IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION **Crim. Misc. Case No: HAM 240/2012**

BETWEEN **JONE DI ATULAGA**

APPLICANT

AND **:** **THE STATE**

RESPONDENT

COUNSEL **:** **Applicant in Person**

Mr M D Korovou for the Respondent

Date of Hearing **:** **06/06/2013**

Date of Ruling **:** **26/06/2013**

RULING ON COST

1. The applicant filed an Application for Cost against the State.

INTRODUCTION

2. The Applicant was tried before this court under two counts of Aggravated Robbery contrary to section 311(1)(b)of the Crimes Decree No:44 of 2009. He was kept in remand until conclusion of his case No: HAC 084 of 2010.

3. The matter was first called in the Magistrate Court on 25th March 2010 and the voire dire against the Applicant commenced on 22nd October 2012. At the end of the inquiry this court held that the interview statement of the Applicant was irrelevant and inadmissible on the basis that the interview statement was obtained involuntarily and unfairly. As the State primarily relied on the Caution Interview Statement of the Applicant it opted to offer no further evidence. The Applicant was accordingly acquitted from the case.

4. Now the Applicant filed this Application and seeks cost against the State on the following grounds:

   i) The prosecution had no reasonable grounds for bringing the proceedings;

   ii) The Prosecution had unreasonably prolonged the matter;

   iii) The Applicant relies on Section 150 of the Criminal Procedure Decree 2009.

BACKGROUND OF EVENTS

5. The Applicant's trial commenced on 22.10.2012 with a voire dire held first to determine the admissibility of the Applicant's Caution Interview Statement to the Police in relation to this case.

6. On 24.10.2012 after the voire dire this court ruled that the Applicant did not give his Caution Interview Statement to the police voluntarily.

7. Because of the decision of this court the prosecution decided not to proceed to trial proper before assessors. Accordingly Applicant was acquitted form this case.

8. The Applicant has now filed a notice of motion with his supporting affidavit seeking costs, compensation and damages and any other orders under Section 150 of the Criminal Procedure Decree 2009.

LAW

9. Section 150 of the Criminal Procedure Decree 2009 deals with the application for cost.

   1. A Judge or magistrate may order person convicted of an offence or discharged without conviction in accordance with law, to pay to a public or private prosecutor such reasonable costs as the judge or magistrate determines, in addition to any other penalty imposed.

   2. A judge or magistrate who acquits or discharges a person accused of an offence, may order the prosecutor, whether public or private, to pay to the accused such reasonable costs as the judge or magistrate determines.

   3. An order shall not be made under sub-section (2) unless the judge or magistrate considers that the prosecutor, either had no reasonable grounds for bringing the proceedings or has unreasonable prolong the matter.

4. A judge or magistrate may make any other order as to costs as may be required in the circumstances to-

   (a) defray the costs incurred by any party as a result of adjournment sought by another party;

   (b) recompense any party for any costs arising from any conduct by any other party which delays a trial or requires the expenditure of monies as a result of the conduct of that party during a trial;

   (c) penalize a lawyer for any improper action during a trial, and in such a case the order may be that the lawyer pay the costs personally; and

   (d) otherwise meet the interests of justice in any case.

5. The costs awarded under this section may be awarded in addition to any compensation awarded by the court under this Decree or the Sentencing and Penalties Decree 2009.

6. Payment of costs by the accused shall be enforceable in the same manner as a fine.

Section 158(2) of the Old Criminal Procedure Code provides:

> "It shall be lawful for a judge of the [High Court] or any magistrate who acquits or discharges a person accused of an offence, to order the prosecutor whether public or private, to pay the accused such reasonable costs as to such judge or magistrate may seem fit:
>
> Provided that such an order shall not be made unless the judge or magistrate considers that the prosecutor either had no reasonable grounds for bringing the proceedings or has unreasonably prolonged the same"

CASE AUTHORITIES

10. **State v Ravuvu** [2004] FJHC 105: Criminal Appeal No: HAA 65 of 2003S:

In considering a costs application, a court should ask both parties to make submissions, and should specify the grounds on which costs are awarded. There are no other grounds on which costs may be awarded (**Graham Southwick v State** CAV0001 of 2003S) and a ruling on costs should specify whether the prosecution was unreasonably brought or unreasonably prolonged.

It is apparent that neither ground applied in this case. If the learned Magistrate had accepted the evidence of PW1, he would have convicted. No prosecutor can predict whether a court will accept the evidence any witness, when the statement of the witness appears to be credible. In this case, there was an equal chance of a conviction, as there was of an acquittal.

11. **State v Southwick** [1999] FJHC 123; HAC Criminal Case No.018 of 1998:

> The said section 158(2) does confer a discretion in the court to make an order for cost but that discretion has to be exercised judicially which I have done bearing in mind that each case must be considered on its own special facts. In this case I find that no good grounds have been shown for the exercise of that discretion in the applicant's favour.
>
> In this case which is a criminal proceedings a particular approach according to its own circumstances is required as already stated here above. **As is clear from the provisions of section 158(2) the mere facts that the accused has been 'discharged' does not result in an order for costs being made in his favour**, nor for the reasons that I have given after considering the submissions of the learned defence counsel that I ought to make the order for costs.

12. **McCartney v State** [2010] FJHC 30: Criminal Appeal No.013 of 2008:

> In the instant case and in the absence of any application by the defence at the time for a stay of proceedings on the basis of unfairness, there was nothing to suggest to the prosecution that the proceedings were unreasonable.

ARGUMENTS

13. The Applicant submits that, the State had no reasonable grounds for bringing the proceedings.

14. It is trite law that "...a confession ...well proved is the best evidence that can be produced" (**R v Baldry** (1852) 2 Den 430,446; 169 ER 568,574). This was referred to in **Urai Tirai v State** [2009] FJCA 25; AAU0018.2009 (17thy July 2009).

15. The State submits that it was reasonably and legally correct to initiate the prosecution against the Applicant because the voluntariness and or admissibility of the confession statement can only be determined by a trial judge during a voire dire inquiry. The prosecution cannot, in law, unilaterally hold that the confession statement was obtained involuntarily for it is only the trial judge that is conferred with the discretion to exclude confession statement after properly conducted voire dire inquiry.

16. In answering to second ground of the Applicant State submits that the Applicant was first produced in the Magistrate Court on 25th March 2010 and was transferred to the High Court for mention on 16th April 2010. On 16th April 2010, the matter was called again in the Magistrate Court but information and disclosures were filed in the High Court on 18th May 2010. Further the inability of the Applicant to secure legal representation and the delay in advancing his voire dire grounds contributed to the delay in the case. His plea was taken on 21st October 2011 and a trial date was set for 15th October 2012.

17. Her Ladyship, Justice Shameen said in **State v Ravuvu**-HAA 65 of 2003S that:
"no prosecutor can predict whether a court will accept the evidence of any witness, when the statement of the witness appears to be credible. In this case, there was an equal chance of a conviction, as there was of an acquittal".

18. Though the Applicant was acquitted after a voire dire inquiry, I conclude that the proceedings were not unreasonably brought against him. Further, State has not contributed any unreasonable delay in this matter.

19. Due to aforementioned reason I conclude that this Application has no merit. Hence I dismiss this application.

20. 30 days to Appeal.

P Kumararatnam
JUDGE

At Suva
26/06/2013