

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

Criminal Miscellaneous Case No. HAM084 of 2014

**BETWEEN**

**MAHENDRA PAL CHAUDHRY**

**Applicant**

**AND**

**STATE**

**Respondent**

**BEFORE: JUSTICE PAUL MADIGAN**

Counsel: Mr. Anand Singh for the Applicant  
Mr. M. Korovou for the Respondent.

Date of hearing: 28 April 2014

Date of Ruling: 30 April 2014

---

**RULING**

---

1. Pursuant to section 239 of the Criminal Procedure Decree 2009, the Applicant moves the Court that the Judgment delivered on the 4<sup>th</sup> April 2014 after his trial on three breaches of the Exchange Control Act, Chapter 211 ("the Act") and the convictions entered pursuant to that judgment be arrested on the grounds that the Information does not state any offence which the Court has power to try.
2. The particular impediment alleged is that counts charged under sections 3, 4 and 26 of the Act in the information state that the breaches were committed without the approval of the Governor of the Reserve Bank of Fiji whereas the Act refers to the approval of the "Minister" (of Finance). The powers of the Minister have been delegated to "the Reserve Bank" and the Applicant submits that the reference in the counts to the absence of authority of the "Governor of the Reserve Bank" makes each of the counts defective. He argues that the counts should read "without the authority of the Reserve Bank". As a consequence, he submits, the convictions pursuant to these defective counts should be set aside and should the D.P.P. wish, proceedings may be brought *de novo*.
3. Legal Notice no. 98 of 1981 makes reference to section 39 of the Act, a section which is concerned with delegation of powers. It reads:

*“The Minister has delegated to the Reserve Bank of Fiji all his powers under the said Act other than the power to make orders or to give authority to apply for a search warrant.”*

Furthermore, section 48 of the Reserve Bank of Fiji Act, Cap 209 states:

*“49. - (1) The Reserve Bank shall exercise, as agent for the Government, such powers or functions under any law for the time being in force relating to exchange control and the regulation of financial institutions in Fiji as may be delegated to it by the Minister. “*

4. It is abundantly clear therefore that the powers of the Minister with respect to exchange control matters has been delegated to the Reserve Bank, and the question arises is the Governor of the Reserve Bank synonymous with the Reserve Bank?
5. The identical question has already been decided in a case that has gone from the High Court, through the Court of Appeal and finally to the Supreme Court. A most relevant case that was never cited in argument neither by Counsel for the Applicant nor by Counsel for the State.
6. In State v Governor of the Reserve Bank of Fiji; ex parte Reddy's Enterprises [1990] FJHC 106, Byrne J. held that a



reference to the Reserve Bank must of course include the Governor of the Reserve Bank.

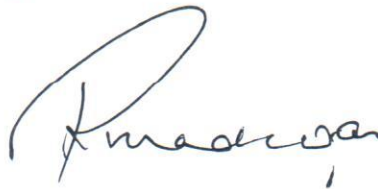
7. He based his conclusion on sections and a by-law of the Reserve Bank Act, Cap 209. He reasoned that the wording of sections 4, 9, 15(1) and bylaw 6 of the Act extended to the Governor the day to day management and conduct of the Bank's affairs. In the principal purposes of the Reserve Bank being the supply, availability and international exchange of money and the promotion of monetary stability, the Governor as Chief Executive Officer of the Reserve Bank is responsible to the Board for the execution of Bank Policy and management. The learned Judge concluded

*"It must be remembered that the Governor of the Bank is acknowledged to be a person of high qualifications befitting the responsible position which he holds. Combining this consideration with the effect of section 4, section 9, section 15(1), section 48 and by-law 6 of the Reserve Bank Act, the contention of the Applicant (an identical contention as in the within application) must fail".*

8. The matter went on appeal to the Court of Appeal and from there to the Supreme Court where in *Governor of the Reserve Bank of Fiji v Reddy's Enterprises Ltd.* CBV 0001.1993 (10 October 1996) a highly eminent bench of Lord Cooke of Thorndon, Sir Anthony Mason and Sir Maurice Casey said:

*“No question was raised in this Court about Byrne J.’s conclusion (accepted by the Court of Appeal) that the Governor of the Reserve Bank was authorized to exercise the Minister’s powers under the Act. “*

9. The submissions of the Applicant in this regard are semantically pedantic and not supported by authority.
10. “The Governor of the Reserve Bank” has been held to be the *persona* of “the Reserve Bank”, by Byrne J. in the **Reddy** case, upheld by the Court of Appeal and referred to without demur by the Supreme Court. Therefore the counts which the applicant were tried on are valid *in law*, and the three convictions unassailable.
11. The application is refused.



**Paul K. Madigan**  
Judge



30 April 2014.