

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 118 OF 2014S

STATE

vs

ILAITIA RAVUWAI

Counsels : **Ms. S. Naidu for State**
Mr. M. Fesaitu for Accused

Hearing : **23 May, 2014**

Ruling : **3 July, 2014**

RULING

1. The accused first appeared in the Suva Magistrate on 15 April 2013, facing 240 counts of "Obtaining Financial Advantage by Deception", contrary to section 318 of the Crimes Decree 2009, "Forgery", contrary to section 156 of the Crimes Decree 2009, "Falsification of Documents", contrary to section 153(1)(b)(ii) and 160(1)(a)(c)(ii) of the Crimes Decree 2009, and other similar offences.
2. The court dealt with the file in the next 11 months, and had the case transferred to the High Court, on 16 March 2014, as a result of an application by the police prosecutor, pursuant to section 191 of the Criminal Procedure Decree 2009, which reads as follows:

"...A magistrate may transfer any charges or proceedings to the High Court..."

3. However, when looking at the court record and the charges, it was found that some of the charges were indictable offences, triable summarily – for examples, “Forgery”, contrary to section 156 of the Crimes Decree 2009. The question therefore became: Did the court have jurisdiction to deal with the matter? Section 4 of the Criminal Procedure Decree 2009 became applicable. The section reads as follows:

“...4 – (1) Subject to the other provisions of this Decree –

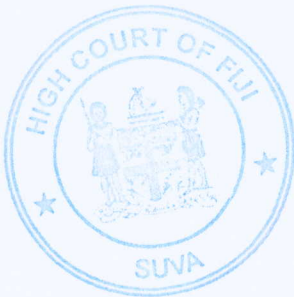
- (a) any indictable offence under the Crimes Decree 2009 shall be tried by the High Court;
- (b) any indictable offence triable summarily under the Crimes Decree 2009 shall be tried by the High Court or a Magistrate Court, at the election of the accused person; and
- (c) any summary offence shall be tried by a Magistrate Court.

(2) Notwithstanding the provisions of sub-section (1), a judge of the High Court may, by order under his or her hand and the seal of the High Court, in any particular case or class of cases, invest a magistrate with jurisdiction to try any offence which, in the absence of such order, would be beyond the magistrate's jurisdiction.

(3) A magistrate hearing a case in accordance with an Order made under sub-section (2) may not impose a sentence in excess of the sentencing powers of the magistrate as provided for under this Decree...”

4. Although section 191 of the Criminal Procedure Decree 2009, gave the learned Resident Magistrate a wide power and authority to “transfer any charges or proceedings to the High Court”, that power or authority must be exercised within the context of the Criminal Procedure Decree 2009 and the Crimes Decree 2009. This meant that the interpretation given to section 191 of the Criminal Procedure Decree 2009, must be consistent with the intention of the law makers, as enshrined in section 4(1), (2) and (3) of the Criminal Procedure Decree 2009. In other words, in exercising his or her powers under section 191 of the Criminal Procedure Decree 2009, the learned Magistrate must do so within the context of section 4(1), (2) and (3) of the Criminal Procedure Decree 2009. He or she cannot go outside the ambit of section 4(1), (2) and (3) of the Criminal Procedure Decree 2009, saved as authorized in Part XIII Division 3 of the Criminal Procedure Decree 2009. I will leave this Part XIII Division 3 issue for later cases to resolve.

5. In this case, on the indictable offences triable summarily, the Learned Magistrate should have put the election for a Magistrate Court or High Court trial, to the accused, in conformity with the requirements of section 4(1)(b) of the Criminal Procedure Decree 2009. This election should be put to the accused preferably, at first call or soon thereafter. This will enable the Magistrate Court to know which venue or court, the accused prefers to be tried in. If the accused elects a Magistrate Court trial, then the Magistrate Court has jurisdiction to deal with the matter, in the normal way. If a High Court trial is elected, then the accused must be sent to the High Court for trial as soon as practicable.
6. As observed by Blackstone's Criminal Practice 2003 (Oxford University Press, 13 ed. 2003), "... since the jurisdiction of Magistrates' courts to try offences triable either way derives solely from statute, any failure to comply with the statutory procedure laid down for determining mode of trial will have the consequence that, if the magistrates do proceed to trial, the hearing together with its result will be ultra vires, a nullity and liable to be quashed by certiorari even where the magistrates have purported to obtain the consent of the accused, and even where the accused is legally represented (kent Justices, ex parte Machin [1952] 2 QB 355)..."
7. The election for a Magistrate Court or High Court trial was not put to the accused during the 11 months the case was in the Magistrate Court. Some of the charges were "Forgery" ones, and therefore indictable offences which were triable summarily. Because of the above oversight, the whole proceeding in the Magistrate Court was a nullity: see Aca Koroi v The State, HAM 186 of 2012S, High Court, Suva, paragraph 7; Fabiano Misaele Vakadrano v The State, HAA 031 of 2013S, High Court, Suva.
8. I therefore remit this case to the Magistrate Court for the election to be put to the accused in conformity with section 4(1)(b) of the Criminal Procedure Decree 2009. I order so accordingly.




Salesi Temo
JUDGE

Solicitor for State
Solicitor for Accused

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Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva.