

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 02 of 2015

GUNAC (SOUTH PACIFIC) LIMITED (“GUNAC”)

Appellant

v.

FIJI NATIONAL PROVIDENT FUND (FNPF)

Respondent

Counsel: Mr. W. Hiulare for appellant.


Ms. L. Koto for respondent.

Dates of hearing: 13 February, 16 March and 1 April 2015

Date of Judgment: 7 April, 2015

JUDGMENT

On the 3rd December, 2014 in the Magistrates Court at Suva, the appellant company “GUNAC” was found guilty of the following charge:



COUNT 1**Statement of Offence**

FAILING TO PRODUCE DOCUMENTS contrary to section 61 (c) thereby committing an offence under section 49 (1)(k) of the Fiji National Provident Fund Act Cap 219.

Particulars of Offence

GUNAC (SOUTH PACIFIC) LIMITED, on 16th June 2011 at 9.00am failed to produce documents to wit: Wages Payment Records for all employees for the period January 2003 to January 2011 inclusive, having been notified in writing on 26th May 2011 to produce the said documents at the office of the Fiji National Provident Fund, 33 Ellery Street, Suva.

2. The learned Magistrate after that finding of guilt ordered that the company pay a fine of \$400 with \$300 costs and that the company remedy the failure charged, that is that they produce all employees wage records for the period January 2003 to January 2011.
3. GUNAC being aggrieved by this finding appeals both the finding and the orders made on the following grounds:
 - 1) that the learned Magistrate erred in law and in fact when he failed to make enquiries whether there was any settlement before proceeding to allow the formal proof to be conducted.
4. Both the appellant's and the respondent's counsel have filed several sets of submissions in this appeal, the appellant ignoring time orders of the court thereby inconveniencing counsel for the respondent.

5. The charge being one of failure to file employment documents cannot be the subject of "settlement". Either the company filed the documents or it didn't. Payment of outstanding sums (if any) is completely irrelevant to the charge as laid.
6. Counsel for the appellant appears to suggest in his written submissions that there was an agreement between his client and FNPF that once all arrears had been paid, then all cases against GUNAC (including this matter) would be discontinued.
7. Counsel for the FNPF submits that there were 2 cases against GUNAC, one for outstanding arrears and this, for failure to provide documentation. The arrears were paid and that case (619/12) was discontinued. There has never been a question of discontinuing the present case (1662/11).
8. I prefer to believe the affidavit evidence of FNPF but even if counsel for GUNAC were correct two matters arise.
 1. The Court below was never informed that an agreement had been reached between the parties to discontinue the present case.
 2. It is very difficult to see how a financial 'settlement' would affect this failure to disclose charge.
9. This appeal is frivolous and vexatious and it is dismissed.



P. K. Madigan
Judge