

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

**Criminal Appeal No. HAA 004 of 2015**

**BIOSECURITY AUTHORITY OF FIJI**

**Appellant**

**v.**

**PHILIP GRACE**

**Respondent**

Counsel: Mr. F. Haniff for appellant.  
Respondent not present

Date of hearing: 27 March, 2015

Date of Judgment: 27 April, 2015

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## **JUDGMENT**

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On the 26<sup>th</sup> September 2014 the respondent appeared in the Nausori Magistrate's Court and was "sentenced" to a fine of \$50 for making a false declaration at the border that she had no fresh fruit with her on arrival.

2. The respondent was an uneducated middle aged national of Vanuatu. She stated in evidence that her daughter had been

given an apple on the aircraft, she had not eaten it so she (the mother) had put it in her bag to keep it. She had completely forgotten about it when filling out her declarations and when interviewed by the Nausori customs officer. The respondent was at the time issued with a fixed penalty ticket which demanded an on the spot fine of \$400. The ticket was in contravention of s.92(f)(i) of the Biosecurity Promulgation 2008 which creates an offence of knowingly making a false or misleading biosecurity declaration. The fixed penalty had to be paid within seven days but was not. As a consequence the fixed penalty notice and order was filed in the Magistrates Court.

3. The Magistrate appears to have taken a very lenient view of this false declaration. For example he said "The fixed penalty is \$400.....However the court is of the view that considering the circumstances this amount not be justified (sic)"

and later

"Is it fair in the circumstances to impose a fine of \$400 on the mistaken belief that an apple that was given as part of an in-flight meal needed not to be disclosed? The Court taking into account the above, must answer in the negative".

4. On the fixed penalty notice and order served on the respondent on 13<sup>th</sup> July 2014, she had entered and signed a written guilty plea. It was because she had not paid the fixed penalty of \$400 within 7 days that the matter had then come before the Magistrates Court. The maximum penalty for the offence is \$20,000 and/or imprisonment for 6 months and these maxima would be available for the Magistrate to consider when choosing to enforce payment of the fixed penalty amount.

When a fixed penalty has been imposed on a transgressor pleading guilty and the sum penalized has not been paid then it comes before the Magistrate who “may enforce payment of the sum outstanding as if it were a fine imposed by the court including imposing costs and confiscation as appropriate” (section 96(8)(b) of the Promulgation). It is not a fresh prosecution coming to the court and it was unnecessary for the court in this instance to take a plea again from the respondent and then “sentence” her to a sum of \$50 which in the circumstances was manifestly lenient and an inappropriate penalty for the offence. It is not an option in law for the Magistrate to impose a “fine” of a lesser amount.

5. The purpose of the Biosecurity Promulgation 2008 is for the important protection of this country’s agriculture, horticulture and marine culture. Its purpose is stated in the preamble to the Promulgation which states:

*“To prevent the entry of animal and plant pests and diseases into the Fiji Islands; to control their establishment and spread in the Fiji Islands, to regulate the movement of animal and plant pests and diseases and of animals and plants and their products, to facilitate international co-operation in respect of animal and plant diseases and for related matters”.*

6. Therefore the importation of unexamined fruit into the Fiji Islands gives risk to potential for devastating harm to crops if that fruit has on it or within it, fruit pests such as fruit fly. It is to this end that proper declaration of import and export by passengers must be enforced, for the protection of our agriculture and to enable proper examination of fruits and plants that are properly declared. It is perfectly understandable that the law should penalize false declarations and that it

should impose harsh penalties on those breaching the regulations.

7. The procedures provided by the Promulgation is this. If a false declaration is discovered (under 92(f)(i)) the passenger or declarant would be asked if he or she admits the offence. If it is admitted a fixed penalty notice is issued. If it is not admitted then the declarant is liable to prosecution under s.93 of the Promulgation. A person or corporate identity that does not pay the fixed penalty within time can be brought before a court to enforce payment and determine the penalty which must be at least the fixed penalty amount and probably more depending on the maxima provided for in the schedule to the Promulgation. When Shameem J. was looking at the fixed penalty system pertaining to the Land Transport Regulation 2000 in the case of **Isimeli Nemeboto** [2002] FJHC 184 she said:

*"In deciding on an appropriate case, the fixed penalty under the Regulation should be considered. An offender who has decided to use the court resources to plead guilty, instead of the fixed penalty procedure, would normally expect at the least a fine above the fixed penalty amount".*

This court endorses those dicta and would apply them to the Biosecurity Promulgation fixed penalty milieu. It would defeat the fixed penalty regime set up by the Biosecurity Promulgation if those cases reaching a court because of non-payment were to have a fine imposed of less than the fixed penalty amount. All fines imposed by a court when enforcing a fixed penalty amount must be at least the amount of the fixed penalty and more according to the maxima set out in the Schedule.

8. The Magistrate obviously trying to be merciful imposed a fine of \$50 which although being merciful to the respondent was

ignoring the purpose and intent of the Biosecurity Promulgation. The Magistrate's "just one apple" could have led to the destruction of the entire country's agriculture. No mercy can be extended to those recklessly or knowingly not declaring plants or animals at the border.

9. This appeal succeeds to the extent that the penalty of \$50 imposed by the Court was totally inadequate and was counter to the spirit of the Promulgation to protect our agriculture. It was also not correct in law that a fixed penalty be set aside.
10. Although the appeal succeeds and the \$50 fine is set aside, it is not intended that this respondent be fined afresh. She has since returned to Vanuatu and there would be no point in imposing an alternative fine on her; a fine that should have been in the region of \$750 to \$1,000. At the request of counsel for the Biosecurity Authority of Fiji, this judgment was written for academic and instructional purposes only without adding to the fine of a passenger who may never come to Fiji again.



**P. K. Madigan**  
**Judge**

At Suva  
27 April, 2015