IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

Criminal Appeal No. HAA 35 of 2014

SHOBNA LATA

Appellant

v

SUVA CITY COUNCIL

Respondent

Counsel: Ms. V. Ravono for the appellant.
Mr. Z. Sahu Khan for the respondent.

Dates of hearing: 23 January and 27 March 2015
Date of Judgment: 15 May, 2015

JUDGMENT

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[1] On the 1st August 2014 in the Magistrates Court at Suva, the appellant was found guilty of the following charge:

Statement of Offence

Operating a food establishment which is not licensed contrary to sections 16(1), 16(2) and section 66 of the Food Safety Act 2003.

Particulars of Offence

Shobna Lata, of 216 Vishnu Deo Road, Suva, being the proprietor of a food establishment known as Kiosk No.1, situated at Suva Market New Wing, Suva Municipal Market, Suva in the Central Division did on the 12th August 2011 at Suva Market New Wing, Suva Municipal Market, Suva operate a food establishment the said address which is not licensed.

[2] To this charge the appellant pleaded not guilty and the matter went to trial resulting in a finding of guilty and conviction and a sentence of $2,500 to be paid to the Suva City Council.

[3] The appellant seeks to appeal both conviction and sentence on a multitude of grounds which can be distilled as follows:

1. There was insufficient evidence on her guilt when it was the Council's fault that she did not have a licence.

2. The magistrate considered irrelevant matter.

3. The Council had made unreasonable demands on the appellant.

4. The offence is statute barred.

5. The sentence is excessive and handed down without a means test.

6. It was improper to order it to be paid to the Suva City Council.

[4] The facts of the case were that:

The appellant operated a food takeaway food business from a Kiosk in the Suva Market. To do so and by Suva City Council regulations she was required to have a business licence and a health licence. She applied for both in 2009. She obtained and kept maintained the business licence but was never issued with a health licence. Although the Kiosk was to sell snacks and ready prepared food, the appellant cooked food in the Kiosk, a pursuit that required a raft of additional health measures such as a chimney, exhaust fan, a double sink and a hand-washing basin. The appellant was told many times of these requirements which would enable her to obtain the health licence in satisfaction of the Food Safety Act 2003 regulations. She did not renovate the Kiosk and thus on the 12th August 2011, by cooking in the stall, and without the requisite Health Licence she was in breach of the said Food Safety Act.

[5] Suva City Council inspectors gave evidence that they inspected the Kiosk from time to time, and the strict conditions to be followed by those cooking in the Kiosk were explained to the appellant. Ample time was given to her to make the alterations or to stop cooking but she did not fulfill the requirements nor did she stop cooking.

[6] The appellant gave evidence as the accused at trial. She admitted she was required to have both a business licence and a health licence. She produced her business licence and admitted she had never been issued with a health licence. She

applied several times for such a licence but each time the Suva City Council had made unreasonable demands on her, demands which were beyond her means to comply with. She thought those demands were unfair and in any event the Kiosks were in a poor condition. As it was their building they should have upgraded the Kiosks, to put them in good condition.

Analysis

[7] The charge is one of strict liability. If, for whatever reason, the stall is being operated without a health licence, then the operator is offending against the provisions of the Food Safety Act 2003. It matters not that she was trying to comply, it matters not that she thought the Council were being obstructive. She was cooking, she had no licence to do that and so she was in breach.

[8] The provisions of the Act (s.61(1)) provide a time ban to proceedings. It reads:

> *"(a) No proceeding under the Act may be instituted after 12 months from the time when the charge arose, unless prior leave of the Court is obtained to institute the proceedings".*

Counsel for the appellant submits that the first time she had been found to be cooking without a licence was in December 2010 and that the charge should have been laid within 12 months of that date, which it wasn't. It is nevertheless a continuing offence and after all of the warnings and instructions to the appellant the Council's final inspection was on 10th August 2011 and therefore any charge laid within 12 months of that date must be valid. The charge was laid on the 23rd December 2011.

This ground of appeal cannot be made out and it fails.

[9] All of the appellant's grounds on irrelevance and steps taken to comply are themselves irrelevant and very little evidence is required to prove the charge. That evidence came from the accused herself at trial when she admitted she was cooking and admitted she had no licence. No more was needed.

[10] The appeal against conviction fails.

Sentence

[11] The maximum penalty for the offence is $10,000. The Magistrate in casting her sentence considered that the accused, after being instructed on the requirements, carried on cooking regardless and was therefore in blatant disregard of the law. The learned Magistrate after considering all sentencing options open to the Court decided that the fine of $2,500 was warranted, and she allowed that it be paid in 3 installments, failing which there would be 3 months imprisonment in default.

[12] Despite the submissions of the appellant that she was not heard on her ability to pay such a fine, the court record shows that mitigation was advanced in which it was stated that neither she nor her family was in a position to pay a large fine.

[13] The obvious intent of the Food Safety Act 2003 is to protect the public from unhygienic food sellers which is of course an extremely important function and the appellant's obvious disregard and ignorance of these regulations when she continued to cook cannot but lead to a stringent penalty. It is quite understandable why the Magistrate would settle on such a fine which is well within (and at the lower end) of the statutory fine. She had heard mitigation and was well aware of the accused's financial means. The fine will not be disturbed, nor the order for 3 months imprisonment in default.

[14] The appeal against conviction and sentence is dismissed.

P. K. Madigan
Judge

At Suva
15 May 2015