

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAA 24 of 2015

BETWEEN : **FIJI NATIONAL PROVIDENT FUND BORAD**

APPELLANT

AND : **PINE LANDOWNERS COMPANY LIMITED**

RESPONDENT

Counsel : **Mr. Rogovakalali for the Appellant**
Respondent represented by Mr. Vulakoro

Date of Hearing : **23rd September, 2015**

Date of Judgment : **07th of October 2015.**

JUDGMENT

1. The Appellant files this petition of appeal seeking a reverse in the order of the learned Magistrate in his sentence, dismissing the Appellant's application made pursuant to Section 108(A) of the Fiji National Provident Fund Decree 2011. The Appellant seeks a further order against the Respondent to pay unpaid FNPF contribution of the sum of \$ 15,610.42 in respect of the other employees for the period October 2013 to January 2014. This petition of appeal is founded on the following two grounds, that;

- I. The learned Magistrate erred in law and in fact in refusing to grant the appellant's application in respect of the Notice filed under Section 108 (a) of the Fiji National Provident Fund Decree 2011,*
- II. The learned Magistrate erred in law in not applying the correct legislation when*

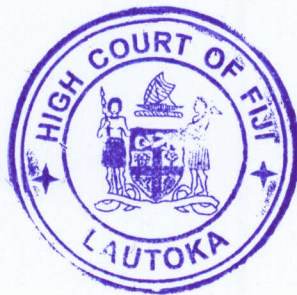
delivering his sentence,


2. The Respondent was charged in the Magistrate court for four counts of “Failing to pay contribution to the Fiji National Provident Fund” contrary to Section 37(1)(a) of the Fiji National Provident Fund Decree 2011. The Appellant also filed a Notice pursuant to Section 108 (A) of the FNFP Decree seeking an order against the Respondent for the payment of unpaid FNFP contribution of a sum of \$ 22,978.26 in respect of the other employees as stated in the said Notice in the event the Respondent is convicted for the said four counts.
3. During the course of the proceedings of the said action in the Magistrate court, the Respondent made a payment of \$ 7,367.84 to the Appellant, thus reducing the total unpaid contribution to \$ 16,242.58.
4. The respondent pleaded guilty and was sentenced by the learned Magistrate on the 12th of May 2015, where the Respondent was ordered to pay sum of \$632.16 in respect of the four counts as charged. However, the learned Magistrate has refused to grant orders in respect of the Notice filed under Section 108(A) of the FNPF Decree.
5. Section 108 (A) of the FNFP Decree states that;

“If a notice of intention so to do is served by the prosecuting officer upon the defendant, evidence may be given, at any trial for an offence under the provisions of section 37 (1) (a) or section 38 (3), of other contributions unpaid at the date of the service of the summons upon the defendant, in respect of other employees, in the form of a certificate under the hand of the Chief Executive Officer or of any officer, servant or agent of the Board authorised in writing for the purpose by the Chief Executive Officer and, if the

defendant is convicted of such offence, the court by which he or she is so convicted shall, without prejudice to any right under the provisions of section 108 (1), order the defendant to pay to the Fund the amount of such unpaid contributions, together with any contribution unpaid at the date of trial in respect of the charge upon which the defendant has been convicted, and the provisions of the Crimes Decree 2009 shall apply to any such contributions or any portion thereof so ordered to be paid."

6. Accordingly, it appears that the Magistrate is required to order the Respondent without prejudice to any rights under the provisions of Section 108 (1) of the Decree to pay the Appellant the amount of such unpaid contribution as stated in the Notice filed pursuant to Section 108(A) of the FNPF Decree.
7. Having perused the sentence delivered by the learned Magistrate on 12th of May 2015, it appears that he has not given any reason for his refusal of the Notice filed under Section 108(A) of the Decree. Accordingly, it is my opinion that the learned Magistrate has erroneously refused the Notice filed under Section 108 (A) of the Decree. Wherefore, I quash the order of refusal by the learned Magistrate in his sentence and order the Respondent to pay the sum of \$ 15,610.42 as prayed in the Petition of Appeal.




R. D. R. Thushara Rajasinghe
 Judge

At Lautoka
07th October 2015

Solicitors : Fiji National Provident Fund Board Legal Counsel
Pine Land Owners Company Limited Representatives