

**IN THE HIGH COURT OF FIJI**  
**CRIMINAL JURISDICTION**  
**AT LAUTOKA**

HAC 168 OF 2016/ HAC 180 OF 2016

**BETWEEN : THE STATE**

**AND : LEMEKI TABUSOI**

**Counsel : Ms J. Fatiaki and Mr. J.Niudamu for State**  
**The Accused in person**

**Date of Ruling : 3rd of November 2016**

**RULING**

**Introduction**

1. The accused has been charged for two separate counts of Unlawful Cultivation of Illicit drugs contrary to Section 5 (a) and (b) of the Illicit Drug Control Act in two separate criminal actions bearing Criminal Case No 220 of 2014 and Criminal Case No 182 of 2014, in the Magistrates court of Rakiraki.
2. The learned Magistrate transferred these two cases to the High Court under Section 194 (c) of the Criminal Procedure Decree, stating that the Magistrate court has no jurisdiction to hear these two cases.
3. Accordingly, these two cases were mentioned before the High Court on 1st of September 2016 and 20th of September 2016 respectively. The learned counsel for the prosecution made an application that these two cases be remitted back to the Magistrates court as the Magistrates court has jurisdiction to hear these charges. I

accordingly directed the parties to file written submissions, which they filed as per the direction.

### **Background**

4. The accused has been charged in Criminal Action No 220 of 2014 for one count of Unlawful Cultivation of Illicit Drugs contrary to Section 5 (b) of the Illicit Drugs Control Act. The particulars of the offence are that;

*“Lemeki Tabusoi on the 26th day of August 2014, at Wainiviti settlement, Nalawa, Ra, in the Western Division without lawful authority, cultivated 127 plants of Indian Hemp or Cannabis Sativa with the heights ranging from 15 cm to 214 cm and total weights of 8.6 Kilograms, an illicit drugs”*

5. The accused has pleaded not guilty for the offence. Hence the matter had proceeded to hearing. The hearing had commenced on the 23rd of June 2016. The prosecution has called five witnesses during the course of the hearing. At the conclusion of the prosecution case, the learned counsel for the defence had made an application of no case to answer. The matter was then adjourned till 18th of August 2016 for the ruling of the learned Magistrate on no case to answer. On the 18th of August 2016, the learned Magistrate ruled that the Magistrate court has no jurisdiction to hear this offence as per the decision of **Sulua v State [2012] FJCA 33; AAU0093.2008 (31 May 2012)** and found the proceedings so far conducted in the Magistrates court is a nullity. Having concluded such, the learned Magistrate then transferred the matter to the High Court under Section 194 (c) of the Criminal Procedure Decree.

6. In respect of the Criminal Case No 182 of 2016, the accused has been charged with one count of Unlawful Cultivation of Illicit Drugs, contrary to Section 5 (a) of the Illicit Drugs Control Act. The particulars of the offence are that;

*“Lemeki Tabusoi, on the 13th day of July 2016 at Wainiviti, Nalawa, Ra, in the Western Division, without lawful authority, cultivated 128 plants of Cannabis or Indian Hemp, an illicit drugs weighted 4960 grams”*

7. The accused was first produced before the Magistrate court of Rakiraki on the 18th of August 2016. The learned Magistrate transferred this case to the High Court under Section 194 (c) of the Criminal Procedure Decree stating the Magistrates court has no jurisdiction to hear this case.
8. Having briefly outlined the background of these two matters, I now proceed to determine whether the Magistrate court has jurisdiction to hear the offences under Section 5 of the Illicit Drugs Control Act.

### The Law and Analysis

9. Section 4(1) of the Criminal Procedure Decree defines the jurisdictions of the High Court and the Magistrates court in respect of the offences created under the Crimes Decree. Section 5 of the Criminal Procedure Decree deals with the jurisdiction of the court in regard to the offences that have been created under other laws. Section 5 of Criminal Procedure Decree states that;

*i) Any offence under any law other than the Crimes Decree 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.*

*ii) When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.*

10. Accordingly, the Magistrate Court has been given the jurisdiction to hear the offences that have been created under other laws, if such laws has not specifically prescribed the jurisdiction of the court or not stated whether the offence is an indictable or summary offence.
11. In these instant cases, accused has been charged for two separate counts of Cultivation of Illicit Drugs contrary to Section 5 (a) of the Illicit Drugs Control Act. The Illicit Drugs Control Act has not specifically given the High Court a jurisdiction to hear the offences under the said Act. Moreover, the Illicit Drugs Control Act has not stated whether the offences under Section 5 of the Act is indictable or summary offences. Hence, the Magistrates court has jurisdiction to hear this case pursuant to Section 5 (2) of the Criminal Procedure Decree.
12. The decision of the learned Magistrate to transfer these two cases to the High Court on the ground of want of jurisdiction is based on the guidelines expounded in **Sulua v State (supra)**. The **Sulua (supra)** guidelines have not demarcated the jurisdiction of the court. A. Fernando JA in **Ratuyawa v State [2016] FJCA 45; AAU121.2014 (26 February 2016)** found that;

*“The Kini Sulua case had laid down the guidelines to be followed in sentencing in cases of possession of cannabis sativa and had devised four categories dependant on the weight of the illicit drugs”*

13. Fernando JA in **Ratuyawa ( supra)** having considered the Section 5 of the Criminal Procedure Decree and the provisions of the Illicit Drugs Control Act, held that;

*“Section 5 of the Illicit Drugs Control Act 2004 which creates the offence of cultivation of illicit drugs does not prescribe the court nor state whether the offence is an indictable or a summary offence. I am therefore of the view that the offence is triable by the Magistrate’s court subject to the limitations set out in section 5 pertaining to sentence. There is no evidence of the Magistrate having acted contrary to such limitations.*

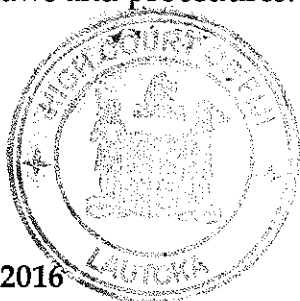
14. Justice Gounder in **State v Wakeham [2010] FJHC 54; HAC001.2010 (23 February 2010)** held that;

*“However, if a legislation creating an offence does not classify it as an “indictable offence” or a “summary offence”, a Magistrates’ Court can hear the matter. This power is vested pursuant to section 5(2) of the Criminal Procedure Decree 2009.*

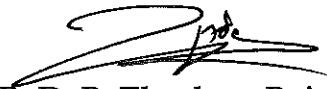
*The offences under the Illicit Drug Control Act 2004 are not classified as either indictable or summary offences. There is now a power vested in the Magistrates’ Court to hear the charges brought under the Illicit Drug Control Act 2004. Thus, there is no need to transfer these cases to the High Court to seek an extension of jurisdiction to a Magistrates’ Court to hear these cases”.*

15. In view of the Section 5 (2) of the Criminal Procedure Decree and the above discussed judicial precedents, the Magistrate court has jurisdiction to hear the offences stem from the Illicit Drugs Control Act.

16. Accordingly, the ruling of the learned Magistrates that the Magistrates court has no jurisdiction to hear the offences as charged in Criminal Actions 220 of 2014 and 182 of 2016 is founded on inaccurate conclusion.
17. Section 194 of the Criminal Procedure Decree deals with the procedure of transferring of indictable offence and the offences that can only be tried in the High Court. Hence, the transfer of these two cases to High Court under Section 194 (c) of the Criminal Procedure Decree is erroneous.
18. I now draw my attention to the ruling delivered by the learned Magistrate in Criminal Case No 220 of 2014 on the 18th of August 2016, where the learned Magistrate found the proceedings so far conducted in the said case is a nullity.
19. In view of the above findings that the Magistrates court has jurisdiction to hear these two cases, I set aside the said ruling dated 18th of August 2016 in exercising the revisionary power of this court pursuant to Section 262 (1) (b) of the Criminal Procedure Decree.
20. In conclusion, I remit these two cases, Criminal Case No 220 of 2014 and Criminal Case No 182 of 2016, back to the Magistrate Court of Rakiraki and direct the learned Magistrate to continue to hear these two cases according to the applicable laws and procedures.



At Lautoka  
3rd of November 2016

  
R. D. R. Thushara Rajasinghe  
Judge

Solicitors: Office of the Director of Public Prosecution