

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAC (FICAC) 2 OF 2014

BETWEEN : **FIJI INDEPENDENT COMMISSION
AGAINST CORRUPTION (“FICAC”)**

AND : **TIMOCI NAULU**

Counsel : **Ms F. Puleiwai & Ms L. Mausio for State
Mr E. Maopa for Accused**

Date of Hearing : **29th September 2016**

Date of Ruling : **30th of September 2016**

RULING

Introduction

1. The Applicant files this Notice of Motion, seeking an order to permanently stay the proceedings of HAC 2 of 2014 on the ground of entrapment.
2. The notice of motion is being supported by an affidavit of the Applicant, stating the ground for this application. The Applicant stated that he entrapped by the

complainant and the FICAC officers while he was conducting an operation against the Complainant regarding an offer of donation.

3. The learned counsel for the Respondent informed the court that she does not wish to file any affidavit in opposition but preserved the right to make submissions during the hearing. Subsequently, the counsel for the Applicant and the Respondent made their respective oral submissions during the course of the hearing. Having considered the notice of motion, the affidavit of the Applicant and the respective submissions of the counsel, I now proceed to pronounce my ruling as follows.

Background

4. The prosecution alleges that the accused solicited an advantage of FJD 5000 from the Complainant, Mr. Kamlesh Kumar in order to drop the charges against the complainant. The second count is with regard to the acceptance of an advantage of FJD 200 and AUD 200 from the said Complainant in order to drop the charges against the complainant.
5. The accused denies the charges and claims that it was the Complainant who made an offer to donate FJD 5000 to the Border Police Station. He then initiated an operation by himself against the complainant to investigate the source of the money.

The Law and Analysis

6. Osborn's Concise Law Dictionary defines entrapment as "enticing a person into committing a crime in order to prosecute him".

7. Lord Hoffman in **R v Looseley Attorney General's Reference (No 3 of 200) (2001) UKHL53, (2002) 2 LRC 382, (2001) 1 All ER 897** held that;

“entrapment occurs when an agent of the state- usually a law enforcement officer or a controlled informers caused someone to commit an offence in order that he should be prosecuted”.

8. Lord Hoffman in **R v Looseley (supra)** has further discussed the application of the principle of “entrapment” in the domain of English law, where his lordship found that;

“First, entrapment is not a substantive defence in the sense of providing a ground upon which the accused is entitled to an acquittal. Secondly, the court has jurisdiction in a case of entrapment to stay the prosecution on the ground that the integrity of the criminal justice system would be compromised by allowing the state to punish someone whom the state itself has caused to transgress. Thirdly, although the court has a discretion under section 78 of the Police and Criminal Evidence Act 1984 to exclude evidence on the ground that its admission would have an adverse effect on the fairness of the proceedings, the exclusion of evidence is not an appropriate response to entrapment. The question is not whether the proceedings would be a fair determination of guilt but whether they should have been brought at all”.

9. Justice Gates (as His Lordship then was) in **State v Pal (FJHC 48; HAC002.2004) (26 May 2006)** has discussed the application of the principle of “entrapment” in Fiji, where His lordship found that;

“In spite of improper motive on the part of the persons gathering evidence here and what might be regarded as a manipulation of the prices for their own ends, a fair trial of

the charges against the accused could still take place. However, that is not the sole consideration. The courts "cannot contemplate for a moment the transference to the executive of the responsibility for seeing that the process of the law is not abused; Connelly v Director of Public Prosecutions (1964) 48 Cr. App. R. 183, at p 268. The Judiciary should accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law; per Lord Nicholls (Looseley supra para 13)"

10. Entrapment is an improper and manipulative process that creates a crime for the accused to commit by another person and then prosecute him for the same. It is an abuse of the process of the court of law. Hence, the entrapment is not a substantive defence but a ground to stay the proceedings on the basis of abuse of the court process.
11. Having carefully considered the affidavit filed by the Applicant and respective submissions made by the parties, I find neither the Complainant nor the FICAC officers presented the applicant an opportunity or induced or lured him in committing this alleged offence. It is a disputed fact by the parties in this proceeding whether the Applicant actually solicited an advantage of FJD 5000 from the Complainant in order to drop the charges against him or the Complainant made an offer of donation. In the absence of any material or evidence to satisfy the court that the Applicant was entrapped by the Complainant and the officer of FICAC, I conclude that this application has no merit.

12. In view of the above finding, I refuse this application and dismiss it accordingly.

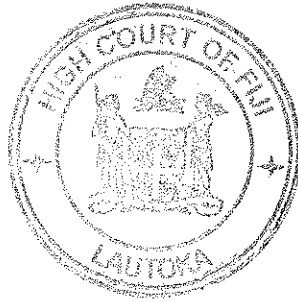


R. D. R. Thushara Rajasinghe

Judge

At Lautoka

30th of September 2016



**Solicitors: Office of the Fiji Independent Commission against Corruption
Messrs Babu Singh & Associates for the Accused person**