

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No. 05 of 2017

JOELI TINAI

Appellant

v

STATE

Respondent

Counsel: Miss S. Nasedra for the Appellant
Ms. A. Vavadakua for the Respondent

Date of Hearing : 16 May 2017
Date of Judgment : 23 May 2017

JUDGMENT

1. This is an appeal against an order for costs made in the Court below against a lady Legal Aid Counsel personally.
2. Although the trial below is still proceeding, this appeal is brought pursuant to sections 246(7) and 151 of the Criminal Procedure Act 2009.

3. The grounds of appeal are:
 1. That the Magistrate erred in making a personal costs order of \$100 against the counsel for causing delay by vacating the trial when in fact the counsel was merely trying to stand the matter down to enable another Counsel to appear.
 2. The learned Magistrate breached the principles of natural justice by warding costs without hearing submissions on the proposed order and without a proper basis to do so.
 3. (Repetitive of Ground 2).
 4. The order is unjust, unfair and unreasonable in the circumstances and is in breach of the provisions of section 150(4) of the Criminal Procedure Act 2009.

Background

4. The trial in question first came before a Labasa Magistrate (not the one making the impugned order) on the 18th June 2013 when the accused first faced charges of Resisting Arrest and Assaulting a Police Officer in the Execution of his duties.
5. A hearing date was first fixed for the 1st April 2014 but that hearing was vacated by the Court because of another hearing.
6. A second hearing date of 23 August 2016 was vacated because the Prosecution was unable to call a Doctor that they needed for the case. An order for costs of \$100 was awarded against an officer of the Labasa Police Station for unstated reasons.

7. A third hearing date of 17 February 2017 was then set; this being the date that the costs in question were awarded.
8. The record shows that Defence Counsel appearing, Miss A., told the Court that she had a conflict of interest and the case was being handled by Miss B., Miss A. asked for the case to be “stood down” so that the supervising Counsel, Mr C. could come and conduct the trial.
9. The record also notes that the learned Magistrate gave a reasoned ruling for issuing the costs as follows:

“Application for stand down is dismissed as this has been a frequent and on-going practice in this jurisdiction which should be put to a stop as it is not an acceptable process and it is a discourtesy to the court and the court system for the Court to stand down to wait for the litigant to prepare and organize themselves. This practice is frequently and commonly used by Legal Aid Commission Counsel. The hearing date today was fixed by the counsel who appeared today and when she fixed the trial date there was no mention of conflict of interest. There is no Nabouwalu Court sitting today and Miss B. should stay over to conduct this trial if she is in charge. There is an application to stand down to allow Mr. C. who is managing the Labasa office. If Miss A. knew that she cannot conduct the trial due to conflict of interest then it would be good management that she stay at the Legal Aid Commission Labasa office to manage the office and for Mr. C. to attend to this case. The court is disappointed on (sic) the conduct of the counsel who appears today as she was the counsel who fixed the trial date. To ensure such practice is not prevalent to this court, the court is considering issuing costs so Counsel can learn a lesson and also to note that such practice is not allowed in this court. I therefore issue a costs of \$100 against

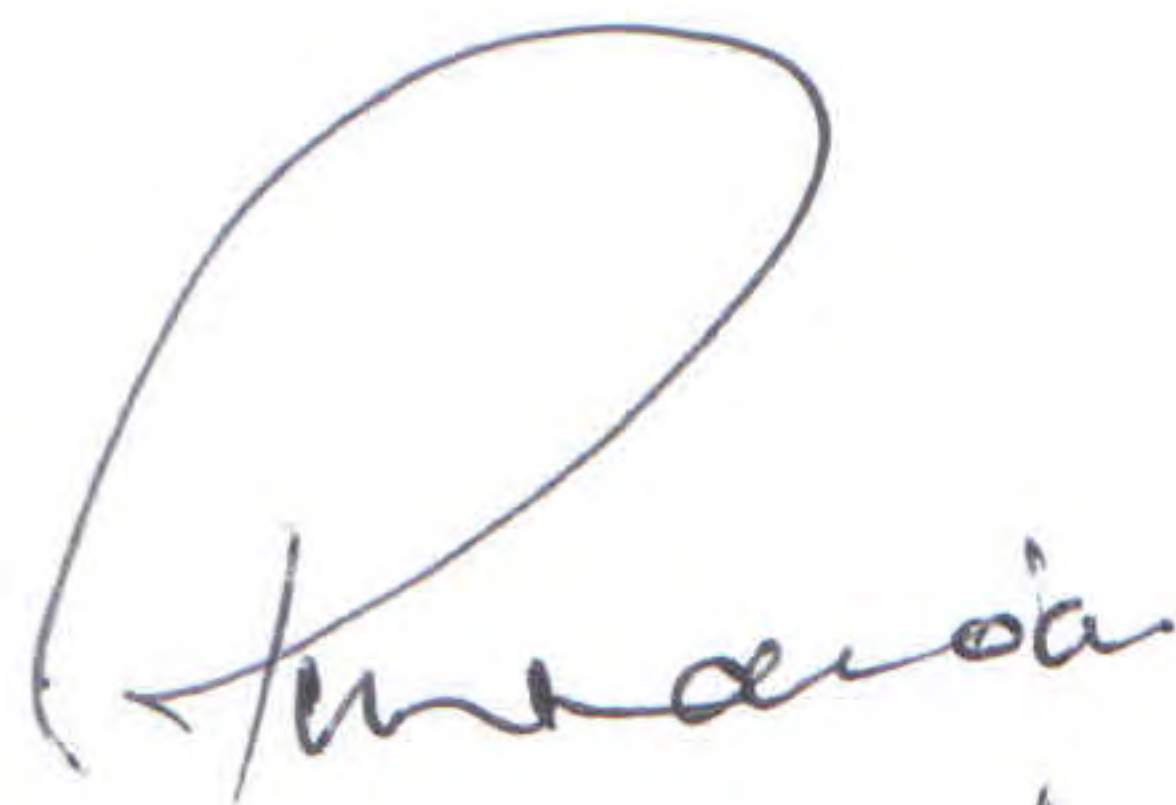
counsel Miss A .of Legal Aid personally and costs to be paid within 31 days for causing delay of this matter. Hearing today is vacated”

10. These remarks show that the Magistrate was quite clearly frustrated and vexed by the poor case management on the part of the Legal Aid Commission.
11. It is also puzzling why when Miss A. appeared on the 9th January 2017 to fix the February 2017 date, she did not then find herself in a conflict of interest situation.
12. Ground one of the appeal pleads that the Magistrate erred in vacating a trial, when all that was applied for was for the case to be stood down to allow Mr. C to appear. However the learned Magistrate’s ruling is quite clear that he was aware it was a stand down and not a vacation that was being requested. He took exception to that and found it was nevertheless a delay that he would not tolerate; it being a common tactic of the Legal Aid Commission. This ground of appeal has no merit.
13. The second ground of appeal prays that in the interests of natural justice the parties should have been invited to make submissions on the Magistrate’s intention to make an order for costs against the Defence Counsel. As this Court said in **Ratuva** HAA 009/2012(Lbs):

When making the order for costs, the learned Magistrate did not ask for submissions from either party on the matter, which although not mandatory would have been in the interests of natural justice so to do”.

14. The reason why this is good judicial practice is twofold. First it allows the judicial officer to hear submissions on the propriety of his/her proposed order and secondly it provides valuable time for the tribunal to recover from any issues of irritation and exasperation.
15. As well as being a principle of natural justice, it is recommended good judicial practice but it is not fatal to the award. This second ground of appeal fails.
16. At the hearing of this matter counsel for the Appellant advanced several other reasons for the request to stand the matter down, reasons revolving around the lack of man power within the offices of the Legal Aid Commission in Vanua Levu on the day in question. These matters however cannot be taken into consideration, because they were not evidence before the Court; the court can only be guided by the record of proceedings in the Court below. It would have been preferable for the Legal Aid Commission to have placed additional evidence before the court by way of Affidavit.
17. This Court finds that the reasoning of the learned Magistrate is valid and justified. All too often a judicial officer is frustrated by cases not proceeding as they should, all for trivial excuses and bad management.
18. However in this case, despite the odd sudden appearance of conflict on the date of hearing, the award of costs should have been a general order against the Commission and not against Miss A. personally. This situation clearly arose as a result of mis-management in the Labasa Commission's Offices.

19. I set aside the personal costs award against Miss A. and if it has been paid, it is to be refunded to her.
20. I make an award for costs against the Legal Aid Commission of \$100 pursuant to section 150(4)(c) of the Criminal Procedure Act 2009, to be paid on or before the 30th June 2017.



P. K. Madigan

Judge



At Labasa
23 May 2017