

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No. HAA19 of 2017

IN THE MATTER OF AN APPEAL
By the State against a costs order
made against the Office of the
DPP in Labasa Magistrates Court
Case No. 122/17

Counsel: Mrs. A. Vavadakua for the State

Date of Hearing: 03 August 2018

Date of Judgment: 07 August 2018

JUDGMENT

1. Proceedings are afoot in the Magistrates Court at Labasa in Case No .122/17 against 6 Police Officers for assault.
2. The matter was listed below for plea on May 24 2018.
3. State counsel had to attend a training session on that day so she had instructed a Police prosecutor to appear on her behalf to fix a new date for plea.
4. The learned Magistrate refused to hear the prosecutor because he was a police officer and the 6 accused were also police officers.
5. The Magistrate thereupon made an ex-parte order for costs against the Office of the DPP pursuant to s.150 of the Criminal

Procedure Act 2009. He awarded costs of \$600 being travel expenses for three of the six accused.

Discussion

6. This appeal against the costs award is made pursuant to sections 246 (6) and (7) of the Criminal Procedure Decree.
7. Unfortunately, the record kept by the Magistrate is deficient. He has not noted why he has refused to hear the Police prosecutor'.
8. He notes in the record that "we will issue cost as a result on the non-appearance of Criminal Procure (sic) Decree."
9. This is a record that the Magistrate has signed as correct.
10. In an earlier ruling made on an application to dismiss charges for the appearance of the Prosecution, the same Magistrate found the application premature but did pre-warn the parties that an award for costs would be made if the Prosecution "failed to turn up" again.
11. It is interesting that in that ruling the same Magistrate referred to the need for the Court to "exercise its discretion judiciously by balancing the interests of both the prosecution and the defence "a direction that he has not heeded on the 24 May 2018.
12. The award is very unfair to the State prosecutor. She obviously knew that the case was being called below on that date and having to be in Suva for training, she arranged for a Police prosecutor to apply for an alternative date.

13. Without enquiring of the police prosecutor why he was appearing, he just assumed that there would be a conflict of interest and refused to hear him.
14. It was additionally unfair of the Magistrate to make the order without hearing representations from the State as to why such order should not be made. To act so precipitously was contrary to due process and unjust. The State had every right to be heard.
15. The appeal of the State has merit and I allow it.
16. The order for costs made below against the Office of the DPP is set aside.



P. K. Madigan
Judge

At Labasa
07 August 2018

