

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL MISC NO: HAM 276 OF 2019
[Nasinu Magistrates Court No: 1341 of 2016]

BETWEEN : **TIKO UATE**

AND : **STATE**

Counsel : **Mr K Prasad for the Accused**
Mr R Kumar for the State

Date of Hearing : **12 May 2020**

Date of Ruling : **1 June 2020**

RULING

- [1] On 12 August 2016, the Applicant was accused of assaulting a fellow prisoner at a corrections facility in Nasinu. The Applicant was a serving prisoner at the time. Two months later, on 26 October 2016, the Applicant was charged with assault causing actual bodily harm contrary to section 275 of the Crimes Act. After the charge was filed in the Magistrates' Court at Nasinu, the police did not produce the Applicant in court for one year.
- [2] The Applicant was eventually produced in court on 15 November 2017. On 18 May 2018, the Applicant's plea was taken and he pleaded not guilty to the charge. Thereafter, the case was adjourned on numerous occasions.
- [3] The Applicant seeks a stay of prosecution on the grounds of abuse of process and post-charge delay.

[4] Any court of justice has power to prevent misuse of its procedure in a way which is manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people (*Connelly v DPP* (1964) A.C. 1254, *DPP v Humphrys* [1976] 2 All ER 497). Lord Salmon in *DPP v Humphrys* [1976] 2 All ER 497 at 527-528 elaborated on the scope of that power:

... a judge has not and should not appear to have any responsibility for the institution of prosecutions; nor has he any power to refuse to allow a prosecution to proceed merely because he considers that, as a matter of policy, it ought not to have been brought. It is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene.

[5] The circumstances which may give rise to abuse of process may vary in each case. It may arise from the methods used to investigate the offence (*R v Heston-Francois* [1984] 1 All ER 785). It may arise on the allegation that the accused is being prosecuted more than once for what is in effect the same offence (*Connelly v DPP*, supra). It may arise from misuse of the process of the court to escape statutory time limits (*R v Brentford Justices, ex p Wong* [1981] 1 All ER 884). It may arise from prejudice due to delay in prosecution (*R v Derby Crown Court, ex p Brooks* (1985) 80 Cr. App. R 164.)

[6] In *Rogers v R* [1994] HCA 42; (1994) 181 CLR 251; (1994) 123 ALR 417; (1994) 68 ALJR 688; (1994) 74 A Crim R 462 (28 September 1994) the High Court of Australia while recognizing the categories of abuse of process are not closed, said the cases may fall into one of three categories:

- (1) the court's procedures are invoked for an illegitimate purpose;
- (2) the use of the court's procedures is unjustifiably oppressive to one of the parties;
- or
- (3) the use of the court's procedures would bring the administration of justice into disrepute.

[7] Section 96 of the Criminal Procedure Act states:

(1) — Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison the court may issue an order to the officer in charge of the prison, requiring the prisoner to be brought in proper custody and at a time to be named in the order before the court.

(2) On receipt of an order under sub-section (1), the officer in charge of the prison shall act in accordance with the terms of the order, and shall provide for the safe custody of the prisoner during his or her absence from the prison in accordance with the order.

[8] The Applicant was in the State's custody when the alleged incident arose. The police then took two months to charge him with a summary offence. After the charge sheet was filed in the Magistrates' Court the police did not produce the Applicant in court for one year. In one year the case was called in the Magistrates' Court on twelve occasions and on all those occasions the learned magistrate issued orders for the Applicant to be produced in court for arraignment. The orders were not complied and no reasons were given to the court for the non-compliance.

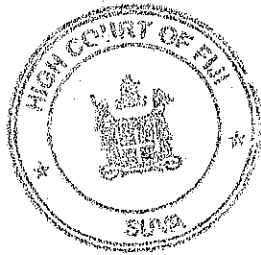
[9] The Applicant had a statutory right to be produced in court for arraignment without undue delay. He also had a constitutional right to be tried without unreasonable delay. He did not have access to court for one year after being charged. Eventually when he was produced in court, the case was adjourned on three occasions before he was arraigned on the charge.

[10] After arraignment the case had been adjourned on nine occasions without the trial being heard. The case has been pending for three and years without hearing. The Applicant is not at fault. The delay is systemic because of poor management of the case by the Magistrates' Court. The case has been adjourned on numerous occasions without good cause. However, since the Applicant has not argued any specific prejudice arising from post-charge delay, stay of prosecution is not appropriate on the ground of delay.

[11] The question is whether the conduct of the police in not producing the Applicant in court for arraignment for one year after charging him is a misuse of the court process, or would bring the administration of justice into disrepute among right-thinking people. The

Applicant was in the State's custody when he was charged with a summary offence. The court issued production orders on several occasions for him to be produced in court, but the police did not comply with those orders and gave no reasons for the non-compliance. The Applicant's statutory and constitutional rights were violated when he was kept in the State's custody without being produced in court in defiance of the orders of the court. In these circumstances, it is an abuse of court process to allow the State to continue with the prosecution of the Applicant.

[12] The charge against the Applicant is permanently stayed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused