

IN THE HIGH COURT OF FIJI
AT SUVA
ANTI CORRUPTION JURISDICTION

CRIMINAL MISSELANEOUS CASE NO. HACDM 009 of 2022S

BETWEEN: **SALOTE VUIBURETA RADRODRO** **APPLICANT**

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

Counsel: Mr. S. Valenitabua for the Applicant
 Mr. D. Hicks with Mr. A. Nand and Mr. J. Works for the FICAC

Date of Hearing: 17th June 2022

Date of Ruling: 22nd June 2022

RULING

(On Stay of Proceedings)

1. The Applicant filed this Notice of Motion seeking an order to stay the proceedings of the High Court Criminal Matter HACD 007 of 2022S until the final determination of the following matters:
 - a) *The Applicant’s criminal appeal, which has been filed in the Fiji Court of Appeal, against the Ruling of the Anti-Corruption Division of the High Court delivered on the 4th of February, 2022, for which Criminal Appeal No. AAU 008 of 2022, Ratu Suliano Matanitobua & ors v. FICAC is material.*

b) *The Applicant's Motion supported by Affidavit in Support for constitutional redress filed in the High Court on 6th June 2022, for which Miscellaneous Action No. HBM 007 of 2022 Salote Vuibureta Radrodro v. FICAC is relevant.*

c) *The Appeal filed by Niko Nawaikula on 2nd June 2022, being Criminal Appeal No. AAU 035 of 2022 Niko Nawaikula v. FICAC.*

2. The Notice of Motion is being supported by an affidavit of the Applicant stating the grounds of this application. The Respondent filed an affidavit of Vasiti Matadigo, stating the Respondent's objections. The Court then heard the submissions of the parties on the 17th of June 2022. The learned Counsel for the Applicant informed the Court that the Applicant had withdrawn the Constitutional Redress Application filed in the High Court, which was one of the matters that the Applicant wishes to determine before the hearing of HACD 007 of 2022S. The Court noticed that the learned Counsel for the Applicant only focused on the appeal filed in the Court of Appeal against the ruling of this Court dated 4th of February 2022. Hence, it appears that the learned Counsel for the Applicant wants to stay the proceedings of HACD 007 of 2022S pending the final determination of the said appeal in the Court of Appeal. The learned Counsel for the Applicant made no submissions in respect of the Criminal Appeal No AAU 035 of 2022.
3. The Applicant made this application pursuant to the inherent jurisdiction of this Court. The inherent jurisdiction of the Court should be exercised with utmost care and sparingly. (*vide Shameem J in Paek Kyeong Yeopl v The State [2003] FJHC 216; HAM0035D.2003S (1 October 2003)*) Inherent jurisdiction is a valuable servant but a bad master. In exercising the Inherent Jurisdiction, the Court must not supersede or negate the statutory intention of the legislature. (*vide Tikaram J in Seru v State [1999] FJCA 37; Aau0041d.99 (3 August 1999)*).
4. Hence, it is prudent to examine the statutory intention of the legislature regarding the stay of proceedings in the High Court, pending the determination of appeals filed against the interlocutory or incidental orders.

5. No provisions under the Criminal Procedure Act give the High Court any jurisdictions to stay of its proceedings pending the determination of an appeal filed in the Court of Appeal. Instead, the provisions of the Criminal Procedure Act and the Court of Appeal Act have explicitly stated that no right of appeal lies against any order made during the proceedings until the trial Court finally determines the guilty of the accused. (*vide; Section 247 (7) of the Criminal Procedure Act and Section 21 of the Court of Appeal Act*). The statutory intention of the legislature is to prosecute the Criminal proceedings expediently without undue delays. Hence, the appeal rights against the interlocutory or any incidental rulings made during the course of the proceedings in the trial Court arise only after the final determination of the guilty of the Accused. Therefore, it is clear that the legislature has no intention to allow an appeal against any interlocutory or incidental orders until the determination of the guilty or the conclusion of the proceedings. Therefore, the staying of proceedings in the High Court pending the determination of the appeal filed against any interlocutory or incidental orders would surely defeat the above intention of the legislature.

6. Sir Moti Tikaram P in **Seru v State (supra)** held that:

“I have no hesitation in ruling that a single judge has no power under Section 35 of the Court of Appeal Act to stay a criminal trial or proceedings pending appeal. The Court of Appeal Act has been amended twice in 1998 first by Act No. 13 of 1998 and then by Act No. 39 of 1998. It is significant to note that Section 35 itself was revised and enlarged by Act No. 13 of 1998 but no power was given to a single judge to grant a stay.

In view of the reasons given I hold that a single judge of the Court of Appeal has no power to make a stay order stopping a criminal trial pending appeal whether the appeal (or proposed appeal) is from a final judgment or an interlocutory decision. In the circumstances it is not necessary for me to rule whether Surman J.'s Order dated 19 July 1997 made in Criminal Case No. HAC004 of 1997 constitutes a final judgment or not. However I appreciate

that the Applicants' right to appeal under S.121 (2) of the Constitution depends on whether the Order in question is a final judgment or not."

7. The Fiji Court of Appeal in ***Buadromo v Fiji Independent Commission Against Corruption (FICAC) [2021] FJCA 14; AAU01.2021 (19 January 2021)*** has discussed the issues of stay of proceedings pending appeal, where Prematilaka JA held that:

*"Assuming that the counsel's submission has merits, firstly, still it is the Court of Appeal and not a single judge of the this court that could have recourse to Rule 7(b) of the Court of Appeal Rules. Secondly, the powers exercised by the English Court of Appeal to stay proceedings appear to be in relation to trials and not appeals. Thirdly, as remarked by Sir Moti Tikaram, President, Court of Appeal in ***Seru v State*** (supra) 'The Court of Appeal Act has been amended twice in 1998 first by Act No. 13 of 1998 and then by Act No. 39 of 1998. It is significant to note that Section 35 itself was revised and enlarged by Act No. 13 of 1998 but no power was given to a single judge to grant a stay.' This shows that the legislature has deliberately omitted to confer power in a single judge of the Court of Appeal to stay proceedings pending appeal. In fact no such power as held by Chalanchini P in ***Chaudhry v State*** (supra) seems to have been vested even in the Court of Appeal in respect of criminal matters or proceedings. Therefore, not only a single judge of the Court of Appeal but also the full court would not be inclined to adopt the jurisdiction following the English Court of Appeal to stay proceedings pending the hearing of an appeal."*

8. In view of the above judicial precedents and provisions of the Court of Appeal Act and the Criminal Procedure Act, it is clear that the legislature had intentionally given no jurisdiction to the Court of Appeal to stay proceedings in the High Court pending the determination of an appeal.

9. The learned Counsel for the Applicant relies on the following case authorities, **Paek Kyeong Yeopl v The State (supra), S Karan Construction Co Ltd v The State [2001] FJHC 69: HAM0023d.2001s (13 September 2001)**. However, the decisions of the above case authorities are concerning the execution of the sentence and other incidental orders made in relation to the sentence and not to stay of proceedings pending the determination of the appeal.
10. The power of the High Court to grant a permanent stay of proceedings in the Magistrate's Court or any proceedings of original jurisdiction in the High Court on the basis of abuse of the Court process under the inherent jurisdiction of the Court is not similar to the stay of proceedings pending the determination of an appeal.
11. Hence, granting a stay of proceedings pending the determination of an appeal filed against an interlocutory or incidental order would defeat the statutory purpose of the legislature. Thus, this Court has no jurisdiction to exercise its inherent jurisdiction to defeat the said intention of the legislature.
12. In view of the above-discussed reasons, I refuse this Notice of Motion for Stay of Proceedings and dismiss it accordingly.



Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

22nd June 2022

Solicitors

Valenitabua & Associates for the Applicant.

Fiji Independent Commission Against Corruption for Respondent.