

IN THE HIGH COURT OF FIJI
AT SUVA
ANTI-CORRUPTION DIVISION

CRIMINAL CASE NO. HACDM 007 of 2022S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

vs.

SALOTE VUIBURETA RADRODRO

Counsels: **Mr. Aslam R, Mr. Hickes D with** - **for Prosecution**
 Mr. Work J and Mr. Nand A.

Mr. Valenitabua S. - **for Applicant**

Date of Hearing: 15/06/22

Date of the Ruling: 21/06/2022

RULING

1. In the substantive matter against the Defendant **Salote Vuibureta Radrodro**, HACD/07/2022S, she is charged in this Court by the Fiji Independent Commission Against Corruption (FICAC) on two counts, as follows:
 - i) **Tendering False Information to a Public Servant**, an offence contrary to **Section 201 (a)** of the **Crimes Act of 2009**; and
 - ii) **Obtaining Financial Advantage**, an offence contrary to **Section 326 (1)** of the Crimes Act of 2009.

2. By this application, though the counsel for the Defendant claims that he files action for a preliminary objection under **Section 279 (1) (2)** of the **Criminal Procedure Act of 2009** against the Information filed by FICAC, this Court perceives that provision for such an objection is not available under the quoted Section by the Defense Counsel and action for such a claim should have been filed under **Section 214** of the **Criminal Procedure Act of 2009**, where some of the niceties' required for a preliminary objection to the information is missing in this application. However, in the interest of justice, since this trial has not yet commenced, this Court will consider this application. The Defendant raises the following preliminary objections challenging the information filed in this Court by FICAC:

- i) Wrong charge in the First Count, i.e. claiming that the Defendant has been charged under the wrong penal section;
 - ii) Jurisdiction, i.e. claiming that this Court lacks jurisdiction to hear this matter;
 - iii) Wrong dates and amounts in the Second Count, i.e. claiming that the MPDF was not valid during the entire period contained in the charge.
3. In objecting to the preliminary objection raised by the Defense, Prosecution (FICAC) made submissions in Court and have filed written submissions elaborating their position.
 4. In grappling with the issues raised by the counsel for the Defendant, this Court intends to consider the issues raised by the Defense and the contentions of the Prosecution and address the issues one by one.

5. Wrong charge in the First Count

5.1 Defense Position

- a. It is the contention of the Defense that Count 1 of the information stems from the Member of Parliament Declaration Form (MPDF Form)) submitted by the Defendant to the Secretary General of Parliament dated 13th June 2019, which was made by the Defendant in pursuant to the **Parliamentary Remunerations Act of 2014**.
- b. It is the position of the Defense that the information tendered by the Defendant to the Parliament was by the MPDF, which was a Statutory Declaration. Therefore, for any falsehood of the information submitted should be adjudicated under the **Statutory Declarations Act of 1970**.
- c. In this light, it is asserted that any false information tendered in a Statutory Declaration tendered should be charged under **Section 180** of the **Crimes Act of 2009** and not under **Section 201(a)**, as done in this matter.

5.2 Position of the Prosecution

- a. Prosecution submits that the **Parliamentary Remunerations Act of 2014** does not make provisions for such declarations as MPDF and it was done as an administrative matter by the office of the Secretary General to the Parliament.
- b. As the Secretary General to the Parliament, she has the authority to direct and advise members to submit information, such as MPDF, though there was the need of obtaining confirmation of information provided by a Parliamentarian at the end of MPDF, by requiring the signature in the form of a declaration.
- c. It is the position of the Prosecution that the argument of the Defendant that the information given in MPDF was meant to be a Statutory Declaration and thus, the only offence chargeable was **Section 180** of the **Crimes Act of 2009** is a misconception.

5.3 Analysis and Finding

- a. The responsibility and the discretion for Filing Information is clearly detailed in **Section 198** of the Criminal Procedure Act of 2009.
- b. In this regard, **Section 198 (1)** of the **Criminal Procedure Act 2009** reads, as follows:

*“An information charging an accused person and drawn up in accordance with **Section 202** shall be filed by the Director of Public Prosecutions or by the*

Commissioner or Deputy Commissioner of the Fiji Independent Commission against Corruption with the Chief Registrar of the High Court within 21 days of the order for transfer except the High Court may grant leave to extend the 21 days.”

- c. In this light, the discretion in filing information has been granted to the Director of Public Prosecutions or the Commissioner of Fiji Independent Commission against Corruption by statute. Therefore, this Court perceives that the submission of the Defense in this regard is without merit.

6. **Jurisdiction**

6.1 Defense Position

- a. It is contended by the Defense that if the Defendant was correctly charged under **Section 180** of the **Crimes Act of 2009**, the Defendant should be tried in the Magistrates Court, since **Section 180** contemplates a summary offence.
- b. Therefore, it is the position of the Defense that this Court will not have jurisdiction to try the Defendant, if properly charged by the prosecution.

6.2 Position of the Prosecution

- a. Prosecution submits that since the charge under **Section 201** of the **Crimes Act of 2009** is not defective, this Court has jurisdiction to hear this matter and there is no need to conduct a summary trial.

6.3 Analysis and Finding

- a. On the premise of the determination made under the first ground of preliminary objection to the Information raised by the Defense, this Court is of the view that it has jurisdiction to hear this matter.

7. **Wrong dates and amounts in the Second Count**

7.1 Defense Position

- a. Defense claims that by the Second Count filed in this Court against the Defendant, Prosecution alleges that she claimed \$37,921.13 during 01st August 2019 to 30th April 2020 in furtherance of the wrongful information she tendered to the Parliament in the MPDF.
- b. It is the contention of the Defense that the amount stated in this Count is wrong, since the submitted MPDF by the Defendant lapsed on 13th December 2020 as per page 3 of the MPDF.
- c. In this regard, it is asserted by the Defense that in page 3 of the MPDF it is clearly mentioned, “Members of Parliament are required to submit 6 monthly Declaration Forms”. Therefore, it is claimed that the submitted MPDF by the Defendant expired on 13 December 2019 and there was no operational MPDF beyond this date in Parliament, though the Defendant was unjustly enriched by Parliament beyond 13th December 2019 mistakenly.
- d. On this premise, Defense claims that the Defendant should have been charged only for the allowances she received during 13th June 2019 to 13th December 2020 and she is ready and willing to reimburse Parliament \$18,943.53, the allowances she wrongfully received during 14th December 2019 to 30th April 2020.

7.2 Position of the Prosecution

- a. Prosecution claims that this argument of the Defense is based on the ground that the MPDF submitted by the Defendant expires in six (06) months.
- b. The wording of MPDF were carefully done, where the obligation of submitting new declarations by every six months was on the Accused. Whether she met the requirement or failed to do so and what actions Parliament subsequently took are issue for the trial and not a consideration at this stage.

7.3 Analysis and Finding

- a. In comprehending with this issue, this Court notices that though the Defendant claims that her MPDF expired on 13/12/2019, she had continued to submit claims to the Parliament and has been paid public money amounting to \$18,343.53 as allowances till 30/04/2020. Further, on realizing this mistake, as claimed by the Defendant, she has not reimbursed this money, though she was an honorable member of the Parliament of Fiji.
 - b. According to the terms of the MPDF, though it was the responsibility of the Defendant to submit an updated MPDF form after 6 months, it is unfortunate to see the Defendant blowing hot and cold in a legal proceeding to raise a preliminary objection to the information filed against her, though she has obtained the money from Parliament without any complaint.
 - c. Further, though the MPDF directs the Parliamentarians to file a new MPDF every six (06) months, there is no mention of a date of expiry in the tendered MPDF.
 - d. In this light, it is reasonable for this Court to presume the continuation of the existing MPDF in the absence of an updated MPDF for administrative purposes, especially in the absence of any complaints by Parliamentarians.
 - e. Therefore, this Court finds that this preliminary objection lacks any ascertainable credit.
8. On the above detailed reasoning, this Court dismisses this preliminary objection to the Information filed by FICAC.
9. Since this is an interim order, you can appeal to the Court of Appeal of Fiji as provided by law.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage', written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva

21st June 2022