

IN THE HIGH COURT OF FIJI
AT SUVA
ANTI CORRUPTION DIVISION

MISCELLANEOUS CASE NO. HACDM 001 OF 2021L

Fiji Independent Commission Against Corruption

vs

JUSTIN HO

<i>Counsels:</i>	<i>Mr. Work J</i>	-	<i>Respondent/FICAC</i>
	<i>Mr. Anthony M</i>	-	<i>Appellant</i>

Date of Hearing: 19 July 2022

Date of Ruling: 23 August 2022

RULING

1. This application is filed by the Applicant pursuant to **Section 110** and **Section 116** of the **Criminal Procedure Act of 2009** requesting this Court to summon the deponent of the State in the application for Stay order pending in this Court. By doing so, the Applicant intends to verify details by cross-examining the State deponent with the objective of obtaining a permanent stay order against the trial proceedings in the substantive matter in the Nadi Magistrate's Court against the Applicant.
2. In the substantive matter pending in the Nadi Magistrate's Court, the Applicant is charged for Bribery and for tendering false documents, which has now come to a standstill because of this application. As submitted by the Applicant, the permanent stay order is prayed on the basis of Entrapment, Inducement and Abuse of Process.
3. According to the Applicant, by summoning the deponent in this application for the State, he intends to question Mr. Jone Cama of his involvement in the investigations, since the statement given by him in the disclosures substantially differs to what he has stated in the Affidavit for this matter.

4. In objecting to this application, FICAC informs this Court that the Applicant has not established sufficient exceptional grounds, as required by law, to grant this extremely exceptional remedy for stay of proceedings. In support of this position, FICAC tenders the ruling by the **High Court of Australia** in the case of **Jaggo v The District of New South Wales**, as below:

“To justify a permanent stay of criminal proceedings, there must be a fundamental defect which goes to the root of the trial of such a nature that nothing a trial judge can do in the conduct of the trial can relieve against its unfair consequences”

Applicable Law and the Determination of Court

5. The substantive matter in the Magistrate’s Court against the Applicant had been filed by FICAC on the 24th of October 2014. Therefore, this criminal matter had been pending in Court against the Applicant for 8 years.
6. **Section 14 (1)(g)** of the **Constitution** of Fiji, elaborating the rights of the Accused states as below:

“Every person charged with an offence has the right to have the trial begin and conclude without unreasonable delay”

7. This Court is very confident that the crafters of the Supreme Law of our country in their legislative wisdom have drafted such a provision in our **Constitution** to debunk any attempt by parties to a legal proceeding to procrastinate the rightful conclusion of the matter.
8. In this matter, if the parties promptly proceed with the trial in the Magistrate’s Court, all these unclear and grey areas in the investigation can be contested and adjudicated by the Learned Magistrate, whereas, if they tantamount to abuse of process by the State, the headache of this criminal trial against the Applicant could be vitiated without any repercussions.
9. In relation to the need to summon a witness to establish the grounds to stay proceedings in the Magistrate’s Court, this Court intends to consider the provisions of **Section 110** of the **Criminal Procedure Act 2009**, which reads:

“Summons to Witness

110. (1) *If a court is satisfied that material evidence can be given by or is in the possession of any person, it shall be lawful for a court having jurisdiction in any criminal case to issue a summons to the person requiring-*

- (a) *attendance of the person before the court or;*

(b) the person to bring an produce to the court all documents and writings in his or her possession or power which are specified or otherwise sufficiently described in the summons for the purpose of evidence I the case.”

10. As clearly stated in the above provision, the Court needs to be satisfied to summon a witness in a legal proceeding. This is a matter where the applicant has filed action in this Court to stay the criminal proceedings in the Magistrate Court, which can be sufficiently done by affidavit evidence. If the Applicant wishes to challenge a witness about the action taken by the witness in the investigation that could be adequately done at the trial, which has now come to a standstill because of this action. By calling this witness in this Court the applicant will create a trial within a trial which is unfounded.
11. Considering the above reasoning, this Court is not satisfied with the need to call a witness and finds that this application is conjectural therefore dismiss this application.
12. Applicant can appeal to the Court of Appeal of Fiji within the time stipulated by applicable law.



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Hon, Justice Dr. Thushara Kumarage

At Suva
This 23rd day of August 2022