

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 25 OF 2023

BETWEEN : **THE STATE** **APPELLANT**

AND : **RAUTO NAIKA KARALO** **RESPONDENT**

Counsel : Ms. S. Swastika for the Appellant.
No appearance by the Respondent.

Date of Hearing : 18 September, 2023

Date of Judgment : 21 September, 2023

JUDGMENT

BACKGROUND INFORMATION

1. The respondent is charged for one count of theft contrary to section 291 (1) of the Crimes Act 2009 at the Magistrate's Court, Sigatoka. It was alleged that the respondent between 26th of February, 2016 and 25th of April, 2017 dishonestly appropriated cash of \$13,311.43 the property of Fiji Police Force with the intention to permanently deprive the said Fiji Police Force.
2. The appellant pleaded not guilty and after several adjournments the matter was assigned a hearing date for 13th April, 2023. On this date the

defence counsel informed the court that they were served with a bundle of documents two days before the trial hence they needed time to peruse the same and sought a new trial date.

3. The learned Magistrate vacated the hearing but ordered costs of \$300.00 against the office of the Director of Public Prosecutions.
4. The appellant aggrieved by the order of the Magistrate's Court to pay costs filed a timely appeal in this court.

APPEAL IN THE HIGH COURT

5. The appellant filed the following ground of appeal:
 - (a) *The learned Magistrate erred in law and in fact when he failed to award an opportunity to the state to show cause before issuing costs.*
6. The petition of appeal filed in this proceedings have been served on the respondent (affidavit of service filed on 21st August, 2023) but he has not appeared in this court on any occasion.

SUBMISSIONS MADE BY THE APPELLANT

7. The state counsel argued that the learned Magistrate did not give the state counsel any opportunity to explain the reasons for the late service of disclosures hence the prosecution was denied procedural fairness.

DETERMINATION

8. At the outset I would to state that the petition of appeal filed by the appellant mentions one ground of appeal whereas the written submissions filed mentions another appeal ground on similar wordings. Since leave was

not obtained from this court, I have disregarded the second ground of appeal.

9. At page 20 of the copy record the following is noted:

13/04/23

Prosecution: Ms Swastika – DPP

Accused: Present (Mr. Singh J.)

Defence: We've just been served with bundle of disclosures 2 days ago. Need time to vacate.

Court: Hearing is vacated given the unreasonable delay in wasting proceeding and court's time, court costs of \$300.00 against DPP's office to be paid by next mention date.

- DPP carriage for the past 4 years, officer in charge of matter did not conduct matter diligently.*
- Pretrial conference at 10am 18/4/23.*
- Bail extended.*

[sgd] Joseph Daurewa
Resident Magistrate

10. From the notation it is evident that the learned Magistrate did not give the state counsel an opportunity to explain the reasons for the late service of disclosures. It is accepted that the order made was a result of exercise of discretion, however, the exercise of discretion has its limits.

11. In this instance the learned Magistrate ought to have accorded the state counsel due process of explaining herself about the late service of

disclosures which was a fair thing to do. Any discretion must be exercised fairly and judicially to avoid any denial of natural justice which is fundamental to the justice system.

12. Although the learned Magistrate was clearly upset (and correctly so) that the state counsel had not acted diligently or with expediency it does not take away the right of the defaulting party to be heard. The learned Magistrate erred when he made the order for costs without hearing the state counsel.
13. In view of the above the order for costs cannot be allowed to stand.

ORDERS

- 1) Appeal against order for costs is allowed.
- 2) The order for costs made against the office of the Director of Public Prosecutions is set aside.
- 3) The substantive matter pending in the Magistrate's Court will take its normal course.



**Sunil Sharma
Judge**



At Lautoka

21 September, 2023

Solicitors

Office of the Director of Public Prosecutions for the Appellant.

No appearance by the Respondent.