

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 01 OF 2025

BETWEEN: 1. MOHAMMED SANEEM **APPELLANTS**
 2. AIYAZ SAYED-KHAIYUM

A N D: **THE STATE** **RESPONDENT**

Counsel: Mr. D. Sharma with Ms. F. Gul for Appellants
 Ms. N. Tikoisuva for Respondent

Date of Hearing: 17th February 2025

Date of Judgment: 17th March 2025

J U D G M E N T

Introduction

1. The first Appellant has been charged with one count of Receiving a Corrupt Benefit in the Magistrate’s Court, contrary to Section 137 of the Crimes Act. In a separate proceeding in the same Court, the second Appellant has been charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act. Subsequently, the Prosecution moved to consolidate the charges against the Appellants, which both Appellants opposed.

2. Meanwhile, the first Appellant filed a Notice of Motion pursuant to Section 290 (1) (f) of the Criminal Procedure Act and Sections 16 and 23 of the Constitution and the Electoral Act, seeking orders on three main grounds: viz, a declaration that the first Appellant's human rights as guaranteed under the Constitution were breached; a declaration that the office of Director of Public Prosecution has no jurisdiction to prosecute the Appellant under the Electoral Act; and a declaration that the charge filed against him is null and void on the ground that it was sanctioned by an illegally appointed Acting Director of Public Prosecution.
3. The Learned Counsel for the Appellant argued in the Magistrate's Court, asserting that the Learned Magistrate has jurisdiction to hear the matter. In the Magistrate's Court, he emphasized that Section 290 (1) (f) of the Criminal Procedure Act grants the Magistrate's Court broader jurisdiction to hear breaches of any fundamental and human rights, including those under the Bill of Rights chapter. Therefore, the Learned Magistrate can determine the validity of the charge based on the grounds raised by the Appellant in his Notice of Motion and accompanying Affidavit. However, the Learned Counsel for the Appellant submitted that if the Learned Magistrate considers he has no jurisdiction to hear the application, he could transfer the matter to the High Court under Section 44 (5) of the Constitution.
4. The Learned Counsel for the State, Mr. Rabuku, contended that the Learned Magistrate lacks jurisdiction to hear this application, as the jurisdiction to address breaches of rights guaranteed under the Constitution has been conferred upon the High Court under Section 44 of the Constitution. Moreover, Mr. Rabuku asserted in the Magistrate's Court that the jurisdiction to determine the legality of the decision made by the Acting Director of Public Prosecutions to prosecute the Appellant lies with the High Court under the power of judicial review; therefore, that portion of the application should be dismissed.
5. The Learned Counsel for the Appellant consented to Mr. Rabuku's submissions, seeking an order to transfer this application to the High Court and stay the consolidation of the charges until the High Court determines the matter. Consequently, the Learned Magistrate identified

three main issues to be referred to the High Court (*vide: pages 44 to 64 of the first volume of the record of the proceedings in the Magistrate's Court*).

6. As per the conversation between the Learned Magistrate and the two Counsels of the parties on the 25th of September, 2024, it seems that the Learned Magistrate has reached a decision to transfer this application to the High Court based on three main issues (*vide; page 63 of the first volume of the record of the proceedings in the Magistrate's Court*).
7. The parties' positions, including the Learned Magistrate, shifted when the matter was called before the Learned Magistrate on the 7th of October, 2024. I gathered from the record of the proceedings that the Learned Magistrate concluded that the Magistrate's Court has jurisdiction to hear this application under Section 100 (7) of the Constitution and Section 290 of the Criminal Procedure Act, where he concluded that:

“So, with the consent of both parties, I am going to record that it is for this court now determine by virtue of section 100 (7) of the Constitution, in conjunction with 290 of the Criminal Procedure Act, to rule on all those three pertinent matters before this court” (vide; page 24 of the third volume of the record of the proceedings in the Magistrate's Court)

8. On the 4th of November 2024, Mr. Sharma, unlike on the previous occasions, affirmatively requested the Learned Magistrate to transfer this application to the High Court under Section 44 (5) of the Constitution.
9. Eventually, the Learned Magistrate conducted the hearing of this application and delivered his ruling on the 18th of December 2024, dismissing it. In his ruling, the Learned Magistrate identified four main grounds to be determined, as follows:
 - i) ***The First Ground:*** *The issue of investigation being carried out by Police and not by FICAC as Defence challenges that the offences fall under Electoral Act and therefore should have been investigated and prosecuted by FICAC,*

- ii) ***The Second Ground:*** Section 290 of the CPA for Court to ventilate pre-trial issues such as alleged human rights abuse of Accused in leading up to investigation, subsequent charging and refusal of bail without reasons and filling of the charges,
- iii) ***The Third Ground:*** The issue of former acting Director of Public Prosecution, Mr. John Rabuku sanctioning the charge when the Supreme Court decision said that he was not eligible for the position of DPP due to his conviction under Legal Practitioners Act on non - compliance to address a matter with Chief Registrar in a timely manner,
- iv) ***The Fourth Ground:*** Objection to the consolidation of the charges by Defence,

10. The Learned Magistrate dismissed the first ground, stating that it is an issue for the Court to decide at the conclusion of the trial and not at the pre-trial stage. The second ground was dismissed because it does not pertain to the admissibility of the caution interview; hence, it lacks merit. The Learned Magistrate concluded by considering the third ground that the Supreme Court only provided an opinion, which has no retrospective legal effect on Mr. Rabuku's earlier decision to sanction the charges; therefore, his decision regarding this matter is valid under the law. Regarding the issue of consolidation, the Learned Magistrate found in favor of the consolidation of charges.

Grounds of Appeal

11. Aggrieved with the ruling of the Learned Magistrate, the Appellants filed this appeal on the following sixteen grounds:
- 1. ***The Learned Magistrate erred in fact and in law in ignoring the issues raised by the Appellants that the Police had no jurisdiction to prosecute an electoral***

offence that ought to have been investigated by the Fiji Independent Commission against Corruption.

2. ***The Learned Magistrate erred in fact and in law in ignoring the issue raised by the Appellants that the 2nd Appellant was protected from any criminal liability under the **Electoral Act** and any act of election bribery could have been dealt with under the Electoral Act.***
3. ***The Learned Magistrate erred in fact and in law at **paragraph 25** of his Ruling in thinking that the issue was about how clearly the offence was defined when in fact the issue was about whether the Police had the jurisdiction to charge the Appellant for an offence of electoral bribery.***
4. ***The Learned Magistrate erred in fact and in law in completely failing to analyze any of the submissions made by the Appellants in **paragraphs 13 to 20** of the Ruling.***
5. ***The Learned Magistrate erred in fact and in law in confining the issue raised by the Appellants as being trial issues in **paragraph 30** of his Ruling.***
6. ***The Learned Magistrate erred in fact and in law in holding that the Court had no powers under section 290 of the Criminal Procedure Act 2009 to look into prosecutorial misconduct when such conduct was grossly in breach of the Appellants fundamental human rights and the evidence funder oath of the 1st Appellant was unchallenged.***
7. ***The Learned Magistrate erred in fact and in law in holding that the Court could conduct a trial within a trial pursuant to section 290 of the Criminal Procedure Act 2009 to look at allegations pertaining to confessions when there was no such allegations pertaining to confessions when there was no such allegation before the Court and what was before the Court was rogue Police misconduct which took place during the caution interview, the pre***

charge detention period, the post charge detention and failure to adhere to the Bail Act and the Constitution.

8. ***The Learned Magistrate erred in fact and in law at **paragraph 45** of the Ruling in holding that the Appellants could bring separate civil proceedings in the High Court relating to the issues raised by the Appellants.***
9. ***The Learned Magistrate erred in fact and in law in holding that the issue of John Rabuku signing the charge was well settled by the High Court when there was no such Ruling relating to John Rabuku by the High Court.***
10. ***The Learned Magistrate erred in fact and in law relating to the validity of John Rabuku signing the charge filed against the 1st Appellant without considering the factors that the 1st Appellant had raised negating the claim by the State that even though John Rabuku's appointment was De-facto his conduct was De jure.***
11. ***The Learned Magistrate erred in fact and in law relating to the validity of John Rabuku's appointment by saying at **paragraph 56** of the Ruling that the Supreme Court opinion had no retrospective effect.***
12. ***The Learned Magistrate erred in fact and in law relating to the validity of John Rabuku without analyzing any of the factors that negated the principles relating to De jure conduct.***
13. ***The Learned Magistrate erred in fact and in law relating to the validity of John Rabuku when at paragraph 55 of the Ruling he held that because John Rabuku was an experienced counsel and had practiced in criminal law area for over 2 decades so his conduct as Acting Director of Public Prosecutions in sanctioning charges and making appointments were valid without considering or analyzing any of the factors that the Appellants had raised to show why Mr. Rabuku's conduct was not De jure.***

14. **The Learned Magistrate erred in fact and in law relating to his decision to consolidate the Charges in Criminal Case Nos. 324 of 2024 and 548 of 2023 which was based on his analysis that:**

- *the facts had some nexus;*
- *that the consolidation would not embarrass or prejudice both Accused in their defence;*
- *that the public expenses in running two trials would be less if they were consolidated; and*
- *Witnesses would be greatly inconvenienced.*

And in doing so the Learned Magistrate failed to consider the fact that:

- *the State chose to charge them separately;*
- *the State chose to charge them an year apart;*
- *neither can be a compellable witness for the other;*
- *there was no evidence that there were common witnesses;*
- *there was no evidence of any comparison or analysis of the costs of trial;*
- *that consolidation would cause extreme prejudice to the Appellants.*

15. **The Learned Magistrate erred in fact and in law in not transferring the issues to the High Court when the 1st Appellant had opted under s. 44 (5) of the Constitution and requested the transfer.**

16. **The Learned Magistrate erred in fact and in law in not referring the issues raised by the 1st Appellant to be resolved by the High Court if he felt that his powers of jurisdiction under section 290 were limited only to trial issues and he couldn't deal with pre-trial applications relating to Police misconduct, nullity of charges or breach of human rights.**

12. This Appeal was heard on the 17th of February, 2025, during which the Learned Counsel for the Appellants and the Respondent made their respective oral submissions. The Court then directed them to file further written submissions, which the parties submitted. Considering the record of the proceedings in the Magistrate’s Court along with the parties’ respective oral and written submissions, I now pronounce the judgment in this matter.
13. For convenience, I group these sixteen grounds of appeal under the four grounds addressed by the Learned Magistrate. Thus, the first to fifth grounds of appeal fall under the first ground of the ruling, while the sixth, seventh, eighth, fifteenth, and sixteenth grounds relate to the second ground of the ruling. The sixth, ninth, tenth, eleventh, twelfth, thirteenth, and sixteenth grounds pertain to the third ground, and the fourteenth ground of appeal addresses the fourth ground of the ruling.

Jurisdiction of the High Court

14. Section 246 (1) of the Criminal Procedure Act outlines the appellate jurisdiction of the High Court in hearing appeals against the judgments, sentences, and orders issued by the Magistrate’s Court in any criminal proceedings. However, this appellate jurisdiction may be exercised subject to the temporal limitation specified in Section 246 (7) of the Criminal Procedure Act, which states:

“An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the Accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.”

15. Section 246 (7) of the Criminal Procedure Act consists of two primary components. The first component defines the scope of the right to appeal to the High Court against orders from the Magistrate’s Court. Consequently, any order from the Magistrate’s Court can be appealed to the High Court, regardless of whether the Magistrate's Court has proceeded to a

conviction in the matter. Thus, the right to appeal against the orders of the Magistrate's Court is not limited to any specific orders. The second component specifies when the right to appeal to the High Court may be exercised. Accordingly, the right to appeal to the High Court can be exercised only after the Magistrate's Court has determined the Accused's guilt. Therefore, the existence of a final determination of guilt in the Magistrate's Court is *sine qua non* to invoke the appellate jurisdiction of the High Court against the judgments, sentences, or orders of the Magistrate's Court. An exception to this temporal limitation exists when the right to appeal against any order made before the finding of guilt is provided by law.

16. Therefore, the default position for exercising appeal rights against the interlocutory rulings of the Magistrate's Court is after the determination of the Accused's guilt. However, the exception to this default position occurs if the law grants the right to appeal against such orders made before the finding of guilt.

17. Section 100 (7) of the Constitution states that:

“If in any proceedings in a Magistrates Court or a subordinate court, a question arises as to the interpretation of this Constitution, the Magistrates Court or a subordinate court may decide the matter, and its decision may be appealed as of right to the High Court. (emphasis added)

18. The Magistrate's Court has been explicitly granted jurisdiction to determine questions regarding the interpretation of the Constitution if such issues arise during any proceedings in the Court. Decisions made by the Magistrate's Court can be appealed to the High Court as a matter of right.

19. Considering the record of the proceedings in the Magistrate's Court on the 25th of September 2024, the 7th of October 2024, and the 4th of November 2024, it appears that the Learned Magistrate concluded, even though he did not explicitly state it in his ruling, that Section 100 (7) of the Constitution provides the Magistrate's Court the jurisdiction to hear

the Notice of Motion dated the 31st of July 2024 (*see pages 70 to 80 of volume one and page 24 of volume three in the record of the proceedings*). In doing so, he implicitly denied the Respondent's and the Appellants' application to transfer this matter to the High Court according to Section 44 (5) of the Constitution. Furthermore, the Learned Magistrate concluded that the Magistrate's Court has jurisdiction under Section 100 (7) of the Constitution and Section 290 of the Criminal Procedure Act to review the correctness, legality, and motive of the prosecutorial decision made by the then Acting Director of Public Prosecution, Mr. Rabuku.

20. The first Appellant sought the following relief from the Magistrate's Court in the Notice of Motion:

- i) A Declaration that there been a breach of the Applicant's human rights as guaranteed under the Constitution.*
- ii) A Declaration that the pre-charge and post-charge conduct of the Prosecution has brought disrepute to the prosecution of this case and breached the Applicant's rights to dignity, to a fair prosecution and not be subjected to malicious conduct on the part of Prosecutors.*
- iii) A Declaration that the Office of Director of Public Prosecution has no jurisdiction to prosecute a charge which rightfully has to be made under the Electoral Act.*
- iv) A Declaration that the charge in this case is null and void as it was sanctioned by an illegally appointed Acting Director of Public Prosecutions and prosecuted by those appointed by the illegally appointed Acting Director of Public Prosecutions.*
- v) An Order that the Charge filed in the within action and dated 11 March 2024 be wholly set aside and declared null and void.*

vi) The criminal proceedings herein be struck out forthwith.

vii) Costs.

viii) Such other terms and conditions as this Honourable Court deems just.

21. I will briefly outline the nature of the issues raised in the Notice of Motion. The alleged breaches of rights relate to the rights granted to the detainees under Section 13 of the Constitution. The first Appellant sought a declaration that his rights, as guaranteed under the Constitution, had been breached as a relief.
22. The first Appellant challenged the validity of the charge and the ensuing proceedings in the Magistrate's Court on the ground that he should have been charged under the Electoral Act. Consequently, the first Appellant sought a declaration that the Prosecution lacked jurisdiction to prosecute him under the Crimes Act. It is pertinent to note that this declaration was sought on the basis that the Prosecution has no jurisdiction to prosecute him under the Crimes Act. Therefore, it contested the prosecutorial decision made by the Acting Director of Public Prosecutions under Section 117 (8) of the Constitution.
23. Moreover, the first Appellant sought a further declaration that the charge was null and void on the ground of the legality of the sanction made by the then Acting Director of Public Prosecution, Mr. Rabuku. Additionally, a further declaration was sought on the allegation of malicious prosecution by the then Acting Director of Public Prosecution.
24. Accordingly, the Notice of Motion raises two main issues under the Constitution, *viz* the breach of rights outlined in the Bill of Rights chapter and the prosecutorial discretion exercised by the former Acting Director of Public Prosecution under Section 117 of the Constitution. Accordingly, hearing these issues in the Magistrate's Court required the interpretation of Sections 100 (7), 44 (5) and 117 of the Constitution.

25. I will now proceed to consider whether this Court has the appellate jurisdiction, pursuant to the exception as stipulated under Section 246 (7) of the Criminal Procedure Act, to hear the appeal against the following decisions made by the Learned Magistrate, i.e to conduct the hearing of this Notice of Motion, while refusing to transfer the matter to the High Court under Section 44 (5) of the Constitution, his conclusion that the sanctioning of this charge by the former Acting Director of Public Prosecutions is valid in law, and dismissing the issue of whether the Director of Public Prosecution has jurisdiction to prosecute the first Appellant under the Crime Act.
26. Two main elements are required to invoke the appellate jurisdiction of the High Court under the exception of Section 246 (7) of the Criminal Procedure Act, i.e. an order made prior to the finding of guilt of the Accused and a right to appeal against such an order as provided by law. Meanwhile, Section 100 (7) of the Constitution can be deconstructed into three main components, viz a question arises during the proceedings in the Magistrate's Court regarding the interpretation of the Constitution; the Learned Magistrate decides the question; and the decision can be appealed to the High Court as of a right.
27. If the drafters of the Constitution enacted Section 100 (7) only with the first two components, any party wishing to appeal the decision made by the Learned Magistrate exercising power under Section 100 (7) is required to wait until the final determination of guilt to invoke the appellate jurisdiction of the High Court as provided in Section 246 (7) of the Criminal Procedure Act. However, the inclusion of the third component, which explicitly states that the appeal to the High Court is a right, brings the appeal against the Learned Magistrate's decision under the exception stipulated in Section 246 (7) of the Criminal Procedure Act.
28. In this matter, as outlined above, the Learned Magistrate made the orders invoking the jurisdiction stipulated under Section 100 (7) of the Constitution before determining the Appellants' guilt. Moreover, Section 100 (7) of the Constitution explicitly states that the orders made by the Learned Magistrate can be appealed as of right to the High Court, thereby satisfying the two main elements required to invoke the appellate jurisdiction of the High Court under the exception of Section 246 (7) of the Criminal Procedure Act.

29. Accordingly, I find that this Court has the appellate jurisdiction, pursuant to the exception as stipulated under Section 246 (7) of the Criminal Procedure Act, to hear the appeal against the following decisions made by the Learned Magistrate, i.e to conduct the hearing of this Notice of Motion, while refusing to transfer the matter to the High Court under Section 44 (5) of the Constitution, his conclusion that the sanctioning of this charge by the former Acting Director of Public Prosecutions is valid in law, and dismissing the issue of whether the Director of Public Prosecution has jurisdiction to prosecute the first Appellant under the Crime Act.

The issues that need to be determined

30. The issues regarding the legality of the sanctioning of the charge by the former Acting Director of Public Prosecutions, whether the Director of Public Prosecutions has jurisdiction to prosecute the first Appellant under the Crimes Act rather than the Electoral Act, and whether the former Acting Director of Public Prosecutions charged the first Appellant maliciously, fall within the powers granted to the Director of Public Prosecutions under Section 117 (8) of the Constitution. Therefore, I group these three issues under one ground. Consequently, the main issue that this Court must determine in this appeal is whether the Magistrate's Court has jurisdiction under Section 100 (7) of the Constitution and Section 290 of the Criminal Procedure Act to hear the following two issues:

- i) Whether the first Appellant's rights guaranteed under the Constitution have been breached as alleged in the Notice of Motion, and,
- ii) The correctness, legality, and motive behind the decision made by the former Acting Director of Public Prosecutions to prosecute the first Appellant under the Crimes Act instead of the Electoral Act,

Section 100 (7) of the Constitution

31. Section 100 (7) of the Constitution states that:

“If in any proceedings in a Magistrates Court or a subordinate court, a question arises as to the interpretation of this Constitution, the Magistrates Court or a subordinate court may decide the matter, and its decision may be appealed as of right to the High Court.

32. The Magistrate’s Court has been granted jurisdiction to determine questions regarding the interpretation of the Constitution if such issues arise during any proceedings before it. So as to understand the scope and boundaries of the interpretative jurisdiction conferred upon to the Magistrates’ Court, it is prudent to comprehend the jurisdiction of the High Court as outlined under Section 100 (4) of the Constitution, which states:

“The High Court also has original jurisdiction in any matter arising under this Constitution or involving its interpretation”

33. Section 100 of the Constitution defines the High Court and its jurisdiction. In doing so, Section 100 (4) grants the High Court original jurisdiction over two Constitutional matters, i.e. any issue arising under the Constitution and the interpretation of the Constitution. Original jurisdiction refers to a Court's power to hear and decide an issue for the first time.
34. Conversely, Section 100 (7) does not confer original jurisdiction for interpretation but rather a limited interpretative jurisdiction if such a question arises during any proceedings before the Magistrate’s Court. Hence, the interpretive jurisdiction of the Magistrate’s Court under Section 100 (7) of the Constitution is restricted to the issues of interpretation that arise in the proceedings. Moreover, Section 100 (7) does not grant the Magistrate’s Court the jurisdiction to address any other issues arising under the Constitution.
35. Determining whether the first Appellant's rights guaranteed under the Constitution have been breached, as alleged, requires applying the relevant provisions of the Bill of Rights to the alleged facts. Thus, it is not a matter of interpreting the provisions of the Constitution but rather enforcing the rights granted under it in the event of any contravention. Section 44

of the Constitution outlines the legal mechanism for enforcing the rights under the Bill of Rights in case of any breaches.

36. On the same note, I could conclude that determining whether the Acting Director of Public Prosecutions had legally and correctly exercised the power given under Section 117 (8) of the Constitution does not fall within the scope of interpretation but within the boundaries of other matters arising under the Constitution, as stated under Section 100 (4) of the Constitution.
37. Considering the reasons outlined above, the two main issues raised by the first Appellant in the Notice of Motion filed in the Magistrate's Court do not come within the jurisdiction stipulated under Section 100 (7) of the Constitution. Thus, I find the Learned Magistrate erred in interpreting Section 100 (7) of the Constitution, concluding that he had the jurisdiction to hear and determine the two main issues raised in the Notice of Motion.

Section 290 (1) (f) of the Criminal Procedure Act

38. Although Mr. Sharma contended in this Court that the Learned Magistrate erred by not transferring the Notice of Motion under Section 44 (5) of the Constitution, he extensively argued in the Magistrate's Court that it has the jurisdiction to hear the two main issues raised in the Notice of Motion under Section 290 of the Criminal Procedure Act. Therefore, it is prudent to consider whether the Magistrate's Court has jurisdiction under Section 290 of the Criminal Procedure Act to hear and determine the two main issues: one raised under the Bill of Rights of the Constitution and the other under Section 117 (8) of the Constitution.
39. Section 290 was enacted under Part 18 of the Criminal Procedure Act, which deals with pre-trial orders, hearings, and conferences. Section 289 states the objectives of Part 18, while Section 290 stipulates the issues that could be considered in pre-trial orders. Sections 289 and 290 of the Criminal Procedure Act state:

289 -

The objectives of this Part are to —

- (a) improve case management in the courts exercising criminal jurisdiction;*
- (b) apply procedures at an appropriate stage before the trial of a criminal case, which aim to —*
 - (i) clarify the triable issues in each criminal proceeding;*
 - (ii) confirm the charges that are to proceed to trial,*
 - (iii) ascertain the intention of the Accused person to plead guilty to the charge against him or her, or to any other appropriate charge;*
 - (iv) determine the length of the trial, and explore means by which its hearing may be facilitated by the application of any appropriate procedure.*
- (c) otherwise enhance the efficiency of the courts in determining criminal proceedings in any just manner.*

290.

(1) Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to —

- (a) any determination as to the most appropriate locality of the court at which the trial should take place, and the transfer of the proceedings to the most appropriate court;*
- (b) compelling the attendance of any witness or the production of any evidence at the trial;*
- (c) compelling the provision by the prosecution to the defence of any briefs of evidence, copies of documents or any other matter which should fairly be provided to enable a proper preparation of the defence case;*

- (d) *a challenge to the use of any report or other evidence that may unfairly prejudice the defence case;*
- (e) *a challenge to the validity of the charge, complaint or information as disclosing no offence under the law;*
- (f) *a challenge to the proceedings on the grounds of the breach of any fundamental human right of the Accused person, or any applicable human rights issue; and*
- (g) *any matter concerning the giving of an alibi notice and the information to be provided in such a notice.*
- (h) *the signing of agreed facts under section 135 (1) of this Decree.*

(2) *A court may hear and adjudicate upon an application made under this section at any time that the court determines, or the court may defer the hearing of it until the next pre-trial conference for that matter to be held under the provisions of this Part.*

(3) *Upon hearing any application under this section the court may make any necessary order to protect the rights of any party to the proceedings, or to facilitate a fair and timely hearing of the proceedings to which the application relates. (emphasis added)*

40. Mr. Sharma argued that the phrase “any order necessary to protect the interest of either party,” as stipulated in Section 290 (3), has given the Magistrate’s Court expansive jurisdiction over breaches of fundamental human rights or any applicable human rights under Section 290 (1) (f). Hence, the Magistrate’s Court could grant the orders sought in the Notice of Motion.

41. It is a rule of interpretation that a word or phrase within an Act must always be understood in light of the surrounding text, a principle known as “*noscitur a sociis*”. **Bennion on Statutory Interpretation, 7th Edition at pg. 549 &550**, states that:

“A word or phrase in an enactment must always be construed in the light of the surrounding test. As Lord Simmonds said in A.G. v HRH Prince Ernest Augustus of Hanover, words and particularly general words, cannot be read in isolation; their colour and content are derived from their context or as Stamp J put it in Bourne (Inspector of Taxes) v Norwich Crematorium Ltd,

“English words derive colour from those which surrounded them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words....

42. Bindra’s Interpretation of Statutes states that general terms and expressions in a statute should be given their full and natural meaning unless the context or another admissible consideration suggests that the legislature intends to assign them a more limited meaning. Additionally, it asserts that a limited and restricted meaning is valid if the broadest interpretation could lead to unjust, oppressive, or absurd consequences. **Bindra’s Interpretation of Statutes (12th Edition, page 213)** observes that:

“The general terms and expressions in a statute are to receive a general construction; that is, they are to be accorded their full and natural meaning unless the context or some other admissible consideration indicates that the legislature intended them to be taken in a more limited sense. General terms in a statute may be restrained and limited by specific words with which they are associated. They may be taken in a limited and restricted sense when the construction of them according to their widest meaning would lead to unjust, oppressive or absurd consequences. They may be read structurally and in their context, for their significance may vary with their contextual setting”

43. I will now determine whether the context in which section 290 has been enacted or any other admissible consideration suggests a limited interpretation. In addition, it is essential to find

whether giving an expansive meaning to Section 290, as suggested, would lead to absurd consequences.

44. The Court have given the term “absurd” a broader and more expansive meaning than it holds in standard English, encompassing concepts such as being “out of harmony with reason or propriety; incongruous, unreasonable, and illogical” (*vide: Bennion on Statutory Interpretation, 7th Edition, page 360*).
45. Section 289 of the Criminal Procedure Act outlines the objectives of Part 18 of the Act. Sections 291 and 292 provide detailed procedures and powers for conducting pre-trial conferences to achieve the objectives stated in Section 289. **Bennion on Statutory Interpretation (7th Edition, page 454)** highlights the significance of purpose clauses and their application in interpretation, stating:

“An Act or part of an Act may contain an express statement of its purpose or the principles according to which it is to be interpreted. This kind of proposition is often referred to as a “purpose clause”. ...

A purpose clause is an operative part of the Act and will colour the interpretation of the provisions that it governs. Its function is to provide a guiding principles for interpreting the text.”

46. In light of the above, Section 289 of the Act serves as a purpose clause, functioning as an operative and guiding principle for interpreting Part 18, including Section 290. Therefore, Section 290 (1) (f) should be interpreted to achieve the objectives outlined in Section 289 of the Act.
47. Section 101(2) of the Constitution defines the jurisdiction of the Magistrates Court as:

“The Magistrates Court has such jurisdiction as conferred by a written law”

48. As explained previously, Section 100 (7) of the Constitution has conferred limited jurisdiction to the Magistrate’s Court to decide any questions of Constitutional interpretation that arise during its proceedings. According to Section 6 (1) of the Constitution, the Magistrate’s Court is obligated to apply the provisions of the Bill of Rights outlined in the Constitution. However, the authority to enforce the rights guaranteed under the Bill of Rights chapter has not been granted to the Magistrate’s Court. Section 44 (1) of the Constitution explicitly assigns the jurisdiction to enforce the rights stipulated in the Bill of Rights chapter to the High Court. Section 44 (1) of the Constitution states:

“If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.

49. Section 44 (5) of the Constitution states:

“If in any proceedings in a subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the member presiding in the proceedings may, and must if a party to the proceedings so requests, refer the question to the High Court unless, in the member’s opinion (which is final and not subject to appeal), the raising of the question is frivolous or vexatious”

50. If any question regarding the contravention of any rights under the Bill of Rights Chapter arises during proceedings in the Magistrate’s Court, the Magistrate may refer the issue to the High Court or must do so if requested by a party to the proceedings.

51. Sections 100 (3) and (4) of the Constitution deal with the original jurisdiction of the High Court, where it states:

“(3) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution or any written law.

(4) The High Court also has original jurisdiction in any matter arising under this Constitution or involving its interpretation.

52. Unlike the Magistrate’s Court, the High Court's original jurisdiction in criminal proceedings is not limited to written law; instead, it derives its authority from any law. The High Court has been granted the original jurisdiction to address any matters under the Constitution and to interpret the Constitution.
53. In recapitulating the Constitutional framework outlined above, the Magistrate’s Court can exercise its jurisdiction only when conferred by written law. With respect to the Constitution, the Magistrate’s Court has limited interpretative jurisdiction under Section 100 (7). The jurisdiction over enforcing the provisions under the Bill of Rights Chapter and other matters arising under the Constitution is vested in the High Court (*Vide; Sections 44 and 100 (4) of the Constitution*).
54. Section 117 of the Constitution establishes the Office of the Director of Public Prosecutions and the position of the Director of Public Prosecutions. Subsection 117 (8) defines the powers of the Director, which include initiating and conducting criminal proceedings. According to subsection 117 (10) of the Constitution, the Director of Public Prosecutions is granted independence in exercising the powers conferred upon him, subject only to the authority of a Court of law. Subsection 117 (10) of the Constitution states:

“In the exercise of the powers conferred under this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority, except by a court of law or as otherwise prescribed by this Constitution or a written law”

55. Section 16 of the Constitution states:

Subject to the provisions of this Constitution and such other limitations as may be prescribed by law—

a) *every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt;*

b) *every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and*

c) *any executive or administrative action may be reviewed by a court, or if appropriate, another independent and impartial tribunal, in accordance with law.*

56. The *locus classicus* on the jurisdiction of the Court to review the prosecutorial discretion of the Director of Public Prosecutions in Fiji is **Matalulu v Director of Public Prosecutions [2003] FJSC 2; [2003] 4 LRC 712 (17 April 2003)**. In this case, the Supreme Court, after considering the constitutional framework of the 1990 and 1997 Constitutions regarding the powers of the Director of Public Prosecutions, which is akin to the powers under Section 117 of the Constitution, held that the prosecutorial discretion of the Director of Public Prosecutions is reviewable under the civil jurisdiction of the High Court. Thus, the Supreme Court ruled:

“It is not necessary for present purposes to explore exhaustively the circumstances in which the occasions for judicial review of a prosecutorial decision may arise. It is sufficient, in our opinion, in cases involving the exercise of prosecutorial discretion to apply established principles of judicial review. These would have proper regard to the great width of the DPP’s

discretion and the polycentric character of official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits. This approach subsumes concerns about separation of powers”

57. Kumar CJ, in **Malani v Director of Public Prosecutions [2021] FJHC 235; HBJ02.2021 (10 September 2021)**, discussed several leading authorities from other common law jurisdictions and Fiji concerning the High Court's jurisdiction to review the prosecutorial discretion of the Director of Public Prosecutions. Afterward, Kumar CJ, in **Malani v Director of Public Prosecutions (supra)**, reviewed the prosecutorial discretion exercised by the Director of Public Prosecutions.
58. Considering Sections 16, 100 (3) and (4), and 117 (8) and (10) of the Constitution, along with the outlined judicial precedents, it is the High Court, not the Magistrate’s Court, that has the jurisdiction to review the prosecutorial direction exercised by the Director of Public Prosecutions under Section 117 (8) of the Constitution.
59. Mr. Sharma argued that the alleged breach of the first Appellant's rights, along with the malicious and illegal conduct of the former Acting Director of Public Prosecutions, constitutes an abuse of the administration of criminal justice. Therefore, the Magistrate’s Court could issue orders to prevent such an abuse of process.
60. The Fiji Court of Appeal in **State v Pal [2008] FJCA 117; [2009] 1 LRC 164 (8 February 2008)** explicitly held that the superior Courts have the inherent power to prevent abuses of the administration of justice. By examining the judicial authorities within Common Law jurisdictions, the Fiji Court of Appeal concluded that this power is part of the inherent jurisdiction of the Court. There is no written law granting inherent jurisdiction to the Magistrate’s Court. Therefore, if the Appellant wishes to raise the issue of abuses of process based on the alleged infringement of the first Appellant's rights, along with the former

Acting Director of Public Prosecutions' malicious and illegal conduct, he may invoke the inherent jurisdiction of the High Court.

61. **Bindra's Interpretation of Statutes (12th Edition, page 183)** observes:

“It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.

62. Consequently, the Court must interpret the scope and the boundaries of Section 290 of the Criminal Procedure Act in a manner consistent with the Constitutional framework outlined above.

63. Another pertinent principle of statutory interpretation is the presumption against ousting established jurisdictions and creating new ones. **Maxwell on The Interpretation of Statutes (11th Edition, page 122)** explains:

“It is, perhaps, on the general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject, that is so strong a leaning now exists against construing a statute so as to oust or restrict the jurisdiction of the superior courts, although this feeling may owe its origin to the pecuniary interests of the judges in former times, when their emoluments depended mainly on fees. It is supposed that the legislature would not make any important innovation without a very explicit expression of its intention,”

64. The constitutional framework outlined above, along with the context in which Section 290 (1) (f) is enacted and the applicable principles of statutory interpretation, suggests a more limited and exclusive definition of Section 290 of the Act. An excluding definition modifies the natural meaning by either narrowing it or clarifying any potential doubts about what is

excluded (*vide: Bennion on Statutory Interpretation, 7th Edition, page 475*). Furthermore, as suggested, an expansive and broader interpretation will undoubtedly lead to absurd consequences by granting certain jurisdictions to the Magistrate's Court, which is inconsistent with the Constitution.

65. As previously explained, no law or provision explicitly grants the Magistrate's Court jurisdiction to hear matters regarding the enforcement of the rights established in the Bill of Rights Chapter and other constitutional issues, except for the limited interpretative jurisdiction specified in Section 100 (7) of the Constitution.
66. Consequently, the meaning of "any necessary order to protect the rights of any party to the proceeding", as stated in Section 290 (3) of the Criminal Procedure Act, is the order that the Magistrate's Court has jurisdiction to make. Accordingly, the Magistrate's Court does not have the jurisdiction to make orders under Section 290 (3) of the Criminal Procedure Act to enforce the rights under the Bill of Rights Chapter or issues involving the exercise of prosecutorial discretion under Section 117 (8) of the Constitution.
67. Therefore, a challenge to the proceedings based on a breach of fundamental human rights or any relevant human rights issues under Section 290 (1) (f) should focus on achieving the objectives set out in Section 289. Thus, Section 290 (1) (f) of the Act has not granted the Magistrate's Court the jurisdiction to enforce the right stated under the Bill of Rights chapter; instead, it aims to achieve the objective outlined in Section 289 by preserving and protecting those fundamental rights. Accordingly, to achieve those objectives, the parties could challenge the proceedings during the pre-trial process on the grounds of a breach of fundamental and applicable human rights issues.
68. Those issues should link and are essentially connected to the resolution or determination of the dispute in the proceedings, such as the admissibility of evidence, matters regarding the limitation of presenting evidence (e.g., restrictions on evidence of past sexual history and the presentation of documentary evidence), the manner and special measures adopted in presenting evidence (e.g., closed Court, screening of the witness, providing evidence from

a separate location, use of objects and items to facilitate the witness in giving evidence effectively), protection of the rights of vulnerable witnesses, and adopting applicable measures to adhere to the rights of the Accused in the trial, *etc.*

69. As the Learned Magistrate accurately stated in paragraph 40 of the ruling, the admissibility of the Accused's confession as evidence during the trial is an issue that falls under Section 290 (1) (f) of the Act. Section 288 of the Criminal Procedure Act explicitly grants the Magistrate's Court the jurisdiction to conduct a *voire dire* hearing in order to determine any issue during a trial. A *voire dire* hearing regarding the admissibility of the confession made by the Accused in evidence is an inquiry conducted by the Magistrate's Court so as to protect the right of the Accused.
70. Therefore, Section 290 (1) (f) of the Act empowers the Magistrate's Court to ascertain whether the parties' rights under the Bill of Rights Chapter and any fundamental human rights relevant to the issues at hand are being protected and adhered to.
71. There are no issues concerning the admissibility of the evidence or the conduct of the proceedings due to the alleged breach of the first Appellant's rights. Given the nature of the orders sought in the Notice of Motion, the first Appellant aims to enforce the rights that have been allegedly violated during detention at the Police Station and contends that such Police conduct constitutes an abuse of the criminal justice process. Hence, the issues raised and the orders sought in the Notice of Motion are not within the ambit of the pre-trial orders stipulated in Section 290 (1) (f) of the Act.
72. Having determined that the Magistrate's Court lacks jurisdiction under Section 100 (7) of the Constitution and Section 290 (1) (f) of the Criminal Procedure Act to hear this Notice of Motion based on the grounds raised and the reliefs sought, I find it appropriate for this Court to issue appropriate orders under Section 256 of the Criminal Procedure Act.

Appeal against Ground 2 of the Ruling

73. The issue of the alleged breach of the Constitutional rights of the first Appellant during detention at the Police Station arises in the proceedings of the Magistrate's Court. Under such circumstances, the Learned Magistrate may refer the matter to the High Court if he is satisfied that the question raised is neither frivolous nor vexatious. If a party to the proceedings requests a referral to the High Court, the Learned Magistrate must comply with the request, provided he is convinced that the question raised is not frivolous or vexatious.
74. Mr. Sharma initially insisted that the Magistrate's Court had jurisdiction to hear this application. However, he later requested that the matter be referred to the High Court under Section 44 (5) of the Constitution. Mr. Rabuku consistently maintained his position, urging the Learned Magistrate to act under Section 44 (5). Therefore, the Learned Magistrate had to refer the matter to the High Court unless he was satisfied that the question raised was frivolous or vexatious.

Continuation of Proceedings in the Magistrate's Court

75. It is now essential to consider whether the Learned Magistrate has jurisdiction to stay the substantive proceedings in the Magistrate's Court until the High Court determines the issue referred to it under Section 44 (5) of the Constitution. No provision in the Criminal Procedure Act or the Constitution grants the Learned Magistrate the authority to stay proceedings pending the determination of the referral made under Section 44 (5) of the Constitution. Therefore, the Learned Magistrate must proceed with the substantive matter unless the High Court or any other Superior Court orders otherwise.

Appeal against Grounds 1 & 3 of the Ruling

76. As previously outlined, the second issue involves three grounds raised in the Notice of Motion: namely, the charging of the first Appellant under the Crimes Act instead of the Electoral Act, the legality of the sanction made by the former Acting Director of Public

Prosecutions, and the malicious conduct of the former Acting Director of Public Prosecutions. The jurisdiction for determining these matters lies with the High Court. Unlike the first issue, there is no provision comparable to Section 44 (5) in the Constitution that allows the Learned Magistrate to refer this matter to the High Court.

77. In his submissions, Mr. Sharma argued that the Learned Magistrate should have transferred this matter to the High Court pursuant to Section 275 of the Criminal Procedure Act, which I find cannot be applied in isolation. I do not wish to discuss the scope of referring the case to the High Court under Division Three, Part Fifteen of the Criminal Procedure Act; therefore, I will simply conclude that Section 275 does not apply to this matter.
78. Considering the reasons outlined above, it was not open to the Learned Magistrate to reach the conclusion he made in paragraphs 32, 55, 56, and 57 of the ruling. Instead, he should have dismissed grounds one and three of the ruling due to lack of jurisdiction.

Continuation of the Charge filed in the Magistrate's Court.

79. It remains open for the first Appellant or his legal team to invoke the civil jurisdiction of the High Court to review the correctness, legality, and motives behind the decision made by the former Acting Director of Public Prosecutions pursuant to Section 117 (8) of the Constitution. Consequently, no restriction prevents the Learned Magistrate from continuing the proceedings based on the charges filed unless the High Court, upon an application from the first Appellant, directs the Learned Magistrate otherwise.

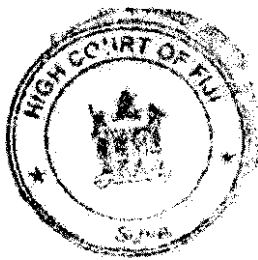
Appeal against Ground 4 of the Ruling

80. The appeal against the consolidation of the charges falls within the temporal limitation outlined in Section 246 (7) of the Criminal Procedure Act. Therefore, I dismiss the appeal against the consolidation of the charges based on lack of jurisdiction under Section 246 (7) of the Criminal Procedure Act.

Conclusion

81. In conclusion, I make the following orders:

- i) The appeal against the first and third grounds of the ruling is allowed on the basis that the Learned Magistrate lacked jurisdiction. The conclusion reached under these two grounds is set aside.
- ii) The appeal against the second ground of the ruling is allowed, and the conclusion reached under that ground is set aside.
- iii) The Learned Magistrate is directed to refer the issue of the alleged breach of the rights under the Bill of Rights Chapter of the Constitution to the High Court pursuant to Section 44 (5) of the Constitution if the Learned Magistrate is satisfied that the issues under the second ground of the ruling are not frivolous or vexatious.
- iv) The fourth ground for consolidating the charges is refused pursuant to Section 246 (7) of the Criminal Procedure Act.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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

At Suva

17th March 2025

Solicitors.

R. Patel Lawyers for Appellants.

Office of the Director of Public Prosecutions for the Respondent.