

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**Criminal Miscellaneous No. HAM 65 of 2025**

**BETWEEN : JIN CHAO CHEN**

**Applicant**

**AND : STATE**

**Respondent**

**Counsel : Mr K Lachman & Mr V Maharaj for Applicant**

**Mr E Samisoni for Respondent**

**Hearing : 25 August 2025**

**Judgment : 29 August 2025**

**EX TEMPORE JUDGMENT**

[1] The applicant seeks a permanent stay of criminal proceedings brought against him currently on foot in the Nasinu Magistrates Court. He also seeks the release of his passport.

[2] The applicant is charged with unlawful possession of illicit drugs contrary to s 5(a) of the Illicit Drugs Control Act 2004. It is alleged that the accused was in possession of 0.1537 grams of methamphetamine on 25 December 2022. The trial is scheduled to be heard on 9 September 2025.

## **Background**

- [3] The applicant is a Chinese national - it appears that his main language is Mandarin and that he speaks very little, if any, English. At the time of the alleged offending, the applicant was employed as a chef at a hotel in Suva. He was on a one-year contract expiring in January 2023, only a matter of weeks after he was charged.
- [4] The accused was arrested in December 2022 and produced in the Nasinu Magistrates Court on 28 December 2022. He was bailed the same date on conditions that included he surrender his passport. A Stop Departure Order was also put in place.
- [5] Since 28 December 2022, the matter has been called on approximately 17 occasions up to 21 February 2025. That, in itself, tells us little about the delays in the proceeding.
- [6] The applicant arranged for private legal representation. He pleaded not guilty on 8 March 2023 – two earlier mentions were adjourned as the registry had not organised a Mandarin speaking interpreter. In mid-2023, the applicant's then solicitor wrote to the Director of Public Prosecutions Office seeking to have the charge against the applicant withdrawn. It appears there was some delay receiving a response.<sup>1</sup>
- [7] On 1 December 2023, the applicant obtained a temporary lifting of the Stop Departure Order to travel to China from 4 December 2023 to 5 January 2024. His passport was released for this purpose. The applicant returned to Fiji and his Passport was again surrendered.
- [8] The matter was next called in the Magistrates Court on 8 January 2024, at which time a hearing was fixed for 20 May 2024. That hearing, however, was vacated on the day of the hearing because the Magistrate was unavailable.
- [9] On 17 June 2024, a second trial date was fixed for 5 October 2024. The day before the trial, on 4 October 2024, the matter was called in the Magistrates Court and the

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<sup>1</sup> It appears that the approach was unsuccessful.

hearing vacated, again, it appears, because the Magistrate was unavailable. According to the court record for the Magistrates Court for 4 October 2024, the hearing on 5 October 2024 was vacated '*by consent*'. The matter was adjourned to 12 November 2024 for mention to fix a new hearing date.

[10] According to the court record, on 12 November 2024, the applicant attended court but his then counsel did not. The matter was adjourned to 27 December 2024 for mention to fix a hearing date. On 27 December 2024, the Magistrate was unavailable and the matter was adjourned to 21 February 2025, at which time a hearing was fixed for 9 September 2025.

[11] A further point to note before discussing the present application for a permanent stay. A perusal of the record of the Magistrates Court shows that the applicant has not made any application to expedite the proceeding. There is no indication in the court record that the Magistrate has been informed of the applicant's particular circumstances or the financial impact of any delay with the proceeding on him.

### **Decision**

[12] The applicant filed his Notion of Motion in the High Court seeking a permanent stay on 17 July 2025, about five months after a hearing was set down, and a matter of a little under two months before the scheduled hearing date of 9 September 2025.

[13] There is no dispute as to the legal principles that must be applied when determining an application for a permanent stay. The principles are thoroughly set out by Rajasinghe J in *Shah v State* [2016] FJHC 446 (24 May 2016) at paragraphs 10 to 19.

[14] There are two questions that I must consider. Firstly, whether the delay here is unreasonable, and secondly, if it is, what is the appropriate and available remedy for the unreasonable delay? The authorities make it plain that the granting of a permanent stay is rarely done and only made in exceptional circumstances. One of the main considerations for the court to consider is whether an accused person will be prejudiced by the delay, such that the accused person is denied a fair trial.

[15] Having carefully considered the circumstances of the present case, the affidavits of the applicant (including his annexures), and the respective submissions of the parties, I am not satisfied that the applicant has established an entitlement to a permanent stay of the present proceedings in the Magistrates Court. My reasons for this conclusion are these:

- i. I accept that there have been delays, primarily systemic delays, with the applicant's proceeding, but I do not consider the delay to be unreasonable. If the trial proceeds on 9 September 2025 as scheduled, and there is no indication it will not, then there will have been a two-year, nine-month delay as between the date the applicant was originally charged and the date of the trial. This length of time is not out of the ordinary in the Magistrates Court.
- ii. The fact that the hearing is only two weeks away does not assist the applicant's present application. He is on the doorstep of his trial.
- iii. There is no evidence that I have seen that the delays will cause the applicant to be denied a fair trial. The only argument on this matter raised by the applicant is that the other person in the vehicle with him at the time the alleged illicit drugs were discovered has passed away while the proceedings have been on foot. It is not clear what, if any, evidence this person would have provided to assist the applicant. Nevertheless, according to the applicant at the hearing on 25 August, the person passed away more than a year ago, before the second scheduled hearing date. As such, the unavailability of the said person can hardly be attributed to the delays with this proceeding up to the present time.
- iv. The applicant states that his particular circumstances justify a permanent stay. He is unable to secure employment because of the pending charges. He cannot obtain a work visa because his passport is held by the Nasinu Magistrates Court and has now expired. These matters have impacted on his financial situation, including his ability

to look after his wife, son, and elderly parents who are residing in China. Sadly, however, this is one of the by-products on accused persons facing criminal prosecution.

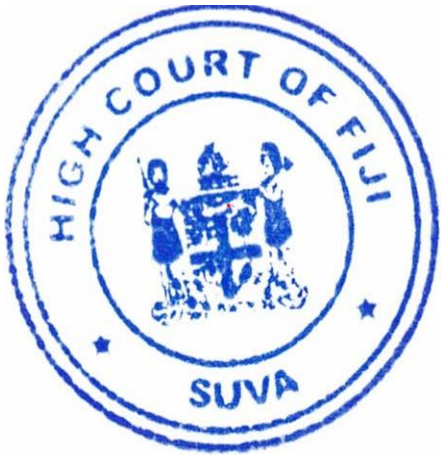
- v. The applicant's case for a permanent stay would have been assisted if he had taken steps to expedite an early hearing date or had informed the Magistrate of his particular circumstances and need for an early hearing date. As stated, I have found no such indication in the court record. Instead, the applicant appears to have consented to the adjournment on 5 October 2024. His then counsel could have registered an objection and/or indicated that the applicant sought an early hearing date. It does not appear that counsel did either.
  
- vi. The applicant cites a number of authorities to support his application. In my view, none of these authorities are similar to the facts of the present case. Nearly all involve proceedings with a much lengthier delay; ie six years or more. The only decision where the delay is similar is the High Court decision of *State v Ali* [2008] unreported, Crim. Appeal No. HAA 89 of 2007 (16 July 2008). The delay in that case was two years as between the date of being charged and the trial. The trial in fact proceeded in the Magistrates Court and Mr. Ali was acquitted. The State subsequently filed a late appeal in the High Court. In response, Mr. Ali filed a separate application in the High Court seeking a permanent stay of the appeal. A reading of His Lordship's decision indicates that the acquittal in the Magistrates Court, the late appeal to the High Court and the advice from counsel for the State that the appeal was pursued to address a novel issue had a significant influence on the High Court's decision to grant the permanent stay.<sup>2</sup>

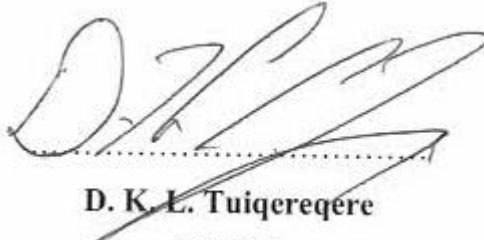
[16] Accordingly, the applicant's application for a permanent stay is dismissed.

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<sup>2</sup> See para 56 and 57 of the decision.

[17] Nevertheless, there have already been two hearings vacated due to the unavailability of a Magistrate and I direct the Nasinu Magistrates Court to ensure that the hearing proceeds on 9 September 2025. If the hearing does not proceed on that date, and the applicant is not responsible for the same, then this may well provide the applicant with a legitimate basis to make a fresh application for a permanent stay. The prosecution is to bring this direction to the attention of the Nasinu Magistrates Court.



  
D. K. L. Tuiqereqere  
JUDGE

**Solicitors:**

Vijay Maharaj Lawyers for the Applicant

Office of Director of Public Prosecutions for the Respondent