

**IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. HAA 23 of 2025

PENI TUILASELASE

APPELLANT

-V-

THE STATE

RESPONDENT

Counsel: Appellant in Person
Mr. Naimila, Tevita for the Respondent

Date of Hearing: 1st October, 2025
Date of Ruling: 28th November, 2025

JUDGMENT

[1]. The Appellant was charged as follows;

Statement of Offence

Unlawful Possession of Illicit Drugs: Contrary to section 5(a) of the Illicit Drugs Control Act, 2004.

Particulars of Offence

Peni Tuilaselase on the 1st day of September, 2021 at Nakasi in the Central Division without lawful authority was found in possession of white substance weighing 0.3453 grams of Methamphetamine, an illicit drug.

[2]. This is an appeal against conviction arising from Learned Magistrate delivering a judgment and sentence on 8th April, 2025, without hearing the appellant's Defence case at the Nasinu Magistrates' Court.

Brief Background

- [3]. On 3rd September, 2021, the appellant first appeared at the Nasinu Magistrates Court. After several years of adjournment, the case was adjourned for hearing on 30th January, 2024. During the Prosecution case, the appellant was present in court. At the close of the Prosecution case, the court ruled that there is a case to answer. The defence case was scheduled for 24th March, 2025.
- [4]. Then on 24th March, 2025 when the case was listed for the defence case, the appellant was not present in court. The Prosecutor informed the court that the appellant was released from prison and his address was unknown. The Learned Magistrate adjourned the case to the 23rd April, 2025 for judgment. However, on 8th April, 2025, the learned magistrate found the appellant guilty of the charge in a judgment and sentence pronounced in to custodial term of 18 months imprisonment.
- [5]. On 23rd May, 2025 the appellant's appeal was received by the Chief Registrar's office. The appellant advanced five grounds of appeal, but his principal complaint is that the learned magistrate did not provide him with the opportunity to hear his defence case. He was remanded in custody from the 19th February, 2025 until 24th April, 2025. He was later on 25th April, 2025 convicted and order to serve a custodial term. (*A letter from the Fiji Correctional Services dated 30th September, 2025 was tendered in Court*).
- [6]. The State concedes to the Appellant's explanation of his absence from court.

Law

- [7]. The Constitution allows for **trials in absentia** in the following circumstances:

“Every person charged with an offence has the right – to be present when being tried, unless –

- (i) The court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend; or*
- (ii) the conduct of the person is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence. (s 14(2)(h))*

- [8]. The Constitution provides every person accused of a crime to be present and to participate in his or her trial. An accused can only be deprived of the right to be present in his or her trial only in the two circumstances set out in **section 14(2) (h) (i)**

& (ii). Both subsection (i) and (ii) did not apply to this case since the appellant was remanded in custody.

[9]. Before an application for **trial in absentia** is granted the court must be satisfied of the following:

- a. The accused had notice of the proceedings;
- b. The accused deliberately chose not to attend trial; and
- c. A fair trial can be held in the absence of the accused.

Analysis

[10]. A perusal of the copy record shows that the appellant had notice of the proceedings since he was present in court throughout the Prosecution case. Furthermore, the appellant was present on 27th February, 2025 when the hearing date for the defence case was assigned to 24th March, 2025. He was produced in court on a Production order (pages 37 & 38 of the copy record). So only limb (a) above was satisfied.

[11]. In respect of limb (b) the appellant did not deliberately chose to be absent from court. He was still remanded in custody when the court proceeded to forgo his defence case and rendered a judgment and then sentenced him in his absence. On 24th March, 2025, the date of the defence case, the Prosecution orally informed the Court that the appellant was released from prison and his address is unknown (page 39 of the copy of the record).

The Learned Magistrate could have ascertained from Prosecution as to whether appellant was still in the custody of the Correctional Services Department or released by obtaining confirmation from the said department.

[12]. As for limb (c) a perusal of the judgment delivered by the Learned Magistrate indicates that did not order Prosecution to check for the whereabouts of the appellant. The appellant's absence from court did not mean he was guilty. In paragraph of judgment the Learned Magistrate states "*the accused did not avail himself of the opportunity to give evidence, call witnesses, or otherwise present a defence to the charge...*"

[13]. Furthermore, the appellant at no stage waived his right to be present in his trial. Any waiver of the right to be present in the trial must be clearly waived by the accused (**Chand v State** [\[2017\] FJHC 865](#); HAA13.2017 (17 November 2017).

Order

[14]. The Court orders as follows;

- (i) That the appellant's appeal succeeds.
- (ii) That the conviction and sentence is dismissed.

- (iii) This file is remitted to the Nasinu Magistrates Court for the Magistrate to hear the defence case.
- (iv) The case will be listed for mention before the Nasinu Magistrates Court on 16th December, 2025 at 9.00am.



Dated in Suva this 28th day of November, 2025

Counsel:

Appellant in Person

Office of the Director of Prosecution for the Respondent