

**IN THE MAGISTRATES COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION**

Criminal Case No. 551 of 2017

STATE

-v-

ALOVETI RABETE

For the State: Constable A. Lal

Counsel for the Defendant: Mr. Waqanivalagi of the Legal Aid Commission

RULING ON COSTS

1. Pursuant to section 150 (4) (a) of the **Criminal Procedure Act 2009**, I may make an order as to costs as may be required in the circumstances to defray the costs incurred by any party as a result of an adjournment sought by another party. In addition, pursuant to section 150 (4) (d) of the **Criminal Procedure Act 2009** I may make an order as to costs as may be required in the circumstances to otherwise meet the interests of justice in any case.
2. These criminal proceedings were last called on 16 April 2019 and were adjourned to today. Counsel representing the Director of Public Prosecutions was present. She was aware of today's scheduled appearance. Not only that, she was aware of the reasons for today's appearance.
3. Constable Lal appeared today without instructions. If representatives are not present and fail to properly instruct replacements, the Court is not assisted and criminal proceedings do not advance very far. We adjourned at a crucial point on 16 April 2019 to permit the Defendant to seek legal advice on his plea. Competent counsel would have understood that if the Defendant maintained his plea of guilty, then the matter would progress to sentence but if the Defendant wished to change his plea – as seemed highly probable, the matter would advance to trial. We discussed as much in open Court on 16 April 2019.

4. Today, the Defendant entered a not-guilty plea and the matter had to adjourn. We could not fix a date for voir dire or trial today.
5. Constable Lal, through no fault of his own, was unable to tell me whether there are admissions against interest or whether the State intends to rely on admissions against interest— if they exist. I was unable to obtain information to assist me in respect of how many witnesses the State intended to call at trial. The matter had to adjourn for representatives of the State to compile the information I needed in order to make useful case management orders and to progress the matter for trial.
6. The reality is that this information does exist and it is readily available. The reality is that counsel for the Director failed in her duty to be present and, failing to be present, to ensure that another prosecutor was briefed to appear. The Defendant is out of pocket as a result. He lost \$35.00 in income and \$5.80 in transportation costs. This information, I obtained from him on oath today in open court.
7. In the circumstances, it is in the interests of justice that I award costs against the Office of the Director of Public Prosecutions in the sum of forty dollars and eighty cents (\$40.80) to be paid to the Magistrates' Court Criminal Registry by or before 31 May 2019. Whether the Director then moves to recover the amount from counsel is a matter for him.
8. This amount will be paid to the Defendant to defray him the costs of the adjournment pursuant to section 150 (4) (a) of the **Criminal Procedure Act 2009**. This is what the interests of justice demands. The Defendant is a citizen entitled to a fair trial within a reasonable time and he should not have to bear the wasted costs of today's appearance.
9. 28 days to appeal.



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Seini K Puamau
Resident Magistrate

Dated at Labasa this 30th day of April 2019.