

IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT SUVA

Criminal File No: MACD 52/2021 SUV

BETWEEN : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

Prosecution

AND : BENJAMIN PADARATH

Accused

Appearances

For the State : Mr. Work and Mr. Sharma

For Accused : Mr. F. Vosarogo (*Vosarogo Lawyers*)

Date of Ruling : 1st April 2021

RULING

1. The accused was produced in custody on 31st March 2021.
2. The following allegations have been leveled against him, that is;

Count 1: Sedition contrary to section 67(1)(a) of the *Crimes Act 2009*;
Count 2: Attempting to Defeat the Course of Justice contrary to section 190 (e) of the *Crimes Act 2009*;
Count 3: Destroying Evidence contrary to section 189 of the *Crimes Act 2009*;
Count 4: Disobedience of Lawful Orders contrary to section 202 of the *Crimes Act 2009*.
3. The accused upon the advise from his counsel in court elected to have count 1 and count 4 dealt with by the Magistrates Court and in this case the Magistrate Division of the Anti-Corruption Court.
4. Prosecution provided proof that first phase disclosures were served and this was not denied by the learned counsel for the accused.
5. The court was informed by his counsel that the accused was ready for plea, as such the accused's plea on all four counts was taken.
6. The accused then proceeded to enter pleas of not guilty on all the charges.

7. Following this, Prosecution informed the court that they were objecting to bail as such both counsels made bar table submissions on the issue of bail.
8. They also were willing to have a formal hearing wherein Prosecution could file formal objections and the accused through his counsel could make responses.
9. During the course of the above-mentioned discussions, this court enquired from Prosecution on whether it was proper to have the matter called and determined in Suva as three (count 1, count 2 and count 3) out of the four allegations arose from Lautoka.
10. Prosecution counsel directed the court's mind to Section 40 (d) of the *Criminal Procedure Act 2009* as the authority to justify the filing of charges in Suva and also the reason for the allegations to remain adjudicated by the Anti-Corruption Magistrate Division in Suva.
11. Learned counsel for the accused, vehemently objected submitting that the proper jurisdiction to deal with the matter is Anti-Corruption Magistrate Division in Lautoka.
12. He further submitted that the fourth count was incidental to counts 1 to 3 wherein whilst in the custody as a result of being arrested by the Fiji Independent Commission Against Corruption, the allegation under count 4 arose.
13. The same was not disputed by Prosecution counsel.
14. Upon hearing arguments on the issue of bail and also jurisdiction this court then adjourned the matter for its decision.

Jurisdiction

15. It is trite law that the court which has no vested authority to handle a matter cannot therefore suddenly assume jurisdiction.
16. This is particularly true for the Magistrate Division where powers are vested in statute as it is a creature of statute. There is no inherent jurisdiction to state otherwise.

17. The reason this court has chosen to discuss the issue of jurisdiction firstly is very simple. If this court does not have jurisdiction to deal with the matter, there shall be no *locus* to deal with the issue of bail as a result and vice versa.

18. This position is affirmed by the recent decision of *Wimalasena J* in **Fiji Independent Commission Against Corruption (FICAC) v Buadromo [2021]**¹ where at paragraphs 11 and 13 his Lordship had stated thus:

“11. I have considered the written submissions, oral submissions and the case authorities submitted by both parties. However, I will first deal with the issue of election as it relates to jurisdiction and determination of that matter is crucial to the direction that this case may take.

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13. Although the parties did not raise that there is no election by the Respondent in respect of the second and third counts, to be tried in the Magistrate’s Court, this Court is of the view that it is a fundamental issue that the Court must look into before considering other grounds of appeal.”

19. Although the fundamental issue of jurisdiction in that matter [*Buadromo* case (supra)] was the issue of 'Election' as opposed to this current matter, it was deemed as a prudent exercise of judicial discretion by his Lordship in the *Buadromo* case (supra) to deal with the issue of Jurisdiction firstly.

20. In saying this, does Section 40 of the *Criminal Procedure Act 2009* give this court authority to deal with this matter, when three (3) out of the four (4) allegations arose in Lautoka, whilst the fourth (4th) allegation was incidental to the three (3) allegations.

21. Section 40 of the *Criminal Procedure Act 2009* is re-stated verbatim as follows:

“ *Trial where place of offence is uncertain*

40. When —

(a) it is uncertain in which of several localities an offence was committed; or

(b) when an offence is committed partly in one locality and partly in another; or

(c) when an offence is a continuing one, and continues to be committed in more locality than one; or

(d) when an offence consists of several acts done in different localities -it may be dealt with and tried by a court in any of the localities.”

¹ FJHC 187; HACDA003.201S (23 March 2021)

22. Learned Counsel for Prosecution has sought that this court considers sub-section (d) only. However, as an elementary rule of statute interpretation, all parts of the Section has to be interpreted together and not one part by itself².
23. Bearing this in mind, Section 40 relates to trial where place of offence is uncertain. Nothing can be further from the truth for this matter, as there is certainty in the locality of the offences.
24. As such this court finds that Section 40 of the *Criminal Procedure Act 2009* cannot be applied.
25. Be that as it may, this court upon perusing Part V of the *Criminal Procedure Act 2009* under the head '*Place of Hearing and Transfer of Cases*' has noted that the following provisions apply.
- i. *Accused person to be sent to Division where offence committed*

33. Where a person accused of having committed an offence in Fiji is removed from the Division within which the offence was committed and is found within another Division, the court within whose jurisdiction the person is found may cause the person to be brought before it and shall, unless authorised to proceed in the case —

 - (a) send the person in custody to the court within whose jurisdiction the offence is alleged to have been committed; or
 - (b) require the person to give security for his surrender to that court there to answer the charge and to be dealt with according to law.
 - ii. *Ordinary place of proceeding and trial*

37. Subject to the provisions of section 35 and to the powers of transfer conferred by Division 2 of this Part, every offence shall ordinarily be tried by a court—

 - (a) within the locality in which the offence was committed; or
 - (b) within the locality that the accused —
 - (i) was apprehended; or
 - (ii) is in custody on a charge for the offence; or
 - (iii) has appeared in answer to a summons lawfully issued charging the offence.
 - iii. *Trial at place where act done or consequence ensues*

38. When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be tried by a court within the locality that any such thing has been done, or any such consequence has ensued
 - iv. *Trial where offence is connected with another offence*

39. When an act is an offence —

 - (a) by reason of its relation to any other act which is also an offence; or

² *Turquand v Board of Trade* (1886) 1 App. Cas 286 per Lord Blackburn.

(b) which would be an offence if the doer were capable of committing an offence –

A charge of the first-mentioned offence may be tried by a court within the locality that either act was done.”

26. All of the above mentioned when taken together in this court’s view lead to the inescapable conclusion that this matter should be dealt with by the Anti-Corruption Magistrate Division in Lautoka.
27. As a consequence this matter shall be transferred to be dealt with by the Anti-Corruption Magistrate Division in Lautoka as that court has jurisdiction to deal with the matter as outlined above-herein.
28. This also means that bail shall not be determined by this court and shall be reserved for both parties to re-visit the issue before the Resident Magistrate responsible for the Anti-Corruption Magistrate Division in the Western Division.
29. As the accused is currently remanded in custody, his remand warrant shall be extended however he shall now be remanded at the Natabua Corrections Remand Facility with a returnable date of 8th April 2021.
30. The accused shall be produced at the Ba Magistrates Court on the 8th April 2021 as the learned Resident Magistrate responsible for the Anti-Corruption Magistrate Division in the Western Division sits as a Resident Magistrate in that district. He shall then assign a date for the Lautoka court.
31. The court so orders.


JEREMAI N.L SAVOU
Resident Magistrate

