

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

Criminal File No: MACD 34/2021 SUV

BETWEEN : SEMI SALAUCA MASILOMANI

Applicant/Accused

AND : FIJ INDEPENDENT COMMISSION AGAINST CORRUPTION

Respondent/Prosecution

Appearances

For the Applicant : Mr. D. Toganivalu (*Toganivalu Legal*)

For Respondent : Mr. Hicks (*FICAC*)

Date of Ruling : 30th November 2021

RULING

Background

1. This is a matter where the entire trial was conducted before Senior Resident Magistrate Ms. W. George. This meant that SRM Ms. W. George had recorded the entire evidence of the four (4) prosecution witnesses as well as the two (2) witnesses called for and on behalf of the accused.
2. It also meant that SRM Ms. W. George also considered the twenty (20) exhibits tendered by Prosecution.
3. However, whilst awaiting Judgment the *High Court Amendment Act 2021* was enacted and came into force via Gazette on 12th February 2021.
4. Consequentially, the *High Court Amendment Act 2021* introduced the Anti-Corruption Division of the Magistrates Court, wherein via Section 61M all pending proceedings were to be transferred to the Magistrate Court responsible for the Division.
5. As a result SRM Ms. W. George ceased to have jurisdiction over this matter pursuant to Section 61M of the *High Court Amendment Act 2021*.

6. Following on from the same, Section 61M (2) the *High Court Amendment Act 2021* bestows upon this court the discretion to consider Section 139 of the *Criminal Procedure Act 2009*, upon the transfer of proceedings.
7. As a matter of clarity the court regurgitates Section 139 of the *Criminal Procedure Act 2009* as follows:

“Conviction or commitment on evidence partly recorded by one magistrate and partly by another

139. — (1) Subject to sub-sections (1) and (2), whenever any magistrate, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction in the case and is succeeded (whether by virtue of an order of transfer under the provisions of this Act or otherwise), by another magistrate, the second magistrate may act on the evidence recorded by his or her predecessor, or partly recorded by the predecessor and partly by second magistrate, or the second magistrate may re-summon the witnesses and recommence the proceeding or trial.

(2) In any such trial the accused person may, when the second magistrate commences the proceedings, demand that the witnesses or any of them be re-summoned and reheard and shall be informed of such right by the second magistrate when he or she commences the proceedings.

(3) The High Court may, on appeal, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced, and may order a new trial.”

8. The above option was afforded to both parties on 9th March 2021.
9. Prosecution opted that this court continue on from where the former judicial officer left off whilst learned counsel for the accused opted for a trial de-novo.
10. This court then ruled on 7th April 2021 considering the relevant authorities that a trial de-novo was not proper in the circumstances.
11. Following on from that ruling, the court then gave directions that both parties file closing submissions by 28th April 2021 wherein Judgment would be delivered on 5th May 2021.
12. Unbeknown to all parties concerned including this court the COVID-19 pandemic and the institutional measures imposed meant that the directions as explained at paragraph 11 above-herein could not be fulfilled.
13. Upon the relaxing of restrictions and the resumption of court sittings, the court re-directed both parties on 15th October 2021 to file closing submissions.
14. However, as this ruling is being written only Prosecution has filed its submission.

15. The accused via his counsel following on from 15th October 2021 has now filed an application which this court is asked to consider.

The Application

16. The application was issued on 1st November 2021 wherein the orders sought by the accused in his motion are as follows:
 - "1. That this matter be transferred to the High Court before the Honourable Chief Justice for determination pursuant to section 191 of the Criminal Procedure Act 2009.
 2. That such an order is expedient for the ends of justice pursuant to section 47(1)(e) of the Criminal Procedure Act 2009.
 3. That the Chief Magistrate pursuant to sections 61I (1)(2) & (4) and 61K(1) of the Magistrate Court Act 1944 consults with the Honourable Chief Justice in vesting Resident Magistrate Warleen George jurisdiction of the Anti-Corruption Division of the Magistrate Court to dispose of this case.
 4. That Suva Criminal Case 335 of 2015 of FICAC v Semi Masilomani be transferred back to Resident Magistrate Warleen George for Judgment."
17. In support of the above application an Affidavit was filed and it stated *inter alia* that the charge had been in the carriage of SRM Ms. George for a period of six (6) years and eight (8) months, that is, from whence charges were laid until trial completion.
18. As such it was only fair in the circumstances to have SRM Ms. George deliver Judgment on the same.
19. In the legal submissions filed, learned counsel for the accused had referenced the Fiji Constitution specifically Section 15 (1), which was the authority on the notions of fair trial being afforded to the accused.
20. Prosecution in their response submitted that the consequential amendments to the Magistrate Court Act 1944 as a result of ***High Court Amendment Act 2021***, is the authority for the view that the application cannot be entertained.
21. This was stated on the basis that the orders sought cannot be entertained given the strict wordings of the statute and that if granted it would impinge on the administrative aspect of the Judiciary.

Discussion

22. This court does not deny that there is constitutional protection for the right to fair trial.
23. In fact, the manner in which this proceeding has prolonged could be deemed to be unfair because charges should not be left hanging over a person's head for a lengthy period. In fact it is now six (6) and eleven (11) months since the first production of the accused on first call.
24. Why the matter was not adjudicated on earlier cannot be answered by this court and perhaps that is the greater unfairness.
25. However upon the establishment of the Anti-Corruption Division of the Magistrate Court as a consequential amendment as Section 61H to 61P of the Magistrates Court Act 1944, the guidelines on its functioning are quite clear.
26. It is established as a division on its own in the Magistrate Court and the appointment of Resident Magistrates is determined by the Chief Justice in consultation with the Chief Magistrate.
27. The Chief Justice also directs on the extent of jurisdiction and sitting times.
28. As a matter of factual reasoning, there have been four (4) appointments of Resident Magistrates by the Chief Justice to take on the role of Anti-Corruption Magistrate in addition to other roles they play.
29. SRM Ms. George at this point in time has not been appointed to take on a role as an Anti-Corruption Magistrate.
30. This is what the application seeks to do, in fact it appears that the application is worded in such manner as to seek that the Chief Justice to so appoint SRM Ms. George into the Division.
31. At this very moment the Chief Justice has not determined that it should be the case and as such if this court were to grant the application it would do so *ultra vires*.
32. In fact this court reminds itself that this was not the intent of the legislature when the amendment was adopted as part of the law following lengthy debates on the same.

33. Given the above discussions, this court is of the opinion that the granting of the application shall not only be contrary to the intent of the legislature but also impinge on the administrative functioning of the Judiciary.
34. The only **fair** outcome of the application is to dismiss it in its entirety.
35. The court so orders.


JEREMIA N.L SAVOU
Resident Magistrate

