

IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CRIMINAL APPEAL NO. 106 OF 1980

Between:

UNION MANUFACTURING & MARKETING
CO. LTD.

APPELLANT

- and -

NAUSORI TOWN COUNCIL

RESPONDENT

Mr. F. Lateef for the Appellant.
Miss A. Prasad for the Respondent.

J U D G M E N T

The appellant was on the 6th day of August, 1980, convicted by the Magistrate's Court, Nausori, of the following offence :

STATEMENT OF OFFENCE

Business so conducted as to be offensive to the public Contrary to Section 56(f), 58 and 59 of the Public Health Ordinance Cap. 91.

The appellant was fined \$10 and the Magistrate purported to make a number of orders pursuant to section 59 of the Public Health Ordinance Cap. 91. I am not concerned with the legality of the said orders in this appeal. Leave was granted to the appellant pursuant to subsection (2) of section 290 of the Criminal Procedure Code to prosecute this appeal.

The appellant contends that the trial was a nullity or alternatively that the learned Magistrate erred in law in convicting the appellant when no offence was disclosed by the charge.

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I have set out above the statement of the offence. The particulars of the offence in the charge are as follows :

PARTICULARS OF OFFENCE

UNION MANUFACTURING AND MARKETING COMPANY LIMITED, a limited liability company having registered office at 80 Nasese Road Suva, did on the 31st day of December, 1979 at Manoca Industrial Area, Nausori in the Central Division, cause his business of timber industry so conducted as to be offensive to the public, by allowing timber and saw dust on footpath.

The alleged offence is said to be contrary to section 56(f), 58 and 59 of the Public Health Ordinance.

Section 56(f) creates no offence and is merely one of the definitions of the term "nuisance". It reads as follows :

"56. For the purposes of this Ordinance, but without limiting the meaning of the term 'nuisance' -

(f) any work, manufactory, trade or business injurious to the health of the neighbourhood or so conducted as to be injurious to health or offensive to the public shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Ordinance."

Section 58 of the Ordinance likewise creates no offence and deals with the procedure to be followed where a person makes default in complying with a notice requiring abatement of a nuisance which notice is provided for in section 57. The section enables a local authority to seek a nuisance order from a Magistrate's Court.

Section 59 provides for a nuisance order which may be an abatement order, a prohibition order or a closing order or a combination of those orders which the Magistrate is authorised to make on the hearing of a complaint by the local authority made pursuant to section 58.

Subsection 8 of section 59 does provide for a penalty on non compliance by a person of a nuisance order made under that section. This subsection, however, has no application in the instant case as no nuisance order had been made by the Magistrate prior to his hearing the charge against the appellant.

The charge discloses no offence and the appellant should not have been convicted by the Magistrate.

The appellant company was served with a notice requiring abatement of a nuisance issued pursuant to section 57 of the Public Health Ordinance. It purported in error to refer to a nuisance "contrary to section 56 (p).....". There is no section 56 (p) and the section as I have stated is merely a definition section.

Notwithstanding that defect the appellant was told how to abate the nuisance but did not comply with the notice. If any offence was committed it was the offence provided for in subsection (4)(b) of section 57 namely making default in complying with the requisitions of the notice within the time specified. The appellant was not charged with this offence.

The appeal is allowed. The conviction is quashed and the fine if paid refunded to the appellant.

R.G. Kermode
(R.G. KERMODE)
J U D G E

SUVA,

16th April, 1981.