

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO. AAU0126 of 2016
[High Court Case No. HAA6 of 2016]

BETWEEN : AIR CUSTOMS LIMITED
Appellant

AND : BIOSECURITY AUTHORITY OF FIJI
Respondent

Before : Hon. Mr Justice Daniel Goundar

Counsel : Mr G Driscoll for the Appellant
Mr A Sokimi for the Respondent

Date of Hearing : 7 December 2017

Date of Ruling : 26 January 2018

RULING

[1] This is a timely appeal against a judgment of the High Court delivered on 17 August 2016, in its appellate jurisdiction. The appeal is governed by Sections 22(1) of the Court of Appeal Act 1949. Section 22 states:

*“22.-(1) Any party to an appeal from a magistrate’s court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only...:
Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate’s court.*

[(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground-

(a) The sentence was an unlawful one or was passed in consequence of an error of law; or

(b) That the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence.]

[2] The issue for consideration is whether there is a question of law alone arising from the High Court judgment. If there is no question of law alone for the Full Court to consider, then the appeal could be dismissed under section 35(2) of the Court of Appeal Act 1949 on the basis that the appeal is bound to fail because there is no right of appeal.

[3] The grounds of appeal are as follows:-

1. That the Learned Appellant Judge erred in law when he stated in his ruling that “the Appellant has not made the application in the Magistrates Court either to vacate the written guilty plea or challenge the guilty plea on the ground that the person who entered the plea had no proper authority of the Appellant company. In the absence of such application, the learned Magistrate has correctly exercised his jurisdiction.....” when the real question was whether there was an authority from the appellant a limited liability company to entertain a written guilty plea from its employee.
2. That the Learned Appellant Judge erred in law in not considering or enquiring from the Director of the Company who was present in Court on the issue of guilty in writing made on behalf of the company and as such failure caused a substantial miscarriage of justice.
3. That the Learned Appellant Judge erred in law in not dealing with Ground 3 of the Appellant’s Appeal before the High court which was that the respondent did not disclose to the Learned Trial Magistrate the material facts that were in their possession which would have proved that the Respondent

had no basis of charging the Appellant and hence a miscarriage of justice had occurred.

4. That the Learned Appellant Judge erred in law whilst considering the Appellant's Grounds of Appeal at page 8 of the Court Record whereby the then Appellant's Counsel while requesting for an adjournment to provide if any authorisation by the Appellant company but instead the Learned Magistrate imposed a fine of \$10,000.00. Such record would demonstrate the errors made by the learned Trial Magistrate which the learned Appellant Judge failed to consider.
5. That the appeal against sentence being manifestly harsh and excessive and wrong in principal (sic) in all the circumstances of the case.
6. That the Learned Appellant Judge erred in law and in fact in taking irrelevant matters into consideration when sentencing the Appellant and not taking into relevant consideration in particular not allowing the Appellant to mitigate.
7. That the Learned Appellant Judge erred in law and in fact in not taking into consideration the provisions of the Sentencing and Penalties Decree 2009 when sentencing the Appellant.

[4] The appellant is a limited liability private company. The respondent is a statutory body created by the Biosecurity Act 2008 (the Act). The main purpose of the Act is to prevent the entry of animal and plant pests and diseases into Fiji. The Act also gives the respondent enforcement powers.

[5] On 25 September 2015, the respondent issued a fixed penalty notice to the appellant pursuant to section 96 (1) of the Biosecurity Act 2008. The notice contained the following charges:

Statement of Offence

Removing of Regulated article without obtaining Biosecurity clearance from Bio-security holding area contrary to Section 20(6) of the Biosecurity Promulgation 2008.

Particulars of Offence

That on the 10th day of September 2015 Air Customs Limited removed 2 x 20'containers (NYKU 3014, NYKU 3665797) containing regulated article under fumigation without obtaining Biosecurity clearance (no proper fumigation gas and procedure).

- [6] The fixed penalty notice was served on the director of the company, Mr Ranjit. When Mr Ranjit received the fixed penalty notice, he pleaded guilty on behalf of the appellant in writing pursuant to section 96 (5) of the Act. After the plea of guilty was entered, the respondent issued the appellant with a fixed penalty order pursuant to section 96 (5) (a) and (b) of the Act.
- [7] The fixed penalty order required the appellant to pay the penalty within the statutory prescribed time limit of seven days. When the appellant failed to comply with the fixed penalty order, the respondent applied to the Magistrates' Court for an enforcement order to compel the appellant to pay the fixed penalty in the sum of \$10,000.00
- [8] On 9 October 2015, the case was called before the Magistrates' Court for mention. Mr Ranjit appeared in court on behalf of the appellant, but the case was adjourned to 3 November 2015 due to unavailability of a magistrate.
- [9] On 3 November 2015, the case was further adjourned to 17 November 2015 for Mr Ranjit to provide in writing authority to bind the appellant to the fixed penalty order that was issued earlier by the respondent.
- [10] On 17 November 2015, Mr Ranjit appeared with his private counsel of choice, Mr Anthony who applied for further time to provide the court with a letter of authorisation for Mr Ranjit to bind the appellant to the fixed penalty order. The case was adjourned to 19 January 2016.

[11] On 19 January 2016, Mr Ranjit appeared with a different private counsel of choice, Mr Sharma who applied for further time to provide the court with a written authority to bind. The learned Magistrate refused the application for an adjournment and imposed a fine of 100 penalty units (\$10,000.00) and costs of \$200.00 on the appellant to be paid within 28 days.

[12] Aggrieved with the learned Magistrate's decision, the appellant appealed to the High Court. The appeal to the High Court was advanced on the following grounds:

- i) That the Learned Trial Magistrate erred in Law and in fact in convicting the Appellant when he failed to clarify whether the person that signed the guilty plea was an authorised officer of the appellant company.
- ii) That the learned Trial Magistrate erred in law and in fact in not enquiring from the Director of the Company who was present in Court on the issue of guilty in writing made on behalf of the company and as such failure caused a substantial miscarriage of justice.
- iii) That the Respondent did not disclose to the Learned Trial Magistrate the material facts that were in their possession which would have proved that the Respondent had no basis of charging the Appellant and hence a miscarriage of justice had occurred.
- iv) That the Appellant appeal against sentence being manifestly harsh and excessive and wrong in principle in all the circumstances of the case.
- v) That the learned Trial Magistrate erred in law and in fact in not taking relevant consideration and took relevant matters into consideration and furthermore not taking into consideration the provisions of Sentencing and Penalties Decree 2009 when sentencing the Appellant.

[13] The learned Magistrate's exercise of the discretion in refusing an adjournment was not challenged in the High Court. The High Court heard the appeal on 15 July 2016. The appellant submitted the appeal on written submissions. Written submissions addressed grounds one and two only. The remaining grounds of appeal were not pursued at the hearing.

- [14] The issue presented by the two remaining grounds was whether Mr Ranjit was authorized to bind the appellant by entering a plea of guilty in writing on its behalf.
- [15] In his judgment, the learned High Court Judge referred to section 96 (8) (b) of the Act and concluded that the proceedings in the Magistrates' Court was for an enforcement order for payment of the outstanding fine imposed on the appellant and not a fresh prosecution. Section 96 (8) (b) states:

If a fixed penalty payable under this section, or any part of it, is not paid by the date specified in the order, the sum payable becomes a debt owing to the Authority and the Authority may -

(a) ...

(b) send a copy of the order to a court of competent jurisdiction which may enforce payment of the sum outstanding as if it were a fine imposed by the court including imposing costs and confiscation as appropriate.

- [16] The learned High Court Judge held that since the appellant had not made any application in the Magistrates' Court to vacate the plea of guilty or challenge the guilty plea on the ground that Mr Ranjit had no authority to act on behalf of the appellant, the learned Magistrate was correct to exercise his discretion to enforce the appellant to pay the outstanding fine.
- [17] The main question posed by the appellant in the present appeal is whether Mr Ranjit had the authority to enter the guilty plea on behalf of the appellant. Mr Ranjit is the director of the company. This was an undisputed fact before the High Court (see, appeal ground two advanced in the High Court). When he entered the plea of guilty in writing on behalf of the company, he did so in his capacity as the director of the company. At no stage, Mr Ranjit suggested that he acted unlawfully by entering the plea of guilty on the behalf of the appellant. If Mr Ranjit had no authority to bind the company, then he was given ample opportunity by the learned Magistrate to provide

the evidence to the contrary. Mr Ranjit failed to provide any evidence that as the director he was not authorised to enter the plea of guilty on behalf of the appellant. In any event, whether Mr Ranjit had the authority to enter the plea of guilty and bind the appellant to a penalty authorized by the law is a question of mixed law and fact. The appeal against sentence was not pursued in the High Court or this Court.

[18] I am satisfied that there is no question of law alone that arises from the grounds of appeal advanced in this Court. The appeal is bound to fail because there is no right of appeal.

[19] Appeal dismissed under section 35 (2) of the Court of Appeal 1949.
Fine and costs, if not paid, must be paid forthwith.




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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Mr G Driscoll – instructed by Iqbal Khan & Associates for the Appellant
Biosecurity Authority of Fiji for the Respondent