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

CRIMINAL APPEAL NO. AAU 031 of 2020
[In the High Court at Suva Case No. HAR 046 of 2020S]
[In the Magistrates Court at Suva case No.CF/SUV/756/2020]

BETWEEN	**:**	**EILEEN ANDERSON**
		Appellant
AND	**:**	**THE STATE**
		Respondent
Coram	**:**	**Prematilaka, RJA** **Dobson, JA** **Heath, JA**
Counsel	**:**	**Mr. R. K. Naidu and Ms. J. Kumar for the Appellant**
	:	**Mr. R. Kumar for the Respondent**
Date of Hearing	**:**	**03 July 2024**
Date of Judgment	**:**	**26 July 2024**

JUDGMENT

Prematilaka, RJA

Background facts

[1] The appellant had been convicted on 22 April 2020 by the learned Magistrate sitting in Suva on her own plea for failure to comply with orders contrary to section 69(1)(c) of the Public Health Act 1935 and Regulation 02 of Public Health (Infectious Diseases) Regulations 2020 and fined $500 to be paid within three months.

[2] On 14 May 2020 the High Court presided over by Justice Salesi Temo, as His Lordship then was ('High Court 01') in Criminal Review Case No. HAR 046 of 2020S purportedly acting under section 260 (1) of the Criminal Procedure Act 2009,

had quashed/set aside the appellant's conviction and sentence and dismissed the charge against her without recording a conviction pursuant to section 15(1)(j) of the Sentencing and Penalties Act, 2009[1]. In the same judgment, High Court No.01 had considered 51 similar cases (including the appellant's case) and set aside the fines imposed except in two cases and directed the respective Magistrates to re-sentence the offenders.

[3] The State had not appealed against the said judgment of High Court 01 to the Court of Appeal.

[4] Thereafter, on 18 May 2020, then Acting Chief Justice Kamal Kumar (as His Lordship then was) sitting in the High Court ('High Court 02' for convenience) had signed and issued a Declaration/Order[2] with regard to the same cases and declared *inter alia* the order made by High Court 01 regarding the appellant to be a nullity, set it aside and sent 21 cases (appellant's case was not among them) for the sentences to be reviewed by the respective Magistrates.

[5] As a result, the conviction and the sentence entered by the Magistrate on the appellant had been effectively restored or reinstated by High Court 02. The appellant had paid the fine of $500 on 21 July 2020 despite the fact that on 20 May 2020 she had already appealed against the conviction and sentence of the Magistrate's court to the High Court which under HAA 26 of 2020 is currently pending the determination of this appeal.

[6] The appellant had filed the present appeal in a timely manner as a second-tier appeal under section 22 of the Court of Appeal Act against the said Declaration/Order issued by High Court 02 on the following grounds of appeal:

> **'Ground 1**
>
> *THAT the Learned Acting Chief Justice erred in law in issuing the Declaration/Order in that he lacked jurisdiction to do so.*

[1] Unreported in PacLII - https://www.paclii.org/countries/fj.html
[2] Unreported in PacLII - https://www.paclii.org/countries/fj.html

Ground 2

THAT alternatively, if the Learned Acting Chief Justice acted within jurisdiction (which is denied), the Appellant was denied the right to be heard on the making of the Declaration/Order, in breach of the rules of natural justice.

[7] A judge of this court in the Ruling delivered on 29 December 2022[3] allowed the appeal to proceed to the Full Court for final determination on several questions of law. In a second-tier appeal under section 22 of the Court of Appeal Act, a decision of the High Court could be canvassed on a ground of appeal involving a question of law only [see also paragraph [11] of ***Tabeusi v State*** [2017] FJCA 138; AAU0108.2013 (30 November 2017)]. A sentence could be canvassed only if it was unlawful or passed in consequence of an error of law or if the High Court had passed a custodial sentence in substitution for a non-custodial sentence [vide section 22(1)(A) of the Court of Appeal Act].

[8] I shall now proceed to consider the questions of law involved in this appeal.

Does the appellant have locus standi?

[9] The respondent has submitted that this appeal should be dismissed *in limine* as the appellant has no *locus standi* before this court to challenge the impugned Declaration/Order and she had anyway appealed against her conviction and sentence to the High Court. However, it is clear that the scope of the current appeal is not the same as the appeal before the High Court against the appellant's conviction and sentence.

[10] *Locus standi* is the right or ability to bring a legal action to a court of law, to appear and be heard in a court on a matter before it. *Locus Standi* essentially applies to a person's attempt to show to the court that he has ample relation or correlation to the cause of action or the suit. In other words, it applies to a person's capacity to bring a case before the court of law or to testify before the court of law.

[3] ***Anderson v State*** [2022] FJCA 203; AAU031.2020 (29 December 2022)

[11] In the context of criminal cases, locus standi typically pertains to the prosecution (usually the state or government) and the defense (the accused). The general rule is that only parties who are directly affected by the outcome of the case have standing. A few key points regarding locus standi in criminal cases are:

1. ***Prosecution****: In most jurisdictions, the state or government has the locus standi to prosecute criminal cases. This is typically carried out by a public prosecutor or a similar authority.*

2. ***Victims****: The victims of a crime do not usually have the locus standi to prosecute the case themselves, but they may have the right to participate in the proceedings to a certain extent, depending on the jurisdiction. For example as in Fiji, they might have the right to be heard during sentencing or to provide a victim impact statement.*

3. ***Private Prosecutions****: In some jurisdictions, individuals or private entities may have the right to initiate criminal proceedings under specific circumstances. However, this is often subject to strict laws, regulations and oversight by public authorities.*

4. ***Defendants****: The accused has the locus standi to defend themselves in a criminal case. They have the right to legal representation and to be heard in court.*

[12] I shall examine a few cases where the question of *locus standi* was considered in broader contexts. The Australian case of ***Giles v Director of Public Prosecutions*** (1993) 71 A Crim R 135 involved a private citizen, Giles, who sought judicial review of the Director of Public Prosecutions' (DPP) decision not to prosecute certain individuals for alleged criminal conduct. The court held that Giles did not have the standing to challenge the DPP's decision. The court reasoned that decisions regarding prosecutions are generally at the discretion of the DPP and not subject to judicial review by private individuals who are not directly affected by the decision. The rationale was to preserve the independence and discretion of prosecutorial authorities.

[13] In the UK case of ***Director of Public Prosecutions v. Humphrys*** [1976] UKHL J0519; [1977] AC 1, Humphrys was acquitted at trial. The DPP sought to appeal the acquittal on the grounds that there were errors in the trial process. The House of Lords held that the DPP did have the standing to appeal the acquittal. However, the court also emphasized that the grounds for such appeals are limited and must be based on

significant errors of law or procedure. The decision highlighted the balance between ensuring fair trials and upholding the finality of acquittals to prevent double jeopardy.

[14] The UK case of ***R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses Ltd*** [1982] AC 617 involved the National Federation of Self-Employed and Small Businesses (the Federation) seeking judicial review of a decision by the Inland Revenue Commissioners (IRC) to grant tax amnesty to a group of taxpayers. The House of Lords held that the Federation did not have the standing to challenge the IRC's decision. The court articulated a broad test for standing in judicial review cases, focusing on whether the applicant had a sufficient interest in the matter. In this case, the Federation's interest was deemed insufficient. This case is significant for its general principles on standing, which can impact criminal law when it involves the review of prosecutorial decisions.

[15] *Locus standi* may also be considered as applying to two groups of applicants; individuals and pressure groups. Where individuals are concerned it will normally be fairly easy for them to demonstrate sufficient interest, so long as they are in some way personally interested in the decision they wish to challenge. For example, in ***R v Independent Broadcasting Authority, ex parte Whitehouse*** (1984) *Times* 14 April, a television license holder was found to have sufficient standing to challenge a decision to broadcast a controversial film. It was indicated that every television license holder would have *locus standi* in litigation relating to the broadcast of programmes likely to give offence. Thus, the fact that the applicant was a license-holder, rather than simply a viewer, was enough to give her sufficient standing.

[16] Where an interest or pressure group is acting in relation to a decision which directly affects its own interests, no problem arises as it is acting in the same way as an individual (e.g. ***R v Liverpool Corporation ex parte Liverpool Taxi Fleet Operators' Association*** [1972] 2 QB 299). However, where the group has been formed simply to challenge a decision which does not directly concern its members, it will not have sufficient standing (see ***R v Secretary of State for the Environment, ex parte Rose Theatre Trust*** [1990] 1 QB 504). Yet, where the group can demonstrate that some or all of its members are personally interested in the decision *locus standi* will be found

(see ***R v HM Inspectorate of Pollution ex parte Greenpeace Ltd*** (No 2) [1994] 4 All ER 329. Furthermore, even where the group cannot demonstrate personal interest on the part of its members, if it is a highly respected 'expert' group standing is still likely to be found (***R v Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd*** [1995] 1 All ER 611).

[17] If a particular applicant is found to have standing then he will be permitted to have his request heard (though determining that an applicant has *locus standi* will not necessarily mean that he will be successful in his final application). On the other hand, if the applicant is not found to have standing to bring the action, the court will not hear his complaint.

[18] The appellant seems to argue that as a result of the judgment of High Court 01, she stood having no conviction or sentence against her name. However, when High Court 02 declared the said judgment of High Court 01 a nullity and set it aside, her conviction and sentence were effectively restored and therefore, the Declaration/Order affected her rights conferring on her the required standing to canvass it in the Court of Appeal. I agree.

[19] Therefore, I hold that the appellant undoubtedly has *locus standi* to prosecute her appeal in the Court of Appeal notwithstanding the fact that she had exercised her statutory right to challenge in the High Court her conviction and sentence which was in the first instance set aside by High Court 01 but later reversed by High Court 02.

Does this court have jurisdiction?

[20] The respondent has referred to section 99 of the Constitution to argue that the appeal should be otherwise dismissed *in limine* for lack of jurisdiction. Section 99(3) & (5) confer jurisdiction on the Court of Appeal to hear and determine appeals from all *judgments* of the High Court with or without leave subject to the requirements prescribed by written law or under rules pertaining to the Court of Appeal.[4] This will

[4] See paragraphs [12] and [29] in **State v Khan** [2023] FJCA 235; AAU139.2017 (24 February 2023) for a fuller discussion.

include the Court of Appeal Act and Rules made thereunder. The respondent also argues that the appellant's appeal is not covered generally under section 3 or specifically under sections 21 or 22 of the Court of Appeal Act, thus making this court lacking jurisdiction. Section 21 has no application here as the appeal is not from a conviction, acquittal, sentence or grant/refusal/conditions of bail pending trial entered by the High Court exercising its original jurisdiction. Section 3 also has no relevance here in as much as the Declaration/Order, though a *'final judgment'*, had not been given in the exercise of original jurisdiction of the High Court. The operative provision applicable and relevant to this instance is section 22 of the Court of Appeal Act.

[21] The question therefore is the true nature of the Declaration/Order, whether it could still be considered as a judgment in law and appealed against though it is not described as such in the caption which categorises it only as a Declaration/Order.

[22] Section 22 of the Court of Appeal Act confers the right of appeal against a ***decision*** made by the High Court in its appellate jurisdiction. In legal terms, a "decision" refers to the outcome of a judicial proceeding, wherein a court or a tribunal provides a ruling on the matters presented before it. A decision may include judgments, orders, rulings, or verdicts that determine the rights and obligations of the parties involved.

[23] The High Court of Australia in ***Commissioner of Taxation v Futuris Corporation Ltd*** (2008) 237 CLR 146 analysed whether the Commissioner of Taxation's assessment could be categorized as a "decision" and thus subject to judicial scrutiny. The court emphasized that a "decision" typically involves a definitive conclusion that affects the rights of the parties. The High Court of Australia in ***Hot Holdings Pty Ltd v Creasy (1996) 185 CLR 149*** once again examined the meaning of "decision" under the Administrative Decisions (Judicial Review) Act 1977 (Cth). The court determined that for an act to be a "decision," it must be a final determination that produces substantive legal consequences for the parties involved. Needless to say that the impugned Declaration/Order satisfies this criteria to be a 'decision'.

[24] The appellant argues based on section 2(1) of the Court of Appeal Act that 'decision' includes an order, judgment or decree and therefore the said Declaration/Order should be considered a 'decision' as defined in the Court of Appeal Act as being justiciable under section 22. The appellant points out that according to section 22(2) of the Court of Appeal Act even a decision in the exercise of revisionary jurisdiction by the High Court is deemed to be a 'decision' made in the appellate jurisdiction by the High Court. It is also contended on behalf of the appellant that the Declaration/Order cannot be other than a decision of the High Court as it is intituled or referred to 'High Court of Fiji, Criminal Jurisdiction' and bears the seal of the High Court and signed by the then Acting Chief Justice.

[25] In the circumstances, I have no difficulty in holding that the impugned Declaration/Order could be considered a 'decision' within the parameters of section 22 read with section 2 (1) of the Court of Appeal Act and also a judgment in terms of section 99(3) & (5) of the Constitution being amenable to jurisdiction of the Court of Appeal under section 22 of the Court of Appeal Act.

[26] Having dealt with the respondent's two preliminary objections, I shall now proceed to consider the appellant's two specific questions of law due for the determination of the Court of Appeal. They are as follows.

> *'(a) The Learned Acting Chief Justice erred in law in issuing the Declaration/Order in that he lacked the jurisdiction to do so.*
>
> *(b) Alternatively, if the Learned Acting Chief Justice acted within jurisdiction (which is denied), the Appellant was denied the right to be heard on the making of the Declaration/Order in breach of the rules of natural justice.'*

Ground (a)

[27] The gist of the appellant's arguments is that the judgment of High Court 01 is final and could have been challenged only by way of an appeal in the Court of Appeal and High Court 02 could not have overruled it. It is also submitted that High Court 02 had not mentioned under what statutory powers it was acting in setting aside the judgment of High Court 01 and declaring it a nullity.

[28] On the other hand, the respondent argues that the judgment of High Court 01 was set aside and declared a nullity by High Court 02 because the former had been given without an authorising report by the Chief Justice under section 260 (2) of the Criminal Procedure Act.

[29] The Declaration/Order of High Court 02 at paragraphs 3-16 has dealt with section 260 of the Criminal Procedure Act and determined for several reasons set out therein that for the High Court to act under section 260 (1) it is mandatory that a report 'under the hand of Chief Justice' requesting High Court to act under section 260(1) be given. Accordingly, the Declaration/Order had concluded at paragraph 19 that as High Court 01 had acted without such a report the judgment delivered by High Court 01 on 14 May 2020 was a nullity for lack of jurisdiction.

[30] Section 260 of the Criminal Procedure Act is as follows:

> *"Division 2 — Revision by the High Court Power of High Court to call for records*
>
> *260. — (1) The High Court **may** call for and examine the record of any criminal proceedings before any Magistrates Court for the purpose of satisfying itself as to —*
>
> *(a) the correctness, legality or propriety of any finding, sentence or order recorded or passed; and*
>
> *(b) the regularity of any proceedings of any Magistrates Court.*
>
> *(2) The High Court **shall** take action under sub-section (1) upon the receipt of a report under the hand of the Chief Justice which requests that such action be taken."*

[31] Section 260(1) and (2) read together suggests that under section 260(1) the High Court (meaning any High Court judge) has discretion ('*may*') to call for records of the Magistrates Court for the purpose of satisfying itself of matters set out under 260(1)(a) and (b). However, any High Court (meaning any judge of the High Court) is bound ('*shall*') to do so upon the receipt of a report from the Chief Justice. In other words, under section 260(1) the High Court can act on its own motion but when a

report is received under section 260(2) from the Chief Justice requesting to do so, the High Court must act under section 260(1). This is the literal and purposive interpretation that could be given to the use of word *'may'* in section 260(1) and *'shall'* in section 260(2) by Parliament.

[32] There is nothing to indicate in section 260 that the legislature intended that a report of the Chief Justice is a condition precedent or a *sine qua non* to the exercise of power of revision by any other High Court judge under section 260(1). To interpret it otherwise would be to impose a fetter not intended by Parliament as *'a strong leaning exists against construing a statute so as to oust or restrict the jurisdiction of the superior courts'* and it is a *'....well-known rule that a statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect…'* (see **Maxwell on Interpretation of Statutes** Twelfth Edition by P. St. J. Langan).

[33] Powers of the High Court on revision are in respect of any proceedings in a Magistrates Court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge (vide section 262(1) of the Criminal Procedure Act). The words *'which has been called for'* and *'which otherwise comes to its knowledge'* seem to suggest instances where the High Court acts on its own motion (*ex mero motu*) or on an application by a party under section 260(1) whereas the words *'which has been reported for orders'* appear to refer to the instance of the High Court acting on a report of the Chief Justice under section 260(2).

[34] This court dealt with the revisionary powers of the High Court in detail at paragraphs [22] to 34] in the recent case of ***Joyce v Civil Aviation Authority of Fiji*** [2024] FJCA 82; AAU0025.2019 (18 April 2024). The court analysed a good sample of instances where the High Court in the past exercised its revisionary jurisdiction not only under the Criminal Procedure Act but also under section 323 read with 325 of the old Criminal Procedure Code[5] and found only one clear instance of the record of the

[5] https://www.paclii.org/fj/legis/consol_act/cpc190.pdf

proceedings in the Magistrate's Court being called for and dealt with by a High Court judge pursuant to a directive made under the hand of the Chief Justice. In all other instances, the High Court judges had acted in revision without such a report by the Chief Justice. The two key takeaways from ***Joyce*** relevant to the issue under consideration are as follows:

1. *Section 260(1) operates independent of section 260(2). The High Court judges may act under section 260(1) in revision on their own or on a report, directive or reference by the Chief Justice under section 260(2).*

2. *A report of the Chief Justice is not a condition precedent or a sine qua non to the exercise of power of revision by any other High Court judge under section 260(1).*

[35] The Declaration/Order does not explain how High Court 02 assumed jurisdiction to oversee the earlier judgment of High Court No.01 and how the exclusive jurisdiction of the Court of Appeal to hear and determine appeals from all *judgments* of the High Court as conferred by section 99(3) & (5) of the Constitution was circumvented.

[36] Therefore, High Court 02 erred in law in issuing the Declaration/Order nullifying the judgment of High Court 01 because High Court 02 lacked jurisdiction to do so and the legal basis it sought to justify it was wrong. Further, it amounted to a usurpation of the exclusive jurisdiction of the Court of Appeal under section 99(3) & (5) of the Constitution.

Ground (b)

[37] The appellant submits that High Court 02 did not hear her before overturning the judgment in her favour given by High Court 01 and therefore her right to be heard was violated amounting to a breach of the rule of natural justice *audi alteram partem*.

[38] The appellant's contention is that in terms of section 14(2) of the Constitution a person charged with an offence has *inter alia* a right to defend herself and to be present when being tried. It appears that section 14 of the Constitution deals with the rights of accused persons when originally tried by a court of first instance. I see no

reason why this fundamental right coupled with other rights under section 15 of the Constitution on access to courts (in so far as they are relevant to appellate proceedings), should not be *mutatis mutandis* available to a party to an appeal or to revisionary proceedings particularly when the decision in appeal or revision would adversely affect that party. It may be pertinent to note that as far as the Court of Appeal is concerned an appellant, notwithstanding that he/she is in custody, shall be entitled to be present, if he desires it and is not prevented by sickness or other cause, on the hearing of his appeal [vide section 31(1) of the Court of Appeal Act].

[39] The appellant also buttresses her argument by referring to Article 14 of the International Covenant on Civil and Political Rights (ICCPR), decisions in **Annetts v McCann** [(1990) 170 CLR 596, 598], **Wiseman v Borneman** ([1971] AC 297, 308-309, **Lloyd v McMahon** ([1987] 1 AC 625, 702-703) and **Ross on Crime** 07th Edition – Mirko Bagaric, 2016.

[40] The pith and substance of these authorities seems to be that when decisions are taken affecting a person's rights, rules of natural justice should be observed unless excluded by plain words. The principles and procedures to be applied in a given situation should be right, just and fair. There is nothing rigid about natural justice which is only 'fair play in action' in that no one shall be condemned unheard and when an order is to be made depriving a person of his right, interest or legitimate expectation, he should be given an opportunity of replying to it or afforded a fair hearing. To achieve that courts will not only require the statutorily prescribed procedure to be followed but will readily imply that much to be introduced by way of additional procedural safeguards to ensure fairness.

[41] Thus, the appellant argues that after she had her conviction and sentence overturned by High Court 01 in its judgment, she had a right to be heard if that decision was to be set aside by High Court 02 as that was going to affect her right, interest and legitimate expectation. Since High Court 02 did not afford her a right to be heard before reinstating the conviction and sentence, the Declaration/Order was made in breach of the rules of natural justice.

[42] The appellant also submits that though when the High Court exercises powers of revision under section 263 of the Criminal Procedure Act, no party has any right to be heard personally or by lawyers, High Court 02 in this instance could not have acted under section 263 in as much as revisionary powers are available for calling for and examining the record of any criminal proceedings before any Magistrates Court and these powers cannot be extended to calling for and examining the record of any criminal proceedings in another High Court namely High Court 01. However, it should be noted that High Court 02 did not call for records from High Court 01 as by that time High Court 01 had already disposed of them through its judgment.

[43] Secondly, the appellant submits that the discretion of High Court as to hearing parties under section 263 is subject to section 262(2) which declares that no order under section 262(1) (a) and (b) shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by a lawyer in his or her defence.

[44] The respondent submits that the appellant had been heard neither by High Court 01 (though the appearance of counsel had been marked for both sides) nor by High Court 02. High Court 01 appears to have exercised its discretion under section 263 of the Criminal Procedure Act as not to hear the appellant or her counsel in as much as the court was not making an order prejudicial to her. However, in the case of High Court 02, the order made was to the prejudice of the appellant. Even assuming only for the sake of argument that High Court 02 was exercising powers of revision, in terms of section 262(2) it had to hear the appellant personally or her counsel in her defence before making the Declaration/Order effectively restoring the conviction and sentence. Again even assuming that High Court 02 was exercising powers of revision such powers under section 262(1) did not authorise the High Court to convert a finding of acquittal into one of conviction without affording an opportunity to be heard either personally or by a lawyer because that was the legal effect of the Declaration/Order as High Court 01 had for all practical purposes acquitted the appellant.

[45] The right to be heard, also known as the principle of *"audi alteram partem,"* is a fundamental aspect of natural justice. It ensures that a party affected by a decision has an opportunity to present their case before an impartial adjudicator. A body of cases I have examined collectively underscore the critical importance of the right to be heard in ensuring that justice is administered fairly and that individuals have the opportunity to present their case before decisions affecting their rights are made. They are as follows:

1. *It was held by the High Court of Australia that the right to be heard is an essential requirement whenever an administrative decision affects the rights or interests of an individual. The decision emphasized that procedural fairness must be observed, especially in cases where a decision adversely impacts a person's rights.*[6]

2. *In UK, it was stressed that parties must be given a fair opportunity to present their arguments and evidence before any appellate body makes a decision that affects their rights or interests.*[7]

3. *The House of Lords held when an individual's rights are affected by an administrative or judicial decision, they must be given a fair hearing. The decision highlighted that even in cases where a decision seems straightforward, the affected party must be afforded the opportunity to be heard.*[8]

4. *The High Court of Australia held that procedural fairness requires that individuals whose rights or interests are likely to be adversely affected by a decision must be given a fair hearing before that decision is made.* [9]
5. *The House of Lords emphasized that the requirements of procedural fairness vary depending on the circumstances but generally include the right of individuals to be informed of the case against them and to be given an opportunity to respond.*[10]

[46] I shall also examine a few important reported decisions relating to applicants in revision applications in criminal cases where the right to be heard was held to be pivotal in criminal cases, especially in revision applications where higher courts review the decisions of lower courts. These cases highlight the critical importance of the right to be heard in criminal revision applications, ensuring that applicants are given a fair opportunity to present

[6] ***Kioa v West*** (1985) 159 CLR 550
[7] ***Administrative Appeals Tribunal v General Medical Council*** [1984] 1 WLR 1271
[8] ***Ridge v Baldwin*** [1964] AC 40
[9] ***Annetts v McCann*** (1990) 170 CLR 596
[10] ***R v Secretary of State for the Home Department, ex parte Doody*** [1994] 1 AC 531

their case and challenge any decisions that may adversely affect their rights or interests.

1. *The Court of Criminal Appeal considered the principles of natural justice in the context of a revision application. The court emphasized that the applicant must be given a fair opportunity to be heard, particularly when the application involves revising a conviction or sentence.*[11]

2. *This case before the House of Lords involved an application for habeas corpus. Although not strictly a revision application, it touched on the broader principles of procedural fairness and the right to be heard, underscoring that individuals in criminal proceedings must be given a fair chance to present their case.*[12]
3. *In this English case, the applicant sought revision of a decision made by the Crown Court. The Court of Appeal highlighted the importance of the right to be heard, stressing that all parties affected by the revision application should have an opportunity to present their arguments.*[13]

4. *This House of Lords case involved a revision application concerning disciplinary proceedings in a prison setting. The court affirmed that natural justice, including the right to be heard, applies to all judicial and quasi-judicial proceedings, ensuring fair treatment of individuals seeking revisions in criminal matters.*[14]

5. *In this High Court of Australia case, the principles of procedural fairness and the right to be heard were considered in the context of a criminal revision application. The court reinforced that applicants must be afforded a fair hearing, emphasizing the need for transparency and impartiality in judicial proceedings.*[15]

[47] This court also looked at this question in ***Joyse*** at paragraphs [31] to 34] and held that:

> *'[34] Therefore, as a matter of general principle or at least as a best practice, the High Court should always observe the fundamental rule audi alteram partem (both sides must be heard before passing any order) in exercising revisionary jurisdiction.'*

[48] Although section 263 of the Criminal Procedure Act states that when the High Court exercises powers of revision no party has any right to be heard personally or by lawyers but the High Court *may* when exercising such powers, hear any party either personally or by lawyer, in the light of the universally accepted right to be heard, the

[11] ***R v Smith*** (1955) 39 Cr App R 139
[12] ***R v Governor of Brixton Prison, ex parte Armah*** [1968] AC 192
[13] ***Balogh v Crown Court at St Albans*** [1975] QB 73
[14] ***R v Board of Visitors of HM Prison The Maze, ex parte Hone*** [1988] AC 379
[15] ***Mitsunaga v The Queen*** (1981) 55 ALJR 167

crystallisation of this right in the Constitution of Fiji coupled with the interpretative tools enshrined therein, section 262(1) and the strong judicial precedents in other jurisdictions and Fiji, I think the High Court judges acting in revision should always adhere to and uphold the fundamental right of any party to be heard in every application for revision, irrespective of whether the order to be made is to the prejudice to the accused or not.

[49] The State also submits that the effect of the Declaration/Order was to administratively set right a legally incorrect situation. Prima facie it appears that the Declaration/Order has all the hallmarks of a judicial pronouncement and trappings of a decision of the High Court. There is no indication expressly or otherwise in the Declaration/Order that it is anything other than a judicial decision. State concedes that it could have appealed against the judgment of High Court 01 to the Court of Appeal but did not or did not have to do so as High Court 02 set aside the said judgment and declared it a nullity.

Dobson, JA

[50] I agree with all the reasoning, and the outcome in Prematilaka, RJA's judgment.

Heath, JA

[51] I have read the judgment of Prematilaka, RJA in draft. I agree that the appeal should be allowed with the consequences he proposes.

Orders of the Court:

1. Appeal is allowed.

2. The Declaration/Order dated 18 May 2020 is set aside in so far as it relates to High Court Suva Case No. HAR 046 of 2020S (Magistrates Court at Suva case No.CF/SUV/756/2020).

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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

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Hon. Mr. Justice R. Dobson
JUSTICE OF APPEAL

.....

Hon. Mr. Justice P. Heath
JUSTICE OF APPEAL

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