

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 534 OF 2004

BETWEEN: AGAPE FISHING ENTERPRISES LIMITED

PLAINTIFF

A N D: FISHERIES DEPARTMENT

FIRST DEFENDANT

CHIEF EXECUTIVE OFFICER, FISHERIES

SECOND DEFENDANT

MINISTER FOR FISHERIES & FORESTS

THIRD DEFENDANT

POLICE DEPARTMENT

FOURTH DEFENDANT

COMMISSIONER OF POLICE

FIFTH DEFENDANT

MINISTER FOR HOME AFFAIRS

SIXTH DEFENDANT

ATTORNEY GENERAL OF FIJI

SEVENTH DEFENDANT

Mr. T. Fa for the Plaintiff

Mr. E. Tuiloma for the Defendants

Date of Hearing: 13th August 2007

Date of Ruling: 25th September 2007

RULING

On 10th November 2003, a fishing vessel Victory 11 was arrested by the officers of the Fisheries Department on the grounds that it had no fishing licence. The catch of fish was sold by the State and proceeds kept by it. Having arrested the boat and sold the catch, nothing else happened. No charges were laid. The vessel just lay with the State lying idle. Hence on 2nd December 2004, this action was filed seeking release of the vehicle. The plaintiff felt particularly aggrieved at the lackluster approach of the State organs in neither prosecuting it nor releasing the boat.

On 5th June 2007 I had fixed the case for hearing on 13th, 14th and 15th August 2007. On 13th August 2007 on the first day of trial, Counsel for the State informed the court that a criminal case had been filed against the plaintiff. Mr. Fa confirmed that that was correct. It was Mr. Fa who told the court that the charge was that of taking fish without a valid licence contrary to Section 10 of the Fisheries Act.

Mr. Tuiloma sought an adjournment on the grounds that forfeiture of the vessel is one of the penalties provided for if there is conviction. On conviction the court has a discretion to forfeit the vessel. Whether it does or does not forfeit is for the criminal court to decide. If I order the release of the vessel, after the hearing of this case, then such an order would be a restraint on the exercise of powers of the criminal court. The State I must say has been tardy in prosecution particularly when the only issue was whether the boat carried a licence or not. It should not have taken three years to initiate criminal proceedings in such a simple matter.

I shall accordingly stay these proceedings pending the outcome of the criminal proceedings and appeal if any from those proceedings.

Mr. Fa is entitled to the costs of wasted hearing days. I fixed that sum at \$400.00 to be paid in fourteen (14) days.

A handwritten signature in black ink, appearing to read 'Jiten Singh', written in a cursive style.

[Jiten Singh]

JUDGE

At Suva

September 2007