

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAA NO. 6 OF 2016

BETWEEN : AIR CUSTOM LIMITED

Appellant

AND : BIOSECURITY AUTHORITY OF FIJI

Respondent

Counsel : Mr Iqbal Khan for Appellant
Mr. A. Sukini for Respondent

Date of Hearing : 15th of July 2016

Date of Ruling : 17th of August 2016

JUDGMENT

1. The Appellant was issued with a fixed penalty notice by the Respondent on the 25th of September 2015 pursuant to Section 96 of the Biosecurity Promulgation 2008 (herein after referred as the Promulgation). It has been alleged that the Appellant has removed a regulated article from the biosecurity holding area without obtaining biosecurity clearance, which is an offence pursuant to Section 20 (6) of the Biosecurity Promulgation. Upon the serviced of the fixed penalty notice, Mr. Ranjith, an officer from the Appellant company has entered a written guilty plea pursuant to Section 96 (5) (a) of the Promulgation. Accordingly, the Respondent has issued the Appellant with a Fixed Penalty Order pursuant to Section 96 (5) (a) and (6) of the Promulgation.
2. However, the Appellant has failed to honour the Fixed Penalty Order within the prescribed time limit of seven days. Hence, the Respondent has sent the copy of

the Order to the Magistrates' court in order to enforce the payment of the said defaulted payment of the Fixed Penalty Order pursuant to Section 96(8) (b) of the Promulgation. The learned Magistrate has imposed a fine of \$ 10,000 (100 Penalty Units) on the Appellant with \$200 of cost to be paid to the Respondent on the 19th of January 2016. Aggrieved with the said order, the Appellant files this Petition of Appeal on the following grounds, inter alia;

Appeal against Conviction,

- 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 reserves his right to argue and/or add further grounds of Appeal upon receipt of the Court Record in this matter.*

Appeal against Sentence,

- i) That the Appellant appeals against sentence being manifestly harsh and excessive and wrong in principle in all the circumstances of the case.*
- ii) That the Learned Trial Magistrate erred in law and in fact in not taking relevant consideration and took irrelevant matters into consideration and furthermore not taking into consideration the provisions of Sentencing and Penalties Decree 2009 when sentencing the Appellant.*
- iii) That the Appellant reserves his right to add to the above grounds of appeal upon receipt of the Court records in this matter.*

3. Pursuant to the service of the Petition of Appeal, the Appellant and the Respondent appeared in court on the 18th of March 2016. The Appellant and the Respondent were then directed to file their respective written submissions, which they filed as per the directions. The appeal was then fixed for oral arguments on the 15th of July 2016. However, only the learned counsel for the Respondent made his oral argument and the learned counsel for the Appellant informed the court that she will reply on the written submissions that has already been filed. Having carefully considered the respective written submissions of both the parties, oral arguments made by the Respondent and the record of the proceedings of the Magistrates' court, I now proceed to pronounce my judgment as follows.
4. Having carefully perused the written submissions filed by the Appellant, I find the learned counsel for the Appellant has only discussed the issues pertaining to the first and second grounds of the Appeal against conviction. The Appellant has

not submitted any arguments or submissions in respect of other grounds of appeal advanced in the Petition of Appeal. Hence, I consider that the Appellant has abandoned all other grounds of appeal except the first and second grounds of appeal against the conviction.

5. The first and second grounds of appeal are founded on the contention that the person who signed the written guilty plea on the Fixed Penalty Notice was not an authorised person of the company. The Appellant submitted that the learned Magistrate failed to clarify whether the person signed the guilty plea was an authorised person of the Appellant Company. Furthermore, the Appellant submitted that the learned Magistrate failed to inquire from the Director of the Company, who was present in the court on the issue of guilty plea, causing a substantial miscarriage of justice.

6. This instant case has been instituted in the Magistrates court pursuant to Section 96 (8) (b) of the Promulgation. The Section 96 (8) of the Promulgation states that;

"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) request the Director of Immigration to place a stop order on the person leaving the country until the sum is paid; and either –

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; or

c) *prosecute the offence.*

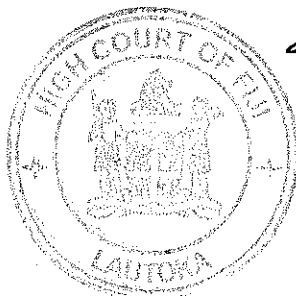
7. Section 96 (8) has provided the procedure in order to enforce the payment of defaulted payment of the Fixed Penalty Orders. The proceedings instituted under Section 96 (8) (b) of the Promulgation could not be considered as a fresh prosecution. It is an enforcement procedure of the payment of defaulted amount of the Fixed Penalty Orders.
8. Justice Madigan in Biosecurity Authority of Fiji v Grace [2015] FJHC 288; HAA004.2015 (27 April 2015) has discussed the scope of proceedings instituted under Section 96 (8) (b) of the Promulgation, where his lordship held;


“When a fixed penalty has been imposed on a transgressor pleading guilty and the sum penalized has not been paid then it comes before the Magistrate who “may enforce payment of the sum outstanding as if it were a fine imposed by the court including imposing costs and confiscation as appropriate” (section 96(8)(b) of the Promulgation). It is not a fresh prosecution coming to the court and it was unnecessary for the court in this instance to take a plea again from the respondent and then “sentence” her to a sum of \$50 which in the circumstances was manifestly lenient and an inappropriate penalty for the offence. It is not an option in law for the Magistrate to impose a “fine” of a lesser amount”.

9. According to the record of the proceedings of the Magistrates’ court, this matter was first mentioned before the learned Magistrate on the 9th of October 2015. The Appellant was represented by an agent namely Mr. Ranjith. The matter has adjourned till 3rd of November 2015 on the ground of the non-availability of the learned Magistrate. On the 3rd of November 2015, the Appellant was given time

to tender a letter of authorisation. The matter was then adjourned till 17th of November 2015. The Appellant was represented by a lawyer on the 17th of November 2015 and has sought further time to tender the letter of authorisation. Matter was against adjourned till 19th of January 2016. The Appellant was represented by a lawyer and sought further adjournment on the 19th of January 2016. However, the learned Magistrate has refused to grant further adjournment and imposed a fine of 100 penalty unites on the Appellant and cost of \$ 200 to be paid to the Respondent.

10. The Appellant has not made an application in the Magistrate 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 conferred on him under Section 96 (8) (b) of the Promulgation by imposing a fine of 100 penalty units with cost of \$ 200 to be paid to the Respondent. Hence, I find first and second grounds of appeal has no merits.
11. In conclusion, I refused this appeal and dismissed it accordingly.
12. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
17th of August 2016

Solicitors : Messrs Iqbal Khan and Associates for Appellant
Biosecurity Authority of Fiji