

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

Miscellaneous Case No. 186 of 2016

BETWEEN:

1. PRAGDEESHWAR GOUNDER
2. NAUSAD ALI
3. RIAZ ALI NUR
4. SHAMAT ANSAR ALI

Applicants

AND:

THE STATE

Respondent

Mr. D. Naidu for the Applicants
Mr J. Niudamu for the State

Dates of Hearing: 8 March, 26 April, 11 May,
2, 12, 20, 26 June 2017

Date of Ruling: 29 June 2017

RULING
(Stay Application)

- [1] Since the 15th December 2005 the applicants have faced multiple charges of fraud in the Magistrates Court at Ba. They now make their third application for stay of those proceedings, have been refused by Goundar J. on 18 September 2009 and also by Rajasinghe J. on 3 November 2015.
- [2] The four applicants were first charged with 144 various counts of fraud in February 2005 at the Rakiraki Magistrates Court. The hearing of these charges was conducted by Resident Magistrate Koya in both Rakiraki and Tavua. After 41 witnesses had been heard the State amended and withdrew charges resulting in the 144 counts being reduced to 74 counts.

The prosecution then closed its case on 15 July 2010. A no case application was filed by the Defence but not ruled on until 22 June 2011. The defence then exercised their right not to give evidence and the matter then adjourned for Judgment.

- [3] Before judgment could be delivered the Magistrate left the bench. The case then was called before Magistrate Naivalu in the Ba Magistrates Court and he ordered that it be heard *de novo*. Since that time (20 December 2012) the matter has not proceeded to hearing.
- [4] In his Ruling of 3 November 2015, Rajasinghe J. refusing the application for stay ordered that the matter be heard within 90 days. Obviously if the order of the Court was to be obeyed, then the matter should have been heard in the first quarter of 2016. It wasn't. One of the reasons it wasn't and there are many was the stated intention of the defence to appeal Rajasinghe's ruling. There was no appeal.
- [5] The Magistrate in Ba finally fixed dates of hearing to be 18-20 October 2016. Three days was a totally unrealistic time frame but no Counsel appears to have assisted the Court in that regard.
- [6] The hearing in October did not take place nor has there been another hearing date set.
- [7] The circumstances of this case present a woeful picture of inefficiency and laxity on the part of **all** the stake holders in the matter, Prosecution, Defence and Court.
- [8] The case has been before the Court for 12 years and fault cannot laid at the door of any one entity.
- [9] Part of the difficulty first arose with the State laying 144 charges against the accused persons. This is an absolutely ridiculous overloading of the charge sheet: not only does it create an administrative and evidential burden on the prosecution itself, it would perturb the Court at the thought of having to deal with so many charges in a judgment and/or in a no case application.
- [10] Despite laying this many charges, the Prosecution was certainly not in control of its own case. In August 2009 they withdrew all 144 charges, and filing 74 new charges in replacement. After the prosecution had closed its case before Magistrate Koya they further amended the charges in December 2010.

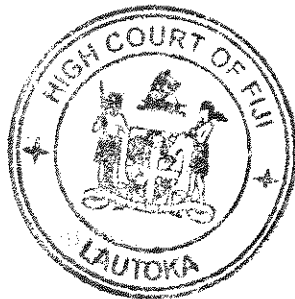
- [11] Even this Court has been at fault. The application for stay was filed on 3 November 2016 but not brought before a Judge until 8 March 2017
- [12] The law on applications for stay has been canvassed in detail by the Courts in Fiji and the cases have been cited in the Rulings by both Goundar J. and Rajasinghe J. who, in following those authorities, came quite properly to the decisions that they did.
- [13] The Constitution of the Republic of Fiji 2013 stipulates in the Bill of Rights by s.14 (2)
**(2) Every person charged with an offence has the right—
(g) to have the trial begin and conclude without reasonable delay.**
- [14] Obviously a Court hearing an application such as this will have to determine whether the length of delay is reasonable or not and in determining that question will have recourse to the wealth of case law on the interpretation of the phrase.
- [15] In the Privy Council case of *Mungroo* [1991 1 WLR 1351, it was said:

“the right to a trial “within a reasonable time” secures first, that the accused is not prejudiced in his defence by delay and secondly, that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.”.
- [16] Twelve years is an extremely long time to be facing the uncertainty and anxiety of ones fate - twelve years without a hearing date being set. The record shows that two of these accused were prevented from attending to important and emotional family commitments abroad by the stricture of their bail conditions.
- [17] Without attributing fault to any single actor, this Court finds that the delay in this case is unreasonable and that the accused persons’ constitutional right enshrined in s.14(2)(g) must be respected.

[18] The application succeeds and the charges in the lower Court stayed.

ORDERS

1. All charges that the four applicants face in the Ba Criminal Case no. 538/12 are stayed and are no longer to be proceeded with.
2. The passports of Pragdeeshwar Gounder, Naushad Ali and Riaz Ali are to be returned to them
3. The names of Pragdeeshwar Gounder, Naushad Ali and Riaz Ali Nur are to be removed from the Immigration Department's stop list.



Paul K. Madigan
Judge

At Lautoka
29 June 2017