

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 324 of 2017

BETWEEN : **SOKO INOKE MOTO** **APPLICANT**

AND : **THE STATE** **RESPONDENT**

Counsel : Ms. N. Mishra for the Applicant

: Ms. M. Khan for the State

Date of Hearing : 03rd November 2017

Date of Ruling : 09th November 2017

RULING

1. The accused is charged with one count of Unlawful Possession of Illicit Drugs, contrary to Section 5 (a) of the Illicit Drugs Control Act. The prosecution alleges that he was found in possession of 4.9 kilograms of *canabis sativa*.
2. The accused was produced in the Magistrate's Court in Suva on the 3rd of October 2017. The prosecution then made an application to transfer the matter to the High Court on the ground that the weight of the alleged *canabis sativa* comes under the category 4 as stipulated by Sulua v State [2012] FJCA 33; AAU0093.2008 (31 May 2012). The learned Magistrate then made his ruling on the 4th of October 2017, refusing the application to transfer the matter to the High Court. However, on the 20th of October 2017, the learned Magistrate declared the ruling that he made on 4th of October 2017 *per incuriam* in respect of the jurisdiction of the Magistrate's Court.

Having declared such, the learned Magistrate found the Magistrate's Court has no jurisdiction to hear this matter pursuant to the directives given in **Kini Sulua (supra)**. The learned Magistrate then transferred this matter to High Court.

3. This matter was called in the High Court on the 3rd of November 2017, where the learned counsel for the prosecution and the defence informed the court that the Magistrate's Court has jurisdiction to hear this matter. I then invited the counsel to file their respective submissions which they filed accordingly.
4. I now draw my attention to determine whether the Magistrate's Court has jurisdiction to hear the matters stem from the Illicit Drugs Control Act.
5. Section 4 (1) of the Criminal Procedure Act defines the jurisdiction of the High Court and the Magistrate's Court in respect of the offences created under the Crimes Act. Section 5 of the Criminal Procedure Act deals with the jurisdiction of the court in regard to the offences that have been created under other laws. Section 5 of Criminal Procedure Act states that:
 - i) *Any offence under any law other than the Crimes Act 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.*
 - ii) *When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.*
6. Accordingly, the Magistrate's Court has been given the jurisdiction to hear the offences that have been created under other laws, if such laws have neither specifically prescribed the jurisdiction of the court nor stated whether the offence is an indictable or summary offence.

7. In these instant cases, accused has been charged for one count of Unlawful Possession of Illicit Drugs contrary to Section 5 (a) of the Illicit Drugs Control Act. The Illicit Drugs Control Act has not specifically given the High Court a jurisdiction to hear the offences under the said Act. Moreover, the Illicit Drugs Control Act has not stated whether the offences under Section 5 of the Act are indictable or summary offences. Hence, the Magistrate's Court has jurisdiction to hear this case pursuant to Section 5 (2) of the Criminal Procedure Act.
8. The decision of the learned Magistrate to transfer this case to the High Court on the ground of want of jurisdiction is based on the guidelines expounded in **Sulua v State (supra)**. The **Sulua (supra)** guidelines have not demarcated the jurisdiction of the court. Fernando JA in **Ratuyawa v State [2016] FJCA 45; AAU121.2014 (26 February 2016)** found that:

"The Kini Sulua case had laid down the guidelines to be followed in sentencing in cases of possession of cannabis sativa and had devised four categories dependant on the weight of the illicit drugs"

9. Fernando JA in **Ratuyawa (supra)** having considered the Section 5 of the Criminal Procedure Act and the provisions of the Illicit Drugs Control Act, held that:

"Section 5 of the Illicit Drugs Control Act 2004 which creates the offence of cultivation of illicit drugs does not prescribe the court nor state whether the offence is an indictable or a summary offence. I am therefore of the view that the offence is triable by the Magistrate's court subject to the limitations set out in section 5 pertaining to sentence. There is no evidence of the Magistrate having acted contrary to such limitations.

10. Justice Goundar in **State v Wakeham [2010] FJHC 54; HAC001.2010 (23 February 2010)** held that:

"However, if a legislation creating an offence does not classify it as an "indictable offence" or a "summary offence", a Magistrate's Court can

hear the matter. This power is vested pursuant to section 5(2) of the Criminal Procedure Decree 2009.

The offences under the Illicit Drug Control Act 2004 are not classified as either indictable or summary offences. There is now a power vested in the Magistrate's Court to hear the charges brought under the Illicit Drug Control Act 2004. Thus, there is no need to transfer these cases to the High Court to seek an extension of jurisdiction to a Magistrate's Court to hear these cases".

11. In view of the Section 5 (2) of the Criminal Procedure Act and the above discussed judicial precedents, the Magistrate Court has jurisdiction to hear the offences stem from the Illicit Drugs Control Act.
12. Accordingly, the ruling of the leaned Magistrate that the Magistrate's Court has no jurisdiction to hear this matter is founded on inaccurate conclusion.
13. Section 188 of the Criminal Procedure Act has provided the procedure of transferring summary trial to the High Court, where it states that:
 - i) *If before or during the course of a trial before a Magistrates Court it appears to the magistrate that the case is one which ought to be tried by the High Court the magistrate may transfer the case to the High Court under Division 3 of this Part.*
 - ii) *Before the calling of evidence at trial, an application may be made by a public prosecutor or police prosecutor that the case is one which should be tried by the High Court, and upon such an application the magistrate shall —*
 - a) *hear and consider the reasons for the application;*
 - b) *hear and consider any submissions made on behalf of the accused person as to the most appropriate court to hear and determine the charges; and*
 - c) *otherwise determine matters relevant to the grounds for the application —*

and may continue to hear the case (unless the charges are of a nature that may be tried only by the High Court) or transfer the case to the High Court under Division 3 of this Part.

14. According to Section 188, the Magistrate is allowed to transfer a summary trial to the High Court only on two instances. The first instance is if the Magistrate considers that the matter ought to be heard in the High Court. The second instance is that upon the application of the prosecution.
15. According to the above discussed provisions, the correct procedure of transferring this matter to the High Court has stipulated under Section 188 of the Criminal Procedure Act.
16. According to the record of the proceedings in the Magistrate's Court, it appears that the prosecution has made this application to transfer the matter to the High Court pursuant to Section 188 (2) of the Criminal Procedure Act. The learned Magistrate has neither given an opportunity nor heard from the accused pursuant to Section 188 (2) (b) of the Criminal Procedure Act, before he made his ruling.
17. In view of these reasons, I find that the transfer order is wrong and not valid in law.
18. In conclusion, I remit this matter back to the Magistrate Court to continue the proceedings according to the applicable law.




R.D.R.T. Rajasinghe
Judge

At Suva
09th November 2017

Solicitors
Office of the Legal Aid Commission for the Applicant
Office of the Director of Public Prosecutions for the Respondent