IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 50 of 2018
(on appeal from Lautoka Magistrates Court Case PP 83.2016)

FIJIAN COMPETITION AND CONSUMER COMMISSION (formerly known as Fiji Commerce Commission)

Appellant

RB PATEL GROUP LIMITED

Respondent

Miss A. Choy for the Commission
Miss M.Rakai for RB Patel

Date of Hearing: 5 November 2018
Date of Judgment: 13 November 2018.

JUDGMENT

[1]. The Respondent company ("RBG") was charged by the Fijian Competition and Consumer Commission (hereinafter referred to as "The Commission") with failing to pay an "on the spot" penalty of $3000 within 21 days of being served with the prescribed form on 13 April 2016 contrary to section 59(1) and (2) of the Commerce Commission Act 2009.

[2]. The matter went to trial in the Magistrates Court at Lautoka.

[3]. The prosecution called one witness, an Inspector with the Commission.

[4]. After the Inspector had given his evidence, the prosecution closed its case.

[5]. Counsel for RBG made a written application for a no case to answer ruling. The Commission responded and on the 2nd July 2018 the learned Magistrate ruled that there was no case to answer and he acquitted RBG of the charge.

[6]. The Commission now appeals that ruling.

[7]. For what appears to be a strict liability offence, all that the Prosecution needed to prove was that RBG failed to pay the penalty of $3000 within the 21 days time limit.

[8]. The Commission inspector (PW1) gave evidence that on the 13th April 2016, he attended at RBG's supermarket (RB WestPoint) and met the Manager there. Accompanied by the Manager, PW1 carried out a routine inspection after giving the Manager an "inspection form" to complete with the store details as required.

[9]. On inspection, PW1 found certain items being offered for sale without the price of the goods being displayed as is required by the Commerce Commission Act 2010. These items were noted on the inspection form. The offending items were shown to the Manager and he was given the Inspection Form and an on the spot penalty form which he signed (Both forms were exhibited). The Inspector ad an assistant accompanying him took photographs of the goods with price indication. (These too were exhibited without objection from the defence.)

[10]. Cross examination of the Inspector (PW1) focused on the service or not of an "order" of the Commission that the items offered for sale without price were in fact non-price control items.

[11]. The thrust of the defence application for no case to answer was that no "order" had been shown to the trader as required by the Commerce Commission Act 2010 ("the Act") and as such an essential element of the offence had not been complied with, leading to a lacuna in the Prosecution case.

[12]. The Act does **not** state that an order for non-price control items has to be shown to the trader when a breach of the Act is detected on site. Unfortunately Counsel for the defence misled the Court below when she submitted on page 2 of her written submissions that such an order had to be shown to the trader.

[13]. The Commission does make orders for price controlled items and also for the maximum prices for non controlled items and these orders are published in the Government Gazette. Publication in the Gazette is notice to all traders in Fiji of the Commissions Orders and to suggest that a trader as large and ubiquitous as RBG was not aware of the maximum prices for non-price control items is absurd.

[14]. In any event, on the reverse side of the Inspection form given to the Manager at the time of detection of the Offence, the offence in question is printed as item no 3 and provides additional notice to the trader of the offence.

[15]. The non production of Order at the time of Offence was a red herring raised in cross-examination and a falsehood relied by Defence Counsel in her written submissions on no case.

[16]. A judgment on this appeal is not helped by the contradictory Ruling by the former Magistrate. In his ruling he writes this:

> *"I am therefore of the view that the prosecution has succeeded in adducing relevant and admissible evidence implicating the accused in each element of the offence pertaining to the above charges and taken at the highest, a reasonable tribunal could convict on it."*

[17]. He then proceeds to note that the photographs were not dated and that no "Order pursuant to section 44(1) of the Act was handed to the Manager before the inspection".

He continues:
"this Court finds that any reasonable tribunal properly directing its mind to the law and the evidence at this stage laid before it could or might convict the accused."

[18]. This of course is the classic test for finding a case to answer. **However** he then goes on to rule that there is no case to answer.

[19]. This very contradictory and mystifying lack of logical reasoning cannot stand. As alluded to earlier, this court finds that there is no stipulation in the Act that an accused be shown a copy of the Gazetted order. The photographs are an *aide memoire* and play no part in the proof of a prima facie case.

[20]. Unfortunately the Magistrate was misled and his ruling in incorrect.

[21]. Pursuant to section 256(2)(a) and (b) this Court allows the appeal and remits the case back to the Magistrates Court with the following opinion:

[22]. Every element of the offence has been proved and there is therefore a case to answer. The Magistrate is to hear the accused's Counsel in defence of the charge and then make a final determination of the matter.

[23]. The parties are to appear in Magistrates Court at Lautoka on Monday 26th November at 9.15am.

P.K. Madigan
Judge