

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 173 OF 2017S

BETWEEN ASERI VAKALOLOMA FIRST APPLICANT

AND BENJAMIN PADARATH SECOND APPLICANT

AND FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION RESPONDENT

Counsels : Mr. J.Uludole for First Applicant  
No Appearance by Second Applicant  
Mr. R. Aslam and Ms. S. Savumiramira for Respondent

Hearing : 03<sup>rd</sup> November, 2017

Ruling : 03<sup>rd</sup> November, 2017

Written Reasons : 06<sup>th</sup> December, 2018

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**RULING AGAINST AN APPEAL ON AN INTERLOCUTORY ORDER OF THE CHIEF MAGISTRATE,  
DATED 14 SEPTEMBER 2017**

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1. On 16 December 2017, the first applicant filed an application for the stay of the learned Chief Magistrate's ruling on matters of "legal professional privilege", issued on 14 September 2017, in the course of a Magistrate's Court criminal trial, in Suva Magistrate's Court Criminal Case No. 737 of 2011, which concerned him. I heard the parties on 3 November 2017.

2. In the course of the hearing, the first applicant's counsel, Mr. J. Uludole, indicated to the court that, their application was not an application for stay of proceeding, but an appeal against the learned Chief Magistrate's ruling on 14 September 2017. It was a ruling issued in the course of the first applicant's trial in the Suva Magistrate's Court. It was a ruling given in the course of a trial to determine the accused's guilt.
3. Counsel for the respondent then referred the court to the Court of Appeal authority of **The State vs Vishal Chand and Ronil Ram**, Criminal Appeal No. AAU 0085 of 2012, 28 May 2015. In that case, it was held that by virtue of section 246 (7) of the Criminal Procedure Act 2009, an appeal against an interlocutory order by a Resident Magistrate in the course of a criminal trial was not permissible, until the trial was concluded with the finding of the accused's guilt or otherwise. Mr. Aslam submitted that the above authority was binding on the High Court, and applicable in this case. Mr. Aslam further submitted that the first applicant's appeal must be dismissed.
4. Mr. Uludole, for the first applicant, admitted that the challenged decision of the learned Chief Magistrate was an interlocutory order. He had no answer to the above Court of Appeal authority. As a result of the above, I dismissed the first applicant's appeal, as it had no basis in law. I ordered that the learned Chief Magistrate's trial of the first applicant continue in the normal manner.
5. The above were the reasons for my dismissing the first applicant's appeal on 3 November 2017.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for First Applicant** : **Mr. J.Uludole, Barrister & Solicitor, Suva.**

**Solicitor for the Second Applicant** : **No appearance**

**Solicitor for Respondent** : **Office of Fiji Independent Commission Against Corruption, Suva.**