

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 87 of 2018

JIMILAI TAWAKE DROSE

V

STATE

Appellant In person
Ms. S. Naibe for the State.

Date of Hearing : 19th February 2019
Date of Judgment : 22nd February 2019

JUDGMENT

- 1.] The Appellant was charged in the Magistrates' Court at Nadi with three offences of Robbery and one of serious assault. He first appeared on the 2nd June 2015. On the 15th January 2016 he entered a plea of not guilty to all charges.
- 2.] Voir dire proceeding were fixed to be heard on 1st February 2017 but on that date the Prosecution was not ready and the hearing was vacated. Thereafter there were difficulties in getting the appellant to Court for this matter because he was in custody in Naboro prison. He was finally produced on the 15th December 2017, and a fresh hearing date for the appellant's voir dire proceedings was fixed for the 2nd March 2018. On

that date the State was again not ready to proceed, After a long period of mentions and adjournments the State finally advised the Court on the 27th June 2018 that they would no longer be proceeding against this Appellant.

- 3.] The formal application to withdraw was made on the 13th August 2018, and on the request of the prosecution the appellant was **discharged** pursuant to section 169(2)(b)(ii) of the Criminal Procedure Act 2009.
- 4.] The appellant now appeals that order of **discharge** asking that the order be substituted by an order for **acquittal**.
- 5.] Section 169(2) (b) allows a Court to either discharge or acquit an accused. The immediate effect of the two orders are the same. Proceedings are then and there terminated. However, the longer term consequences of each order are dramatically divergent. An acquittal frees an accused from the "yoke" of those proceedings but a withdrawal does not. It is open to the Prosecution to re-launch a prosecution against an accused at their whim if the charge is only withdrawn. In most circumstances, the prospect of that would be unfair.
- 6.] Section 14 (2) (g) of the Constitution 2013, gives an accused the right to have his/her trial begin and conclude without reasonable delay.
- 7.] The appellant had been facing these charges for a little over three years when the State elected not to proceed against him and for him to still be facing the possibility of the re-launching of proceedings would be a gross injustice and in contravention of his constitutional right to a fair and speedy resolution of the initial charges laid against him. .
- 8.] In future the Prosecution should be aware of such an injustice and be mindful of the order they are seeking from a judicial officer when charges are being withdrawn and if judicial officers see no prospect of an accused being charged again, then the order on withdrawal should be to **acquit**.

9.] This appeal succeeds. The order passed below to discharge the appellant is set aside and order to acquit him is substituted.



A handwritten signature in cursive script, appearing to read "P.K. Madigan", is written over a dotted line.

P.K. Madigan

Judge

22nd February 2019

At High Court Lautoka