

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an application for
constitutional redress

[CIVIL JURISDICTION]

SENIJIELI BOILA

Applicant

CASE NO: HBM 51 of 2020

V

[Not named]

Decided on: 27 March 2020

ORDER
(Made in Chambers)

1. This is an application for a judicial review filed on 03/02/20. The notice is not dated but the accompanying affidavit is dated 22/01/20.
2. According to the facts stated in the said affidavit, the applicant was charged before the Magistrate Court for the offence of aggravated robbery contrary to section 311 of the Crimes Act 2009, and on 22/10/19, the prosecution had entered *nolle prosequi* in relation to the said charge.
3. The applicant states that he is aggrieved and dissatisfied with the decision of the Learned Magistrate to 'order a nolle prosequi' and by way of this application he seeks to have the said order quashed and for an order of acquitted to be entered.

4. In terms of the provision of section 49 (2) of the Criminal Procedure Act 2009, when *nolle prosequi* is entered by the prosecution in respect of a particular charge, the relevant court cannot acquit the relevant accused and the only order that could be made as far as the relevant charge is concerned, is to discharge the accused. The said section 49(2) reads thus;

(2) Upon the entry of a nolle prosequi under sub-section (1), the accused person shall be

*(a) at once discharged in respect of the charge for which the nolle prosequi is entered;
and*

(b) if the accused person has been committed to prison he or she shall be released; or

(c) if the accused person is on bail his or her recognisances shall be discharged.

5. Moreover, as the applicant is only seeking for an order of *certiorari*, it should be noted that an order made by a subordinate court cannot be substituted with a different order by way of an order for *certiorari*.
6. Given the above circumstances and the provisions of Order 53, Rule 3(3)(b) of the High Court Rules 1988, I consider it unnecessary to hear and determine this matter *inter partes*. The said rule provides thus;

(b) The Court may determine the application without a hearing and where a hearing is considered necessary the Court shall hear and determine the application inter partes.

7. This application is clearly misconceived. Not only that the relief sought by way of this application cannot be granted according to law, the said relief cannot be granted under the jurisdiction for judicial review. The impugned decision taken by the Learned Magistrate in the instant case cannot be challenged by way of judicial review as the said decision was clearly a judicial decision taken according to law.
8. I would therefore refuse to grant leave to proceed with this application.

9. This application is accordingly dismissed.
10. The Registrar shall take steps to serve a copy of this order on the applicant in terms of Order 53, Rule 3(3)(d) of the High Court Rules 1988.



A handwritten signature in blue ink, appearing to read "Vincent S. Perera".

Vinsent S. Perera
JUDGE