

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**Criminal Case No: HAM 107 OF 2020**

**STATE**

**V**

**JANESH KUMAR SAMI**

**Counsel** : **Mr. S. Seruvatu for the State**  
**Mr. D. S . Naidu for the Accused**

**Date of Hearing** : **04 June, 2020**

**Date of Ruling** : **04 June, 2020**

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**RULING**

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1. The accused was charged with one count of Bribery of Public Officials contrary to Section 134 (1) (a) (i) and (b) of the Crimes Act. This offence is an indictable offence triable summarily.
2. When the proceedings began in the Magistrates Court at Nadi the election was not put to the accused. The accused was represented by counsel at

trial. The matter was heard, after the prosecution closed its case, the learned Magistrate ruled that the accused had a case to answer.

3. The defence opened its case, when the learned Magistrate was writing the judgment she realized that election had not been put to the accused.

4. According to the copy record the learned Magistrate at page 55 *interalia* stated:

*“... As the law is clear as this court has no jurisdiction to deliver the judgment without obtaining the election from the accused. I now transfer the matter to the High Court.*

5. Both counsel made oral submissions in this court today for which this court is grateful.

6. Section 4 (1) (b) of the Criminal Procedure Act states:

*“ (b) any indictable offence triable summarily under the Crimes Act shall be tried by the High Court or Magistrates Court at the election of the accused person...”*

7. “Indictable offence triable summarily” means any offence stated in the Crimes Act 2009 or any other law prescribing offences to be an indictable offence triable summarily, and which shall be triable – (a) in the High Court in accordance with the provisions of this Act; or (b) at the election of the accused person, in a Magistrate Court in accordance with the provisions of this Act (see section 2 of the Criminal Procedure Act 2009).

8. Indictable offences are tried in the High Court, however, indictable offences triable summarily, shall be tried by the High Court or Magistrate

Court at the election of the accused person (section 4 (1) (b) of the Criminal Procedure Act). Such cases should be transferred to the High Court only if the accused has indicated to the Magistrate's Court that he or she wishes to be tried in the High Court (section 35(2)(b)(ii) of the Criminal Procedure Act 2009).

9. A similar situation arose in *Vereniki Batikalou v The State, criminal appeal no. AAU 0031 of 2011 (2/01/2015)*. The appellant was not given the statutory option laid down by law to choose the court to stand trial. The appellant was convicted for the offence of robbery contrary to section 310 (1) (a) (i) of the Crimes Act which was an indictable offence triable summarily. The Court of Appeal whilst quashing the conviction and setting aside the sentence made the following pertinent observations at paragraph 30:

*“It is not disputed that the appellant was deprived of a statutory requirement. The appellant possessed a legal right to choose to be tried either in the Magistrate’s Court or the High Court, a right given by law. Can this right arbitrarily be taken away? The intention of the relevant sections in the Criminal Procedure Decree 2009 is clear and unambiguous. And when the law is clear and unambiguous as this, it is not the role of the judge to make or even modify the law but rather to apply it as it is.*

10. The copy record does not show that the accused was given his right of election that is whether he wanted a Magistrate's Court trial or a High Court trial. The right of election imposed by section 4(1) (b) of the Criminal Procedure Act is mandatory. An election ought to be put to the accused before the trial begins so that the court acquires its jurisdiction to hear the matter. This is not the case here.

11. In the circumstances, this court after reviewing the copy record is of the view that this matter be heard *de novo* by another Magistrate and a hearing date assigned as a matter of urgency.
12. This matter is adjourned to 18 June, 2020 for mention at Nadi Magistrate's Court.
13. 30 days to appeal to the Court of Appeal.



  
**Sunil Sharma**  
**JUDGE**

**At Lautoka**

4 June, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs Pillai Naidu & Associates for the Accused.**