

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO. HAA 34 OF 2024**

**BETWEEN:**                      **THOMAS PEARSON**                      **APPELLANT**

**A N D:**                              **THE STATE**                              **RESPONDENT**

**Counsel:**                              Mr. W. Emasi for Appellant  
    Mr. T. Naimila for Respondent

**Date of Hearing:**                      20<sup>th</sup> November 2024

**Date of Judgment:**                      29<sup>th</sup> November 2024

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**J U D G M E N T**

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1. The Appellant was charged in the Magistrate's Court in Nasinu with one count of Criminal Intimidation, contrary to Section 375 (1) (a) (iv) and (2) (a) of the Crimes Act. The particulars of the offence are:

***CHARGE***

*[COMPLAINT BY PUBLIC OFFICER]*

***Statement of Offence [a]***

**CRIMINAL INTIMIDATION:** *Contrary to Section 375 [1] [a] [iv] & [2]  
[a] of the Crimes Act of 2009.*

***Particulars of Offence [b]***

***THOMAS PEASON*** on the 28<sup>th</sup> day of February, 2023 at Valelevu in the Central Division threatened one ***TREVINI MARAMA*** with a kitchen knife by uttering the word 'I will stab you' thereby causing alarm to the said ***TREVENI MARAMA***.

2. On the 17th of May 2024, the Appellant pleaded guilty to the offence. The learned Magistrate, accordingly, convicted the Appellant of the offence and sentenced him on the 1st of July 2024 to one year and sixteen days imprisonment period. Aggrieved with the said conviction and the sentence, the Appellant filed this appeal on the following grounds:

**APPEAL AGAINST CONVICTION**

**Ground 1**

*The learned Resident Magistrate erred in law and in principle when she had failed to give election to the appellant given that this offence is an electable offence.*

**Ground 2**

*The learned Resident Magistrate had erred in law and facts by convicting the appellant on a charge that was not supported by the summary of facts, therefore causing a miscarriage of justice.*

**APPEAL AGAINST SENTENCE**

**Ground 1**

*That the learned Resident Magistrate erred in principle by enhancing the sentence as a result of:*

- (i) *considering the aggravating factor that has already been subsumed in the offence; and*

(ii) *by taking into consideration extraneous factors that were irrelevant to the offending.*

3. The first ground of appeal is that the learned Magistrate erred in law by failing to give the Appellant the right to elect the forum for the hearing of the matter pursuant to Section 4 (1) (b) of the Criminal Procedure Act. The learned Counsel for the Respondent generously conceded this ground, stating that the learned Magistrate had failed to give the Appellant the right to elect the forum; hence, the learned Magistrate had no jurisdiction to record the plea and sentence the Appellant. Both the Counsel informed the Court that they wanted the matter to be remitted to the Magistrate's Court to proceed from the election under Section 4 (1) (b) of the Criminal Procedure Act.
4. Section 4 (1) of the Criminal Procedure Act states:

*Subject to the other provisions of this Act—*

- a) *any indictable offence under the Crimes Act 2009 shall be tried by the High Court;*
- b) *any indictable offence triable summarily under the Crimes Act 2009 shall be tried by the High Court or a Magistrates Court, at the election of the accused person; and*
- c) *any summary offence shall be tried by a Magistrates Court.*

5. Accordingly, any indictable offence triable summarily shall be tried by the Magistrate's Court upon the election of the Accused. Without the election of the Accused to hear the matter in the Magistrate's Court, the learned Magistrate has no jurisdiction to hear any indictable offence triable summarily. Hence, the election of the forum by the Accused is the elementary factor that determines the jurisdiction of the High Court or the Magistrate's Court to hear any indictable offence triable summarily.

6. The Appellant was charged with one count of Criminal Intimidation, contrary to Section 375 (1) (a) (iv) and (2) (a) of the Crimes Act, which is an indictable offence triable summarily. Consequently, the learned Magistrate must ascertain the Appellant's election whether he wishes to have his matter heard in the Magistrate's Court or the High Court. If the Appellant elected the High Court, the learned Magistrate must transfer the matter to the High Court under Section 35 (2) (b) (ii) of the Criminal Procedure Act. The learned Magistrate can only hear the matter if the Appellant elected the Magistrate's Court.
7. Returning to this appeal, it is apparent that the learned Magistrate had not allowed the Appellant to elect the forum where he wished to be tried before he took his plea on the 17th of May 2024. As a consequence of that failure, the learned Magistrate lacked jurisdiction to hear this charge. Therefore, the recording of the guilty plea and the subsequent sentence imposed on the Appellant by the learned Magistrate was void in law.
8. I accordingly find merits in the first ground of appeal and allow it.
9. Reaching the above conclusion, I find no practical purpose in dealing with the remaining appeal grounds.
10. I concur with the request made by both learned Counsel that this matter must be remitted to the Magistrate's Court to hear according to Section 4 (2) (ii) and Section 35 (2) (b) (ii) ( if needed). I accordingly make the following orders:
  - i) The Appeal is allowed,
  - ii) The Conviction dated 1st of July 2024 is set aside, and the subsequent sentence imposed on the same date is quashed,
  - iii) The matter is remitted to the Magistrate's Court under Section 256 (2) (b) of the Criminal Procedure Act to hear it according to Section 4 (2) (ii) of the Criminal Procedure Act.

11. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

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Hon. Mr. Justice R. D. R. T. Rajasinghe

**At Suva**

29<sup>th</sup> November 2024

**Solicitors.**

Office of the Legal Aid Commission for Appellant.

Office of the Director of Public Prosecutions for the Respondent.