

IN THE HIGH COURT OF FIJI

AT LABASA

[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 021 OF 2023

MAGISTRATES' COURT NO. 091 OF 2019

BETWEEN : **DOUYOU FOODS IMPORT AND EXPORT LIMITED**

AND : **MINISTRY OF FISHERIES**

Counsel : Mr A Sen for the Appellant
Ms A Vavadakua for the Respondent

Date of Judgment : **21 March 2025**

JUDGMENT

[1] Procedural Background

In August 2019, the Ministry of Fisheries issued the appellant with a Fixed Penalty Notice for failing to comply with seasonal and species restrictions contrary to Regulation 4 (1) of the Off-Shore Fisheries Management Regulations 2014. The fixed penalty imposed for the offence was \$20,000.00 to be paid within 21 days from the date of service.

[2] The appellant opted not to pay the fixed penalty but to contest the charge in court.

- [3] After the 21 days expired, the Ministry of Fisheries initiated criminal proceedings against the appellant in the Magistrates' Court. No formal charge was laid. The proceedings were initiated by filing the Fixed Penalty Notice in court. The prosecution was represented by in-house counsel of the Ministry of Fisheries.
- [4] On 14 November 2019, the Director of the appellant company appeared in court and opted to be represented by a private counsel. The case was adjourned to 20 December 2019 for mention.
- [5] On 20 December 2019, the Director of the appellant company appeared in person in court and informed the court that they have engaged a legal counsel by the name Mr Sharma who will appear on the next court date. The case was adjourned to 20 January 2020 for mention.
- [6] On 20 January 2020, the Director appeared with counsel, but plea could not be taken due to unavailability of a Cantonese interpreter.
- [7] After three adjournments, a Cantonese interpreter was made available and a plea of not guilty was entered to the charge by the Director of the appellant company. But the trial got delayed due to the Covid-19 pandemic.
- [8] Eventually, on 20 December 2022, the trial commenced in the Magistrates' Court with the appellant represented by counsel Mr Lomaloma and Mr Namua. The Director of the company chose not to participate in the trial.
- [9] **Proceedings in the Magistrates' Court**
At trial, the prosecution led evidence from two witnesses.

- [10] The first witness for the prosecution was Lui Muavesi. In 2019, he was employed as a Fisheries Assistance Officer with the Ministry of Fisheries. He was also an enforcement officer based at Lekutu Fisheries Service Centre.
- [11] On 30 July 2019, Mr Muavesi accompanied a team from his Ministry for an inspection of the business premises of the appellant at Nabouwalu. They found banned species of coral trout and grouper (locally known as kawakawa and donu) inside a freezer in the building. The accused was informed of the breach and the banned species of fish were confiscated and photographed. He gave a search list of the seized fish to the accused. The photographs were tendered as exhibit in evidence.
- [12] The second witness for the prosecution was a compliance officer, Serupepeli Buinimasiu. He accompanied the team to search the appellant's premises at Nabouwalu. They received information that the appellant was harvesting banned species of fish. When they entered the premises they found banned species of kawakawa and donu wrapped in clear plastic for the purpose of export. His task was to assist in documenting the confiscated fish as evidence.
- [13] According to the Fixed Penalty Notice, the date of the alleged offence was 30 July 2019, the date the authorized officer signed the notice was 20 August 2019, the date the notice was served was 29 August 2019, the date the affidavit of service was sworn was 4 September 2019 and the date for the appearance in court in the event of default in the payment of fixed penalty was 3 October 2019.
- [14] At the trial, neither the defence nor the prosecution sought any explanation from the two witnesses regarding the discrepancies in the dates between the commission of offence, issuance of the notice and the service of notice.

[15] After close of the case for the prosecution, the defence elected not to call any evidence.

[16] On 21 February 2023, the learned magistrate delivered a judgment finding the appellant guilty of the charge.

[17] On 18 April 2023, the appellant was fined \$30,000.00 payable at a rate of \$2500.00 per month within 12 months.

[18] **Grounds of Appeal**

On 27 April 2023, the appellant filed a timely appeal against conviction and sentence on the following grounds:

1. **THAT** the Learned Magistrate erred in law in convicting the accused company when she proceeded with the hearing despite the fact that she did not have any jurisdiction as the High Court has an exclusive jurisdiction under sections 79, 97, and 98 of the Off-Shore Fisheries Management Act 2012 to hear and determine an offence under the said Act as the Respondent had not complied with section 98 (2) (d) of the said Act.
2. **THAT** the Learned Magistrate erred in law in convicting the accused company when there was no identification of the accused as the trial of this action was conducted in the absence of the accused company, in particular as to the person or a registered address of the accused.
3. **THAT** the Learned Magistrate erred in law in convicting the accused company when there was evidence as to:

- (i) Ratu Lui Muavesi was an authorized fisheries officer who was:

- (a) Appointed by the Permanent Secretary of Fisheries.
 - (b) Requirements were followed for Ratu Lui Muavesi to be approved as an authorized Fisheries Officer.
 - (c) The name Ratu Lui Muavesi was published in the Gazette to be approved as fisheries officer.
 - (ii) That Section 45 and 46 of the Off-Shore Fisheries Management Act 2012 was complied with.
4. **THAT** the Learned Magistrate erred in law in convicting the accused company when it has been apparent from the evidence led by the Prosecution that there was no expert evidence or report tendered to prove the particulars of the offence; in particular, the items purportedly seized were in fact restricted species. The fisheries officer did not provide any expert knowledge on identification of species which was a crucial issue at the trial.
5. **THAT** the Learned Magistrate erred in law in convicting the accused company when the Learned Magistrate held that the accused company did not call any evidence to rebut the allegations by the prosecution, thereby putting the onus and shifting the burden of proof to the accused.
6. **THAT** the sentence imposed by the Learned Magistrate is wrong in principle, harsh, and excessive in the circumstances of the case.
7. **THAT** the Judgment of the Learned Magistrate is perverse, contrary to the Constitution of the Republic of Fiji and must be set aside and the conviction to be quashed and accused acquitted.

[19] **Jurisdiction**

The issue of jurisdiction is a question of law alone. If the appellant succeeds with this ground then it would not be necessary to consider the grounds pertaining to evidential issues and sentence. If the Magistrates' Court did not have jurisdiction to convict and sentence the appellant, the trial was null and void, and the conviction and sentence resulted from that trial will have to be set aside.

[20] Failure to comply with seasonal and species restrictions is an offence contrary to Regulation 4(1) and (2) of the Off-Shore Fisheries Management Regulation 2014.

[21] Regulation 4(1) and (2) states:

- (1) A person shall not kill, take, land, sell, or offer or expose for sale, deal in, transport, receive or possess any fish identified in Schedule 2A in accordance with the requirements described in that Schedule.
- (2) Any person who contravenes this regulation commits an offence.

[22] Schedule 2A sets out a list of species of groupers and coral trout that are subject of seasonal ban from 1 June to 30 September each year.

[23] Schedule 11 of Regulation 52 sets out the penalty for offences to which a Fixed Penalty Notice applies. Regulation 52 states:

Section/ Regulation	Description of Offence	Fixed Penalty For Natural Pawn	Fixed Penalty for Corporation on other entity
Reg 4	Failure to comply with seasonal and specifies restrictions	\$10,000	\$20,000

[24] In this case, the Fixed Penalty Notice was issued to the appellant pursuant to sections 97 & 98 of the Offshore Fisheries Management Act.

[25] Section 97 states:

- (1) A fisheries officer or authorized officer may-
 - (a) Issue an Offshore Fisheries Fixed Penalty Notice as set out in Schedule 1 of this Act, or;
 - (b) Institute legal proceedings under the provisions of this Act, against a person for any offence committed under this Act.
- (2) Pursuant to subsection (1), where an Offshore Fisheries Fixed Penalty Notice served upon a person is not complied with within 21 days of the notice being issued, the notice shall be regarded for all purposes as a summons issued under the provisions of the Criminal Procedure Act 2009.
- (3) A fisheries officer or authorized officer who issues an Offshore fisheries Fixed Penalty Notice under subsection (1) shall duly notify the Permanent Secretary in writing within 14 days of the issuance of such notice.

[26] Section 98 states:

- (1) Notwithstanding any other requirement of the Criminal Procedure Act 2009, an authorized officer may institute proceedings in respect of the alleged commission of an offence by serving personally upon the person alleged by him or her to have committed the offence, an Offshore Fisheries Fixed Penalty Notice as in Schedule 1.
- (2) An Offshore Fisheries Fixed Penalty Notice shall comply with the following requirements –

- (a) state the place, date and time of alleged offence;
 - (b) state the name and address of the person to whom the notice is issued;
 - (c) notify the person to whom the notice is issued and when and where the fixed penalty may be paid;
 - (d) require the person to whom the notice is issued to pay the amount due within 21 days and in the event of the failure to pay the fixed penalty, legal proceedings shall be instituted within the next 14 days and the person may have a legal practitioner to represent them or enter a written guilty plea;
 - (e) notify the person to whom the notice is issued that, in case of default in payment within the time specified in the notice, the High Court may, if the person is found guilty by the High Court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay apply section 37 (1) and (2) of the Sentencing and Penalties Act 2009; and
 - (f) shall bear the date on which it is served on the person charged as the case requires.
- (3) The authorized officer or fisheries officer who issues an Offshore Fisheries Fines Penalty Notice shall cause a signed copy of that notice to be placed before the court specified in the notice not later than 7 days after the date of the notice.
- (4) Nothing in this section shall be taken to prevent the institution of proceedings under any other provision of this Act.

[27] Sections 97 and 98 have to be read conjunctively. According to these two sections, only a fisheries officer or an authorized officer has discretion or power to issue an Offshore Fisheries Fixed Penalty Notice or institute legal proceedings under the Act. If a notice is issued for an alleged breach of the Act, the issuing

officer must bring to the attention of the Permanent Secretary of Fisheries the issuance of such notice in writing within 14 days.

- [28] Upon service of the notice, the accused must be given 21 days to pay the prescribed fixed penalty. If the penalty prescribed in the notice is not paid within 21 days, legal proceedings can then commence against the accused within 14 days from the date of default. In other words, jurisdiction of the court must be invoked within 14 days after 21 days to pay the penalty had lapsed and the fixed penalty was not paid.
- [29] Section 98 (2) (e) requires notice to be given to the accused that in the event the fixed penalty is not paid within 21 days of service 'the High Court may, if the person is found guilty for the offence, impose a penalty which is more than the fixed penalty for the offence or if unable to pay apply section 37 (1) and (2) of the Sentencing and Penalties Act 2009'. The maximum fine that the Magistrates' Court can impose is \$15,000 (see s7 (1) of the CPA). In this case the Magistrates' Court imposed a fine of \$30,000 exceeding the jurisdictional limit of the Magistrates' Court. The logical construction of section 98 (2) of the Offshore Fisheries Management Act is that the jurisdiction to impose such fine lies only with the High Court.
- [30] It is rather unfortunate that the appellant's trial counsel did not object to the proceedings in the Magistrates' Court on the ground that the court lacked jurisdiction over the matter. If counsel had done so the learned trial magistrate would have been obliged to consider the matter and pronounce a judgment on the issue. But not raising the jurisdictional issue in the court below is not a caveat for an appeal ground.

[31] In this case, the jurisdictional error is incurable. The Magistrates' Court does not have jurisdiction to deal with the offences under the Offshore Fisheries Management Act. Only the High Court has jurisdiction to convict and sentence for the offences under the Offshore Fisheries Management Act.

[32] The appellant's conviction and sentence imposed in the Magistrates' Court cannot stand for want of jurisdiction.

[33] **Result**

- Appeal is allowed.
- Conviction and sentence are set aside.
- Fine if paid are to be refunded to the appellant after the expiry of 30 day appeal period to the Court of Appeal.



A handwritten signature in black ink, appearing to be "D. Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Sen Lawyers for the Appellant

Office of the Director of Public Prosecutions for the Respondent