

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 2 of 2025

BETWEEN : STATE

AND : NEMANI BUKAYARO SIKAIIDOKA

Counsel : Mr H Nofaga for the Appellant
: Ms A Dean for the Respondent (Respondent present)

Hearing : 5 June 2025

Judgment : 5 June 2025

EXTEMPORE JUDGMENT

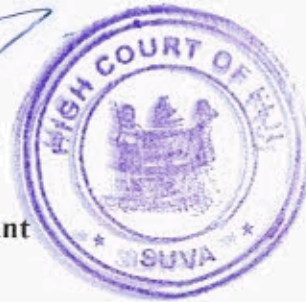
- [1] This is an appeal by the State from a decision of the learned Magistrate dated 24 December 2024.
- [2] The respondent, Mr. Sikaidoka, was charged with two counts. The first count being for unlawful possession of illicit drugs, contrary to s 5(a) of the Illicit Drugs Control Act 2004, and count 2 in respect to bribery of a public official, contrary to s 134(1)(a)(i) of the Crimes Act 2009. The latter offence is indictable, triable summarily. Pursuant to s 4(1)(b) of the Criminal Procedure Act 2009, an election was required to be put to Mr. Sikaidoka as to whether he wished to be tried in the High Court or the Magistrates Court.
- [3] When the matter was first called before the learned Magistrate on 24 December 2024, no election was put to Mr. Sikaidoka. Instead, a plea was taken to which Mr. Sikaidoka, who was then unrepresented, pleaded guilty to both counts. The prosecutor indicated that the summary of facts was as per the charge, and the learned Magistrate proceeded

to convict Mr. Sikaidoka on count 1 and sentence him to be bound over to keep the peace in the sum of \$300 for a period of 12 months. With respect to count 2, the learned Magistrate acquitted Mr. Sikaidoka on the basis that the person to whom Mr Sikaodoka sought to bribe, being a special constable, was not a 'public official' as is required, and defined, under the Crimes Act.

- [4] The State has appealed the decision of the learned Magistrate and contends that a special constable is a public official and, as such, the learned Magistrate ought to have convicted Mr. Sikaidoka on count 2, on his plea of guilty.
- [5] The matter has been set down for hearing this afternoon. Both parties have filed written submissions. A preliminary point has been raised in relation to the fact that no election was put to Mr. Sikaidoka for count 2. Both counsel agree that the failure is fatal, and that the matter ought to be remitted back to the Magistrates Court so that an election can be put to Mr. Sikaidoka.
- [6] The wording of s 4(1)(b) appears to be plain in that an indictable offence triable summarily is to be tried either in the Magistrate Court or the High Court, '*at the election of the accused person*'. Until an election was put to Mr. Sikaidoka, and he elected to have the matter tried in the Magistrates Court, the Magistrate did not have jurisdiction to take a plea or decide Mr Sikaidoka's guilt or otherwise.
- [7] I, therefore, agree with counsel that that the learned Magistrate has erred and that the matter should properly be remitted back to the Magistrates Court.
- [8] Accordingly, I make the following orders:
- i. The learned Magistrate's decision to acquit Mr. Sikaidoka on count 2 is quashed.
 - ii. The matter is remitted back to Magistrates Court to put an election to Mr Sikaidoka for count 2.

- iii. The matter is to be called for mention in Suva Magistrates Court No. 5 on 1 July 2025 at 9.30am.


D.K.L Tuigereqere
JUDGE



Solicitors:

Office of Director of Public Prosecutions for the Appellant

Office of the Legal Aid Commission for the Respondent