

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. HAA 011 OF 2025**

**BETWEEN : MOHAMMED TAIYAB KHAN**

**AND : STATE**

**Date of Hearing : 13 June 2025**

**Date of Judgment : 13 June 2025**

## **JUDGMENT**

### **Introduction**

- [1] There are two applications for the court's consideration.
- [2] The first is an appeal against the Magistrate's refusal to grant a trial de novo. The second is a motion to stay the proceedings in the Magistrate's Court pending the determination of this appeal.
- [3] After reviewing the applications, I invited submissions from both parties on the question of whether the Appellant has a right to appeal at this stage of the proceedings. I decided to conduct a paper hearing to consider this preliminary jurisdictional issue. If the Appellant does not have a right to appeal at this stage, then both the appeal and the motion for stay must fail. Both parties complied with the court's directive and submitted comprehensive arguments.

### **Interlocutory Ruling**

- [4] The first issue is whether the learned Magistrate's refusal to grant a trial de novo constitutes an interlocutory order.
- [5] The Appellant was charged and tried for careless driving in the Magistrate's Court at Nausori. After the prosecution closed its case, the trial magistrate found that the Appellant had a case to answer. However, before the magistrate could conclude the trial, her judicial warrant expired, and a new magistrate assumed responsibility for the pending cases.
- [6] The new magistrate heard the Appellant's application for a trial de novo but concluded that ordering a new trial was not in the interests of justice. Instead, the magistrate decided to complete the existing trial using the transcripts of the evidence, while allowing the Appellant to present his defense case.

### **Right of Appeal**

- [7] It is well established that any right of appeal in criminal matters must be expressly conferred by statute. Appeals from the Magistrates' Court to the High Court are governed by section 246 of the Criminal Procedure Act.
- [8] Section 246 of the Criminal Procedure Act states:
  - (1) Subject to any contrary provision within this Part, any person dissatisfied with any judgment, sentence, or order of a Magistrates' Court in any criminal case or trial to which they are a party may appeal to the High Court against the judgment, sentence, or order—or both the judgment and sentence.
  - (2) No appeal shall lie against an order of acquittal except by, or with the written sanction of, the Director of Public Prosecutions or the Commissioner of the Independent Commission Against Corruption.

- (3) Where any sentence is passed or order made by a Magistrates' Court in respect of a person who is unrepresented by a lawyer, the magistrate must inform the person of their right to appeal at the time the sentence is passed or the order is made.
- (4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.
- (5) The Director of Public Prosecutions shall be deemed a party to any criminal case in which proceedings were instituted and carried out by a public prosecutor, except for matters handled by the Fiji Independent Commission Against Corruption.
- (6) Without limiting the categories of sentences or orders that may be appealed against, an appeal may be brought under this section concerning any sentence or order of a Magistrates' Court, including those relating to compensation, restitution, forfeiture, disqualification, costs, binding over, or other sentencing options or orders under the Sentencing and Penalties Act 2009.
- (7) A court order in a case may be appealed to the High Court, regardless of whether the court has proceeded to conviction. However, no right of appeal shall exist until the Magistrates' Court has made a final determination of the accused's guilt, unless a specific right to appeal an earlier order is provided by law.

[9] Subsection (7) effectively means that an interlocutory order cannot be appealed as of right unless a specific statute grants such a right. For example, the Bail Act expressly allows appeals against bail orders, despite their interlocutory nature.

[10] Several case precedents have clarified this principle. In *Trivedi v State* [2010] FJHC 593; HAA014.2010 (1 April 2010), the Appellant attempted to appeal a no-case-

to-answer ruling before the defence case had concluded. Fernando J dismissed the appeal, ruling that:

"...it is necessary that the Magistrates' Court finally determines the guilt of the accused person for the order to become appealable."

- [11] In *Ismail v State* [2018] FJHC 794; HAA01.2018 (22 August 2018), the Appellant attempted to appeal his conviction before sentencing. Sharma J dismissed the appeal for lack of jurisdiction, stating:

"In my view, section 246(7) means that an accused person's guilt is not finally determined until that accused is sentenced. The entry of a conviction is merely a step toward finality but does not constitute the final determination of guilt. It is only when an accused is sentenced that their guilt is finalized—not before. This provision should be interpreted broadly to ensure appeals are heard only after the final determination of a case in the Magistrates' Court."

- [12] In *Kumar v State* [2016] FJHC 1115; HAA38.2016 (8 December 2016), the Appellant attempted to appeal against a voir dire ruling admitting his confession into evidence while the trial was ongoing. Aluthge J dismissed the appeal, stating:

"The Appellant has not shown any legal provision permitting this appeal before the Magistrates' Court has made a final determination of guilt. Therefore, under Section 246(7) of the Criminal Procedure Decree, this appeal cannot proceed."

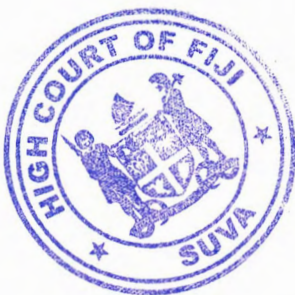
- [13] The principle established in these cases is that interlocutory rulings in criminal cases can only be appealed after the final determination of guilt, unless a specific

statute provides a right of interlocutory appeal (such as in bail matters). Final determination of guilt occurs only after sentencing and the completion of trial proceedings.

- [14] In the present case, the trial is still ongoing in the Magistrates' Court, meaning the trial court has yet to make a final determination of guilt. As a result, the Appellant does not have the right to appeal against the Magistrate's ruling denying his application for a new trial.

### **Result**

- [15] The appeal is struck out for lack of jurisdiction, and the motion for stay is denied.



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**Hon. Mr Justice Daniel Goundar**

### **Solicitors:**

Sunil Kumar Esquire for the Appellant

Office of the Director of Public Prosecutions for the State