

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 71 of 2016

MINISTRY OF HEALTH

v

MOHAMMED RAIYUM

Appearance : **Mr Tuvoli. N** for the prosecution
Accused in person

Judgment : **16 August 2019**

JUDGMENT

1. The Accused, Mohammed Raiyum was issued with a fixed penalty notice on 24 October 2015. The charge was for *Failure by Owner to ensure that a No Smoking sign is Clearly and Conspicuously Displayed in a Public Place* contrary to section 19(3)(b) and (4) of the Tobacco Control Decree.
2. The particulars of the offence are that Mohammed Raiyum on the 24th of October 2015, at Tabia, Labasa in the Northern

Division being a Tobacco retailer did fail to place a no smoking sign within the said retailing area.

3. The Accused waived his right to counsel and pleaded not guilty to the charge.
4. The case proceeded to trial on 7 December 2017.
5. The Prosecutor called Naibuka Waqa (Waqa) as the only witness for the prosecution case. The Accused is the only witness for his case.

Law

6. *Section 19(3)(b) and (4) of the Tobacco Control Decree state;-*

“(3) The registered owner of the place and person in charge of any place referred to in subsection (1) must both ensure that -

(b) a “no smoking” sign is clearly and conspicuously displayed, in that place.”

7. The elements of the offence are;-
 - a. *the accused,*
 - b. *is the registered owner and in charge of the retail shop,*
 - c. *failed to displayed a no smoking sign,*
 - d. *clearly and conspicuously in the shop,*
 - e. *the shop is a public place.*
8. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

Analysis and determination

9. Waqa identified the Accused in court as the person who was serving him at the Tabia Highway Store on 24 October 2015.

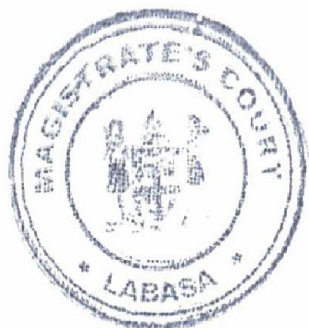
10. Waqa stated in his evidence that he is an authorised officer under the Tobacco Control Decree. He said on 24 October 2015, he was in the Macuata area doing inspection with his team. Around 2.30pm on that day, he entered the Tabia Highway Shop and he approached the Accused who was serving in that store. He asked for a packet of BH 10 and was given with the same. He introduced himself to the Accused, showed his identification card to the Accused and explained to the Accused the purpose of their exercise which is to see and confirm if the Accused had a valid registration certificate to sell tobacco product.
11. He did observe the shop for about 15 to 20 minutes after permitted by the Accused. He noticed that the shop sold tobacco product but there is no smoking sign displayed in the shop. He was standing in front of the counter and did a 360 observation and did not see any no smoking sign. He informed the Accused that the shop is not complying to the Tobacco Control Decree as there is no smoking sign displayed. The Accused agreed with him that there is no sign displayed.
12. He then asked for the business detail and the Accused provided him with all the information where he noted that the Accused is the owner of the shop.
13. He informed Sitiveni one of the officers that were with him for that exercise of the non compliance. Sitiveni then booked the Accused by issuing the fixed penalty notice.
14. He said, according to the Tobacco Control Decree, the owner of the shop has the responsibility to display the non

smoking sign. He never refer to which section of the Decree that states that.

15. *Section 19(1)* of the *Tobacco Control Act (the Act)* listed the area and places that are regarded as public places for the purpose of the Act. Among other areas listed, the section only refers to internet shops, there is no mention of retail shops in the list. *Subsection 19(1)(k)* of the list stated that "any other public place to which the public has access as the Minister may designate by way of a gazette notice." What this subsection says for the purpose of this case, if the retail shops are to be regarded as public place for the purpose of *section 19(1)* then it will be designated by the Minister in the gazette. I had perused the *Tobacco Control Act* and the *Regulation* and no where it can be found any designation made under *subsection 19(1)(k)* that requires the owner of the retail shops to display no smoking sign.
16. There was a designation made by the Minister under *section 20* of the *Act* as stated in *regulation 43(1)(d)* which state that any area of a shops or other retail place to which the public access has been prescribed as smoke free areas. It is clear from this regulation that the retail shops are smoke free areas.
17. The Accused has been charged for not displaying no smoking sign in his shop. In pursuing the Act, I find that there is no requirement under the law for no smoking sign to be displayed in the retail shop as there is nowhere in the Act and in the Regulation that makes that as the requirement of the law.

18. As such, I find the charge is defective. Accordingly, this proceeding is null and void.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C. M. Tuberi". The signature is stylized and written over a horizontal line.

C. M. Tuberi
Resident Magistrate