

IN THE HIGH COURT OF FIJIAT SUVA

In the matter of an appeal under section
246 (1) and (6) of the Criminal Procedure
Act.

STATE

Appellant

CASE NO: HAA. 38 of 2017
[MC Suva, Crim. Case No. 1369 of 2016]

Vs.

1. EPELI VOSABECI
2. NACANIELI VUKILENA

Respondents

Counsel : Ms. J. Fatiaki for the Appellant
Respondents in person

Hearing on : 28 March 2018

Judgment on : 23 April 2018

JUDGMENT

1. This appeal is brought against an order for cost made by the magistrate court. The ground of appeal is as follows;

That the aforesaid Costs Order was awarded against the Prosecution without the Prosecution being given an opportunity to make representations on the amount ordered to be paid to each Accused persons.

2. It is pertinent to note that the two respondents are charged with the offence of aggravated robbery under section 311(1)(a) of the Crimes Act which is an indictable offence. The magistrate court had been vested with extended jurisdiction to try this case under section 4(2) of the Criminal Procedure Act. According to the appellant, on the 9th of August 2017, the prosecution made an application before the Learned Magistrate to vacate the trial as the witnesses had not been summoned and in allowing the application the Learned Magistrate had ordered that the Prosecution pay costs to each accused in the sum of \$200.00 each.
3. When this matter was called before this court on 28/02/18, it was pointed out to the counsel for the appellant that the impugned decision has been made by a magistrate exercising extended jurisdiction and was informed to consider whether this court has jurisdiction to entertain this appeal. On the following date which was 23/03/18, counsel for the appellant submitted that the appellant is of the view that this court has jurisdiction to entertain this appeal.
4. According to the caption of the petition of appeal, this appeal is brought under section 246(1) and 246(6) of the Criminal Procedure Act.
5. Moreover, in the written submissions filed by the appellant in support of this appeal it is clearly stated that "Appellant's right of appeal is governed by section 246(1) & (6) & (7) of the Criminal Procedure Act". It is pertinent to note that the right of appeal against an order made by a magistrate awarding costs in terms of section 150 of the Criminal Procedure Act is specifically created under section 151(1) of the Criminal Procedure Act.
6. Section 246(1) and section 246(6) of the Criminal Procedure Act cited by the appellant in the caption of the petition of appeal read as follows;

246 (1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial

to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgment and sentence.

...

246 (6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties [Act] 2009.

7. The provisions of section 246 which comes under Part XV of the Criminal Procedure Act should be construed as provisions in relation to appeals from the magistrate court exercising the magistrate court jurisdiction vis-à-vis a magistrate court exercising extended jurisdiction.
8. On the other hand, it is pertinent to note that the appeals from the Magistrate Court exercising extended jurisdiction lie with the Court of Appeal. (See *Sharma v State* [2015] FJCA 174: AAU012.2015)
9. In my view, though the particular decision sought to be challenged has nothing to do with the extended jurisdiction vested with the Learned Magistrate, an appeal cannot be preferred against a decision of a magistrate exercising extended jurisdiction under any of the subsections of section 246 of the Criminal Procedure Act. Nevertheless, as far as the impugned order in the instant case is concerned, the section that creates the right of appeal is section 151 of the Criminal Procedure Act and not section 246(1).
10. I also wish to highlight that, given the language used in section 246(6) alluded to above, the said subsection provides for appeals against sentences or orders made

under the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"). The words 'order' and 'costs' in the said subsection should be construed as an order made or costs awarded under the Sentencing and Penalties Act.

11. As I find that the high court lacks jurisdiction to entertain this appeal under section 246(1) of the Criminal Procedure Act, I would dismiss this appeal.

Order:

Appeal dismissed.



Vinsent S. Perera

JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the appellant
Respondent in person