

IN THE HIGH COURT OF FIJI
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 001 OF 1997

BETWEEN : GEOFFREY JOHNSON

APPELLANT

AND : THE COMMISSIONER OF INLAND REVENUE

RESPONDENT

Mr Daubney – for the Appellant
Mr Keay and Ms Malimali - for the Respondent

J U D G M E N T

Background:

1. This matter concerns an Appeal by Mr Geoffrey Johnson from his Conviction by the Magistrate sitting at Suva on 14 August 1996 for 3 Offences under the Income Tax Act (Cap. 201). There is no formal Appeal against the Sentences imposed, which comprised of Fines of 1,000.00, 700.00 and 500.00 Fijian Dollars imposed for the First, Second and Third Charges respectively.

The Detailed Offences:

2. The 3 Charges are linked and deal with the alleged failure by the Appellant (Mr Johnson) to deliver to the Inland Revenue certain Returns and Statements of Income for the years ending December 1989, 1990 and 1991.

The Charges concern non delivery of a Return of Income (Charge 1), the non delivery of a detailed Statement Assets and Liabilities (Charge 2); and the non delivery of an Analysis of his Drawing Account (Charge 3).

The demands for these Returns by the Inland Revenue and the legal obligations of Mr Johnson to comply with the demands made by the Inland Revenue are based on the provisions of Sub-sections 50(1) and 96(1) of the Income Tax Act.

The Case Chronology:

3. For what was essentially a simple Case, the hearings before the Magistrate were long drawn out. The Offences were said to have been committed between 1/ September 1992 and 23 March 1993. The Charge Sheets were dated 6 April 1993 and the matters came before the Magistrate at Suva on 7 June 1993. The Case meandered on through countless hearings for over 3 years before it was concluded in August 1996. The most significant interruption was an excursion in July 1995 to the High Court for a Judicial Review of an Interim Order made by the Magistrate.

I do not want to comment on the whys and wherefores of all these delays, except to note that the view of Mr Justice Scott (who presided over the Judicial Review hearing) was that the Application there was entirely misconceived. Apart from the interlude I have difficulty in understanding why there should be such a long interval between the beginning and the end of the Magistrate's Hearing.

Grounds of Appeal

4. Putting the Grounds in precise and readily understood terms the bases of this Appeal are these:

1. That the Magistrate was wrong in holding that the Income Tax Act lived prior to the 1987 Coup, lived during the Coup, and after it.
2. That there was insufficient evidence to support the Convictions

The life and Existence of the Income Tax Act (Cap. 201):

5. The promulgated date of this Act is January 1974. There is no suggestion that the Act was cancelled between 1974 and 1987. (In other words the Act 'lived' prior to the Coup).

As historical facts there were two Military Coups here in Fiji in 1987. In Fiji, as anywhere else in the world, Governments come and go. But whenever there is a new Government there is generally a concern that there should be no breakdown in fundamental Law and Order. There was no exception to this in Fiji in 1987 because on 1 October (within a week of the second Military Coup) two Decrees were published. The first Decree wholly revoked (or cancelled) the 1970 Constitution. The second Decree (published on the same day) known as 'The Existing Laws Decree' announced that all the existing Laws in force as at 25 September 1987 (the date of the second Coup) were to

continue in force. The Income Tax (Cap, 201) was one of those laws. So the Income Tax Act certainly lived during the Coup despite the revocation of the 1970 Constitution.

Following the revocation of the 1970 Constitution, the 1990 Constitution of the Sovereign Democratic Republic of Fiji was promulgated by Decree on 25 July 1990. It is significant that this written Constitution of July 1990 was published nearly 3 years after the second Coup of 1987 showing that the regime which took over in 1987 was firmly in control. By dint of time it has become the legitimate Government and thereby entitled to the authority that goes with that status. Furthermore, the Sub para 8(1) of the Promulgated Decree of the 1990 Constitution it is clearly stated that all 'existing laws' shall have effect on and after the Appointed Day as if they had been made in pursuance of the New Constitution. This is confirmed in the body of the Constitution itself at Section 168. That Section (168) states once more that all 'Existing Laws' (of which the Income Tax Act is one) will continue in force. It is crystal clear that the Income Tax on after the Coup.

The chronology that I have recounted concerning the retention of the Income Tax Act emphasises its presence at all times before, during and after the Coup of 1987 and continuing through 1992 and 1993 to the present day.

The offences alleged to have been committed by Mr Johnson were on dates between September 1992 and March 1993 (after the birth of the 1990 Constitution). There has been no Notice cancelling the Act or the individual Sections that concern us, and the Magistrate clearly had jurisdiction to deal with the Offences with which Mr Johnson was charged.

Submission of the Appellant:

6. It was submitted on behalf of the Appellant (Mr Johnson) that Laws relating to the raising of Money have to be authorised by a specific Act of Parliament. Even assuming that this is so there are difficulties with this submission in relation to the present case. First, that the Respondent was not being asked for Money; he was asked to deliver information concerning his financial affairs. Second, the Sections under which these Charges are brought are not 'money collection' provisions.

It was also argued that Sections 50 and 96 of the Act (the provisions under which Mr Johnson had been charged) were 'money raising' Sections (if not directly so then certainly as part of 'the Money Raising Machinery'). I cannot agree. If one looks at the Table of Provisions preceding the detailed recitation of the Sections one will find Section under the Heading of 'Returns and Information' and Section 96 under Heading: 'Offences and Penalties'.

Evidence to support the Convictions:

7. The Evidence is plain and simple and essentially not in dispute. **Mr Sekope Takape**, an employee of Inland Revenue Department gave evidence that he had dispatched letters to Mr Johnson (the Appellant) on 19 August 1992 to Office of the Accounting Firm Price Waterhouse at P O Box 156 in Suva (an address given to the Revenue earlier by Mr Johnson). That letter dated the 18 August 1992 to Section 50 of the Income Tax and clearly asked for the information recited on each of the Charges. It asked for that information to be made available for the Revenue by 18 September 1992. An endorsement on the letter by Price Waterhouse confirmed that they had received the letters on 25 August 1992 on behalf of the Appellant.

Further evidence was given by **Mr Peni Senitautau**, also an employee of the Inland Revenue. He stated that he had inspected the file of Mr Geoffrey Johnson on numerous occasions and confirmed that there was no trace of any of the Returns from Mr Johnson which had been called for in the letters that I have indicated.

The evidence from Mr Takape and Mr Senitautau were given by agreement under the provisions of Section 192 of the Criminal Procedure Code (CPC). No questions were raised on either of the letter or the inspection of files. There were no disputes that the Letters of Demand were sent; no dispute concerning their receipt, and no dispute that no Return or Reply had been traced in the Revenue Office from Mr Johnson. There were no contradictions to the last quoted negative averment by Mr Senitautau.

In my Judgment the Magistrate correctly reached the inevitable conclusion that Mr Johnson had failed to comply with the lawful Demands made by the Revenue, and that he was therefore guilty of the Offences charged.

This Appeal is Dismissed.

PETER SURMAN
JUDGE

At Suva