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FIJI MAGISTRATE'S COURT

1 Introduction

The Magistrate's Court tends to be the Court where most people come into contact with the country's judicial system. All criminal offences normally start in this Court, although a number of serious cases will be transferred to the High Court for trial.

The *Magistrates' Courts Act Cap 14 (MCA)* establishes Courts of record of summary jurisdiction in Fiji with the following classes of Magistrates:

- Resident Magistrates;
- Second Class Magistrates;
- Third Class Magistrates: *s3(2) MCA*.

Each division has such Magistrates' Courts as the Chief Justice may direct: *s3(3) MCA*.

The MCA confers both criminal and civil jurisdiction on Magistrates' Courts to hear and determine cases that arise in their division: *s4 MCA*.

The Chief Justice:

- can confer extra-territorial jurisdiction on individual Magistrates;
- decides on the jurisdiction to be exercised by each Court; and
- can confer on a Court specific jurisdiction to hear particular cases normally outside its jurisdiction.

The language of proceedings in the Magistrate's Court is English, but evidence may be given in Fijian or Hindustani or, with the approval of the Court, in any other language: *s51(1) Magistrates' Courts (Amendment) 12 of 1998*.

2 Governing Legislation

The *MCA* establishes and governs the Magistrates' Courts.

The *Criminal Procedure Code – Cap 21 (CPC)* sets out the procedure of the Magistrates' Courts.

Other relevant legislation includes:

- *Penal Code – Cap 17*;
- *Juvenile Act*;
- *Minor Offences Act*;

- *Probation of Offenders Act*;
- *Mental Health Act*; and
- *Land Transport Act*.

3 Composition of the Court

3.1 Magistrates

Appointment

Magistrates in Fiji are appointed by the Judicial Service Commission, which has the Chief Justice as its Chairperson: *s7 MCA, s3(1) Magistrates' Am. Act 12 of 1998, s133(1)(a) Constitution*.

The Commission may appoint fit and proper persons to be Second Class and Third Class Magistrates: *s7(2) MCA*.

Removal

The Commission may remove a Magistrate from office and take disciplinary action against a Magistrate. This may include:

- requiring or permitting the Magistrate to retire from office;
- terminating the contract on which the Magistrate is employed; or
- not renewing the contract on which the Magistrate is employed: *s7A Magistrates' Am. Act 12 of 1998*.

3.2 Clerk of the Court

A Clerk is:

- appointed by the Chief Registrar;
- attached to each Magistrate's Court; and
- under the immediate control of the Magistrate of that Court: *s13 MCA*.

The duties of the Clerk are to:

- attend to the sittings of the Court as directed by the Magistrate;
- create Court documents and give these to the Magistrate for his or her signature;
- issue civil processes;

- make copies of proceedings and to record the judgments, convictions and orders of the Court;
- receive all monies paid to the Court and keep good records;
- administer oaths when asked to by the Magistrate (who should be present); and
- do whatever else the Magistrate asks: *s14 MCA*.

3.3 Other Officers of the Court

Other officers of the Court include:

- Sheriff officers: *s15MCA*; and
- Bailiff officers: *s3(1) Distress for Rent Act Cap 36*.

4 Jurisdiction

4.1 General Powers

All Magistrates, once appointed, shall have and exercise the powers and jurisdiction conferred upon them by the *Magistrates' Courts Act* or any other Act: *s7(3) MCA*.

The Judicial and Legal Services Commission may, by the terms of its appointment, restrict the powers of a Third Class Magistrate in such manner and extent as they see fit: *s7(3) MCA*.

As prescribed by any Act, the rules of Court, or by any special order of the Chief Justice, every Magistrate shall have power to:

- issue writs of summon for the commencement of actions;
- administer oaths and take affirmations and declarations;
- receive production of books and documents;
- make decrees and orders;
- issue processes; and
- exercise judicial and administrative powers in relation to the administration of justice: *s20 MCA*.

4.2 Territorial Jurisdiction

Subject to any express provisions of the *Magistrates' Courts Act* or any other Act, every Magistrate's Court shall exercise jurisdiction within the limits of the division within which it is situated. When, however, there is more than one Magistrate's Court in the same division, the Chief Justice may direct the distribution of business between such Courts: *s4(1) MCA*.

This jurisdiction extends to any territorial or inland waters within and around the division: *s4(2) MCA*.

Special jurisdiction exists for:

- a Magistrate exercising jurisdiction over the place where a ship, boat or canoe may be at the time of a criminal offence or civil matter arose; or
- a Magistrate exercising jurisdiction over the place where the vessel may call after the offence or civil matter arose: *s18 MCA*.

Actions of, or under the authority of, a Magistrate will not be void or impeachable solely because of an error as to territorial jurisdiction: *s21 MCA*.

Subject to the terms of their appointment, Second and Third Class Magistrates have powers to hear cases within their jurisdiction: *ss8, 9 CPC*.

4.3 Criminal Jurisdiction

In exercising criminal jurisdiction, Magistrates have all the powers and jurisdiction conferred on them by the *Criminal Procedure Code*, the *Magistrates Courts Act*, and any other law in force: *s17 MCA*.

All *Penal Code* offences are tried at the Resident Magistrate's Court unless otherwise stated in:

- the Fifth Column of the First Schedule *CPC*: *s4(1) CPC*; or
- any law other than the *Penal Code*: *s5 CPC*.

Resident Magistrates have power to try all offences.

A High Court Judge may by order invest a Resident Magistrate's Court with jurisdiction to try a particular offence which would otherwise be beyond its jurisdiction. However, the Magistrate may not impose a sentence which exceeds their sentencing jurisdiction: *s4(2) CPC*.

4.4 Sentencing Jurisdiction

Resident Magistrates

A Resident Magistrate has jurisdiction to pass sentence up to:

- a maximum 10 years imprisonment on one charge; or
- a fine not exceeding \$15,000; or
- both: *s7 CPC*, as amended by *s3 CPC(Amendment) Act 13 of 2003*.

Second Class Magistrates

Second Class Magistrates have jurisdiction to pass sentence up to:

- a maximum one year imprisonment; or
- a fine of \$200; or
- both: *s8 CPC*.

Third Class Magistrates

Third Class Magistrates have jurisdiction to pass sentence up to:

- a maximum six-month imprisonment term not exceeding six months; or
- a fine not exceeding \$100; or
- both: *s9 CPC*.

4.5 Exemptions

The Magistrate's Court shall not exercise jurisdiction:

- in suits where the title to any right, duty or office is in question;
- in suits where the validity of any will, testament, or bequest is in question;
- in suits where the legitimacy of any person is in question;
- in suits where the validity or dissolution of any marriage is in question;
- in any action for malicious prosecution, libel, slander, seduction or breach of promise to marry: *s16 proviso MCA as amended by s2 Magistrates' Courts (Civil Jurisdiction) Decree 1998*;
- in the issuing of, or the making of orders pursuant to a writ of habeas corpus: *s5 Magistrates' Courts (Chapter14) Amendment Decree 1987 (no 16)*.

4.6 Civil Jurisdiction

Resident Magistrates

Resident Magistrates, in addition to any jurisdiction under any other Act, have jurisdiction in civil causes:

- in all personal suits arising out of any accident involving a vehicle where the amount, value or damages claimed is not more than \$3,000;
- in all other personal suits, whether arising from contract, tort, or both, where the value of the property or debt, or damage claimed is not more than \$2,000;
- in all suits between landlord and tenant for possession of any land claimed under any agreement or refused to be delivered up, where the annual value or annual rent does not or did not exceed \$2,000;
- in all suits involving trespass to land or for the recovery of land, irrespective of its value where no relationship of landlord and tenant has at any time existed between the parties in respect of the land or any part of the land; and
- in any type of suit covered herein, whatever the value, amount, debt or damages sought, if all the parties or their respective barristers and solicitors consent thereto in writing, provided that where such suit has already been commenced in the High Court, it may only be transferred to a Resident Magistrate's Court with the prior consent of the High Court: *s16(1)(a)(b)(c) MCA*.

Resident Magistrates also have the jurisdiction:

- to issue writs of habeas corpus for the production before the Court of any person alleged upon oath to be wrongfully imprisoned and to make orders thereon;
- to appoint guardians of infants, and to make custody orders for infants;
- to grant in any suit instituted in the Court, injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts;
- to enforce by attachment any order made by the Court;
- to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him, in pursuance of any order or judgment of the Court or any other competent Court, provided that such jurisdiction shall only be exercised where it is proved that the person making default has, or has had since the date of the judgment the means to pay the sum and has refused or neglected to pay; and
- in all other suits and actions in respect of which jurisdiction is given to a Resident Magistrate's Court by the *Magistrates' Courts Act* or any other written law, provided that a Magistrate's Court shall not exercise jurisdiction:
 - in suits where the title to any right, duty or office is in question;

- ⊖ in suits wherein the validity of any will or testamentary writing or bequest or limitation under any will or settlement is in question;
- ⊖ except as specifically provided in the *Matrimonial Causes Act* or any other Act in suits wherein the validity or dissolution of marriage is in question; or
- ⊖ in any action for malicious prosecution, libel, slander, seduction or breach of promise of marriage: *s16(1)(d) - (i) MCA*.

Second and Third Class Magistrates

Second and Third Class Magistrates have jurisdiction:

- in all personal suits arising out of any accident involving a vehicle where damages are claimed;
- in all other personal suits, whether arising from contract, tort, or both, where the value of the property or debt, or damage is claimed;
- to enforce by attachment any order made by the Court;
- to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him, in pursuance of any order or judgment of the Court or any other competent Court, provided that such jurisdiction shall only be exercised where it is proved that the person making default has, or has had since the date of the judgment the means to pay the sum and has refused or neglected to pay,

provided that such jurisdiction is limited to the amount of \$200 in the case of a Second Class Magistrate and to \$50 in the case of a Third Class Magistrate.

4.7 Appellate Jurisdiction

Appellate criminal jurisdiction

The Magistrate's Court has no jurisdiction to hear criminal appeals. All criminal appeals lie to the High Court: *s308 CPC*.

Appellate civil jurisdiction

Appeals from all judgments, decisions, or orders from a Second or Third Class Magistrate lie to a Resident Magistrate: *s40 MCA*.

Magistrates may also consider appeals from small claims tribunals.

5 Transfer of Cases

5.1 Territorial Transfer

A Magistrate has jurisdiction to transfer a case where it appears the offence was committed outside his or her territorial jurisdiction: *s68 CPC*.

Any transfer after trial has commenced, should be by way of a report to the Chief Magistrate: *s69 CPC*.

The Chief Magistrate has the power to change the venue of a proceeding where:

- a fair and impartial enquiry cannot be had in any Magistrate's Court;
- some question of law of unusual difficulty is likely to arise;
- a view of the place in or near the place which any offence maybe required for inquiry;
- an order will be to the convenience of the parties or witnesses;
- an order is for the expedience for the ends of justice: *s70 CPC*.

The application to the Chief Magistrate shall be made by motion with an accompanying affidavit, with notice having being served on the DPP's Office 24 hours prior to hearing: *s70(3)(4) CPC*.

5.2 Transfers to the High Court

Transfer of criminal cases from the Magistrate's Court to the High Court may occur:

- by election of the defendant;
- before the trial on the application of the prosecution;
- before or during trial at the discretion of a Magistrate; or
- for sentencing in the High Court after conviction has been entered.

By election of the defendant

For a number of offences, the defendant may elect to have the matter heard in the High Court: *s3 Electable Offences Decree 1988*. These offences are located in the attached Schedule of the *Decree*.

By application of a Magistrate

Subject to the provisions of the *CPC*, a Magistrate may, of his or her own motion, or on the application of any person concerned, report to the High Court the pendency of any cause or matter which in his or her opinion ought for any reason to be transferred from his or her Court to any other Magistrate's Court or to the High Court. The High Court shall direct in what mode and where the cause or matter shall be heard and determined: *s32 MCA*.

There are no longer preliminary enquiries. A Resident Magistrate may transfer any charge or proceeding to the High Court, without holding a preliminary enquiry and committal proceedings: *s223, 224 CPC (Amendment) Act 13 of 2003*.

The transfer of cases to the High Court is also governed by Practice Direction No. 1 of 2003. This decree sets out the administrative requirements for such transfers, regarding the calling of the case, and disclosure of prosecution statements and exhibits: *Practice Direction No. 1 of 2003*.

An order for transfer of a charge or proceedings to the High Court requires the appearance of the defendant in the High Court within 28 days: *s227 CPC (Amendment) Act 13 of 2003*.

A Resident Magistrate has jurisdiction to accept a guilty plea and to record a conviction on an electable offence or an offence only triable in the High Court: *s225(1) CPC (Amendment) Act 13 of 2003*.

Transfer for sentencing

Transfer for sentencing takes place under *s222 CPC (Amendment) Act*. It may take place where a Magistrate is of the opinion that the offender should be given greater punishment than is possible under his or her jurisdiction. The decision to inflict greater punishment is based on:

- the nature of the offence;
- the circumstances of the offending; and
- the offender's previous history.