

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 094 OF 2013S

STATE

VS

- 1. JOSEVATA LESUMAILODONI**
- 2. APIMELEKI WAQANACEVA**
- 3. VILIAME QATIVI**

Counsels : **Mr. T. Qalinauci for State**
Mr. M. Fesaitu for Accused No. 1
Mr. E. Koroi for Accused No. 2
Accused No. 3 in Person

Hearings : **23, 24 and 25 June, 2014**

Ruling : **25 June, 2014**

Written Reason: **3 July, 2014**

WRITTEN REASONS FOR “NO CASE TO ANSWER” RULING

1. On 25 June 2014, the prosecution closed their case after calling eight witnesses, that is, two civilians and six police officers.

2. Defence verbally made a submission that there was no case to answer. The details of this submission are in the court record. The prosecution verbally replied that there was a case to answer. The details of the answer are in the court record.
3. In any event, I must consider Section 231(1) and (2) of the Criminal Procedure Decree 2009, which reads as follows:
 - (1) *When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence.*
 - (2) *When the evidence of the witnesses for the prosecution has been concluded, the court shall, if it considers that there is evidence that the accused person (or any one or more of several accused persons) committed the offence, inform each such accused person of their right:*
 - (a) *to address the court, either personally or by his or her lawyer (if any); and*
 - (b) *to give evidence on his or her own behalf; and*
 - (c) *to call witnesses in his or her defence.*
4. Section 231(1) and (2) of the Criminal Procedure Decree 2009 is somewhat similar to the repealed section 293(1) and (2) of the Criminal Procedure Code, Chapter 21. Consequently, the authorities on the interpretation of section 293 of the Criminal Procedure Code also applied to the interpretation of section 231(1) and (2) of the Criminal Procedure Decree 2009.
5. The test in the interpretation of the above sections are well settled. It is whether or not, there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the offence, the weight and credibility of such evidence, are not matters for assessment by the court, at this stage of the proceeding. The weight and credibility of such evidence, are matters for the assessors, in the trial proper. I rely on the following authorities: **Sisa Kalisoqo v Reginam**, *Criminal Appeal No. 52 of 1984, Fiji Court of Appeal*; **The State v Mosese Tuisawau**, *Criminal Appeal No. 14 of 1990, Fiji Court of Appeal*, and **The State v George Shiu**

Raj & Another, Criminal Appeal No. AAU 0081 of 2005, Fiji Court of Appeal and
The State v Brian Singh, Criminal Appeal No. AAU 0097 of 2005, Fiji Court of
Appeal, all Court of Appeal Authorities.

6. Applying the above authorities to the evidence presented by the eight prosecution's witnesses and after carefully considering the parties' submissions, I made a finding that there was a case to answer on 25 June 2014, and the accuseds ought to be call upon to make their defence. I said I would give my reasons later. The above are my reasons.
7. They were entitled to:
- (i) address the court, and/or remain silent;
 - (ii) give sworn evidence themselves, in their defence, and/or
 - (iii) call witnesses.

I ordered so accordingly.



A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a loop and a tail.

Salesi Temo

JUDGE

Solicitor for the State	:	Office of the Director of Public Prosecutions, Suva.
Solicitor for Accused No. 1	:	Legal Aid Commission, Suva.
Solicitor for Accused No. 2	:	E. Koroi, Barrister & Solicitor, Suva.
Solicitor for Accused No. 3	:	In Person.