

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 154 OF 2014**

STATE

-v-

SULIASI NASARA

Counsel: Mr. J. Niudamu for the State  
Ms. S. Dunn for Accused

Date of Hearing: 31<sup>st</sup> January, 2017  
Date of Ruling: 02<sup>nd</sup> February, 2017

**RULING ON VOIR DIRE**

1. The State seeks to adduce into evidence the caution interview statement and the charge statement of the Accused, Suliasi Nasara, made at the Lautoka Police Station on 19<sup>th</sup> and 20<sup>th</sup> of November, 2014 respectively.
2. The test of admissibility of all confessional statement made to a police officer is whether that was made freely and not as a result of threats, assaults or inducements made to the Accused by person or persons in authority. Further, oppression or unfairness also leads to the exclusion of the confession. Finally, where the rights of the suspects under the Constitution have been breached, this

will lead to the exclusion of the confessions obtained thereby unless the Prosecution can show that the suspect was not thereby prejudiced.

3. Accused objects to the admissibility of his interview on the grounds:
  - I. That his confessions were obtained involuntarily through pressure, duress and force by the police at the Lautoka Station.
  - II. That the accused was assaulted by iTaukei police officers at the place where he was arrested. He was punched around his ribs and back.
  - III. That at the police station he was slapped by an itaukei police officer.
  - IV. That the accused was threatened with assault by three iTaukei police officers who were present during his caution interview.
  - V. That the accused was told that if he refused to sign the places where he was indicated to sign by the interviewing officer he would be assaulted.
  - VI. That the contents of the caution interview or the charge statement were never read back to the accused.
4. What I am required at this stage is to decide whether the interview and charging were conducted fairly and whether the Accused gave the statements voluntarily. If I find that the signature of the Accused was obtained by the Police forcibly, then I can in my discretion exclude the interview and charge statements.
5. The burden of proving voluntariness, fairness, lack of oppression, compliance with Constitutional rights, where applicable, and if there is noncompliance, lack of prejudice to the Accused rests at all times with the Prosecution. Prosecution must prove these matters beyond reasonable doubt. In this ruling I have reminded myself of that.
6. Now I summarise the evidence presented at the trial within trial.

## Case for Prosecution

### Dr. Jona Nabaro

7. Doctor Jona was based at the Emergency Department of the Lautoka Hospital when he medically examined the Accused on the 19<sup>th</sup> of November 2014 at 12.30 in the morning. Corporal Timoci Vuli was present with the patient during his examination. The accompanying officer said that the patient was a suspect in a murder investigation. Patient was handcuffed when he was brought. Patient was cooperative with the examination.
8. Patient had no complaints whatsoever. He noted that the patient had a laceration on inner aspect of the upper lip and there wasn't any active bleeding. It was fresh and would probably have been caused within 24 to 48 hours. There were no other obvious physical injuries that were noted, no hematoma, no laceration and no contusions.
9. Under cross examination, doctor said that the police officer was always standing beside, throughout the examination. He could not recollect as to who provided history of the patient. He did not rule out the possibility that the police officer who brought the patient would have relayed the history. He agreed that if the patient was assaulted or punched on his face, one of the injuries that could occur would be a laceration on the lip.
10. Under re-examination, the doctor admitted that, if the patient was punched on the face, he would have had abrasions or lacerations or soft tissues swelling, or even scratches marks elsewhere on the face.

## D C Jone Sauqaqa

11. In 2014, DC Jona was based at the Crime Investigation Department of the Lautoka Police Station. He received instructions to follow up the murder case at Naikabula Road, and conducted house to house search operation in the area from 16<sup>th</sup> to 18<sup>th</sup> of November, 2014 to apprehend the suspect. Upon an information received, he proceeded to Vakabuli Village to check the house but the suspect was not there.
12. Then he proceeded to Vunato village on the 18<sup>th</sup> of November 2014 and approached a house in the surrounding area of Vunato, and arrested the suspect Suliasi Nasara around 8 p.m. He knew Nasara very well. Nasara is his nephew from his neighboring village. He explained the allegation against the suspect. Witness noticed a cut on Nasara's lips when the suspect was being escorted. He did not inquire about the injury.
13. The suspect directed him to a house at Vunato Settlement to show the pair of jeans he was wearing that night. He was accompanied by DC Mosese and D/Cpl. Silio. A pair of jeans was discovered from that house. He was then escorted to the police station. At no time accused was assaulted by anybody.
14. Under Cross-examination, the witness confirmed recording a statement on the 18<sup>th</sup> November, 2015, two years after the arrest. He denied that he was not present at the arrest and that he was not the officer who arrested the suspect. He said that the arrest was made in Namoli Village bordering Vunato village. He denied that the suspect was arrested by an officer by the name of Waisea Senitiki and that suspect was assaulted on his arrest.

15. Witness denied preparing a fabricated statement almost 2 years later, having realized that there was a medical report showing that the suspect had a laceration on his mouth.
16. Witness explained the delay in recording his statement and said that everybody was getting busy running around for evidence and he compiled the file and sent it over from that time. When a statement was needed by the DPP then he recorded his statement.

**DC Samuela Namusu**

17. When the witness was serving in the CID at the Lautoka Police Station, he charged the accused on the 20<sup>th</sup> November 2014. Sergeant Arish was present with him when the charge statement was being taken. Accused did not complain of anything. His appearance was okay. He was calm and cooperative.
18. Accused was not forced or threatened to make a statement. He was treated fairly. A small cut was observed on his lip.
19. Under Cross Examination, witness admitted that the name and rank of the witnessing officer do not appear on the top of the charge statement although his signature was there. Witness denied that the statement was made because the Accused was threatened to admit the allegation.
20. He said the charging took place in a closed room. He denied that there were several other police officers present during the charging. The statement was read back to accused.

**DC 3074 Colati**

21. On the 19<sup>th</sup> November, 2014, when the witness was stationed at the Lautoka Police Station, he interviewed the Accused, Suliasi Nasara under caution. Witnessing officer was Inspector Tuitai.
22. During the interview, Accused was normal and looked fine. An opportunity to consult a lawyer was afforded to him. He did not make any complaint. Interview commenced at 1130 hours on the 19<sup>th</sup> of November, 2014. It was suspend for accused to have his rest and finished on the next day, 20 November, at: 1510 hours.
23. Accused signed the caution interview. Witnessing Officer counter-signed. At the conclusion, contents of this interview were read back. Before signing, Accused was given the opportunity to read, delete and alter the record.
24. Accused was not threatened coerced or intimidated. No promise or inducement given in any way for him to make a statement. He was very co-operative. Interview was given voluntarily on Accused's own free will.
25. Under Cross-Examination, witness admitted that other officers were also present in the Crime room during the caution interview. However, he could not recall Cpl. Senitiki was there.
26. He observed a slight cut on accused's lips. He inquired whether he needed medical treatment to which he answered in the negative. He didn't wish to go for medical treatment.

27. Witness admitted that the interview on day one lasted for nearly 8 hours, during which 6 breaks were given. Accused was allowed to read his interview from the laptop. Accused read it and agreed on the content. Then a print-out was taken and given to him to be signed.
28. Under re-examination, the witness said that the interview took place in a separate cubicle in the general Crime Office and only the witnessing officer and the Accused were with him in that cubicle.

**Retired inspector Asesela Tuitai**

29. In November 2014, Tuitai was based at the Criminal Investigation Department of the Lautoka Police Station. He received instructions to be the Witnessing Officer at the interview of Suliasi Nasara which was conducted on the 19<sup>th</sup> of November 2014 by Constable Colati. He was present throughout the interview to see that the interview is taken fairly and no one enters the interviewing room during the interview.
30. Accused was alright. He was very cooperative and did not complain of anything. He was not forced, threatened or offered any inducement to make a statement. He was treated well.
31. Accused had a small cut on the upper lip. Before the interview, he was taken for a medical examination on the same night he was arrested.
32. Witness said that the constable by that name of Senitiki was not present in the Station during the interview. He denied that the Accused was arrested by Senitiki or that he was assaulted.

## Case for Defence

### **Suliasi Nasara (Accused)**

33. Nasara said that on the 18<sup>th</sup> of November, 2014, a police team came at around 9.30 pm to his house in Namoli Village to arrest him. He recognised Officer Senitiki at the front door. Senitiki was known to him in the past.
34. He heard Senitiki calling his name. When he stood up to answer the call, without mentioning the reason for his arrest, they straightaway pulled him and started punching. They punched the side of his ribs and stomach and Cpl. Senitiki gave him a back slap on his mouth. He sat down on the ground. Then they kicked his thighs, and, holding him tightly, they threw him inside the Police vehicle.
35. Once he was thrown into the Police vehicle, Senitiki sat beside him and started nudging the side of his ribs asking about his clothes. They took him to his sister's place in Vunato and 4 police officers started searching sister's house while he was being held by Senitiki. He was threatened that chilies will be put all over his body and assaulted. Then they took him straight to the Lautoka Police Station and put him in the cell. The next morning, they took him out from the cell to be interviewed.
36. Detective Sauqaqa never arrested him. He said he was taken to the hospital just after breakfast. The Doctor who gave evidence examined him. He was taken to the hospital on his request so that he can lodge a report that he was assaulted by Police officers.



37. He went with Corporal Senitiki to the hospital hand cuffed. He could not see the Doctor alone because corporal Senitki accompanied him to the examination room. Cpl. Senitiki gave information to the Doctor. There were injuries on his body, on his chest, back and the side of the chest. Doctor medically examined only his lips.
38. After the medical examination, he was taken back to the interview. He admitted reading the interview on the laptop. It took almost half an hour to print the interview. In that half an hour interviewing officer was typing something on the laptop after that only he printed it, he did not know what he was typing. Once it was printed out he was not given an opportunity to go through it. They only informed him to sign the interview.
39. He signed without reading the interview because he was afraid that officers might do something. They also threatened that they will put chilly all over the body and assault.
40. Witnessing officer was not present during charging. He came a short while after and all the charging papers were given to him to sign. He admitted reading the charge statement on the laptop although he did not understand some words. It was never read back and explained to him.
41. Under Cross-Examination, the accused admitted that he knew Senitiki very well and gave his name to his Counsel. Number of police officers assaulted him. He received serious injuries.
42. He was examined by the doctor on 19<sup>th</sup> of November 2014 just after he had breakfast. He denied that Corporal Timoci Vuki accompanied him into the

examination room. The doctor never asked any questions. He just looked at him and started writing. He then said that, at the time he filed Voire Dire grounds, he forgot to mention Senitiki's name.

### Analysis

43. I find that the evidence of the Prosecution to be consistent and plausible.
44. Prosecution called four police witnesses and the doctor who had examined the Accused. Throughout the proceedings, police witnesses maintained that any kind of assault or intimidation never took place at the arrest, before or during the interview or charging. Evidence of interviewing officer Colati, charging officer Namusu, arresting officer, Jone Sauqaqa and witnessing officer Tuitai has been consistent. They all maintained that no assault or intimidation took place during arrest, at the interview or charging.
45. There is no credible evidence that the interview was given as a result of assaults, threats, intimidation or inducement. There is also no evidence of unfairness or breach of constitutional rights in the interview or charging processes. I am satisfied that the Accused gave the confession voluntarily.
46. I am certain, that the Accused had received his injury on the upper lip before he was taken into custody and not as a result of police brutality.
47. According to the arresting officer, Jone Sauqaqa, the Accused had been arrested during night time on the 18<sup>th</sup> November 2014 at Vunato Settlement. (Accused also admitted that he was arrested around 9.30 pm.) Jone had observed a small cut on Accused's upper lip while accused was being escorted. The Accused had

been taken to the hospital the same night. Doctor Jone had examined the accused at 00.30 hrs on the 19<sup>th</sup>. It is clear that the accused had been produced for medical examination before he was interviewed on the 19<sup>th</sup> at 11.30 hrs.

48. Arresting officer Jone is related to the Accused as his uncle. Jone completely denied that he was not the arresting officer and that any kind of assault took place during arrest or transportation. I do not see any reason why Jone should give falls evidence against his nephew if he was not the arresting officer.
49. Jone had recorded his statement two years after the arrest. Defence raised doubts about this belated statement and branded it as a fabrication. Jone explained what made him to record a belated statement. The explanation given for the delay is acceptable.
50. Jone also said that the arrest was made in Vunato village. According to his own previous statement the arrest had taken place at Namoli Village. Defence took up the position that Jone was contradicting himself. Explaining the discrepancy, Jone said that those villages were bordering each other within the range of 2 minutes' drive. I do not see a metrical contradiction there.
51. Although the Accused had nothing to prove in these proceedings, his version failed to cast any doubt in Prosecution's version of events. Evidence of the Accused is implausible and unbelievable.
52. According to Accused, arresting officer was not Jone but one Cpl. Senitiki. Senitiki had been the one who had dealt most of the brutal assaults on him. Accused said Senitiki was well known to him even before his arrest. If accused knew Senitiki by name beforehand, it can be expected Senteki's name to have

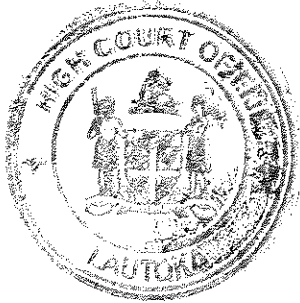
been mentioned to his Counsel as the main perpetrator of the alleged police brutality. If this important piece of evidence was provided to his Counsel, I do not see any reason why Senitiki's name should not be mentioned in his *voir dire* grounds. Accused has not been consistent in his version.


53. Accused said that he was escorted to the hospital after the breakfast by none other than Cpl. Senitiki, quite surprisingly the very person who is alleged to have assaulted him. Senitiki had provided all information to the doctor while remaining in the examination room.
54. Doctor's evidence is completely contradictory to what accused said in court. Doctor said that the Accused was escorted by Timoci Vuli and the examination was done around midnight (0.30 hrs.). Doctor's evidence is based on his report prepared contemporaneously with the medical examination. Doctor is an independent witness. I do not see why the doctor should be lying to this court.
55. According to Accused's evidence he had been assaulted on his face, chest, ribs, back and stomach and he has had visible injuries on his body at the time of medical examination. However, the doctor had observed only one laceration on the inner aspect of the upper lip and had noted no other physical injuries or hematoma/ laceration or contusion other than that. If the Accused was assaulted in the manner described by him, he would have received severe injuries or at least swellings and scratch marks that would have necessarily attracted doctor's attention. Doctor emphasised that if the patient was punched on the face he would have had abrasions, scratch marks, even soft tissues swelling or lacerations elsewhere on the face.

56. Evidence of the Accused was completely unsatisfactory. Even though the burden of proof was on the Prosecution to prove that the Accused made the confession voluntarily, Accused failed to create any doubt in the Prosecution case.

**Conclusion**

57. Prosecution proved beyond reasonable doubt that the Accused's interview and charge statement were obtained voluntarily and fairly. I hold caution interview statement and charge statement to be admissible in evidence.



  
Aruna Aluthge  
JUDGE

**At Lautoka  
2<sup>nd</sup> February, 2017**

**Solicitors: Office of the Director of Public Prosecution for the State  
Office of the Legal Aid Commission for the Accused**