

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 129 OF 2015**

**THE STATE**

**V**

**RATU EPELI NIUDAMU & 15 OTHERS**

**Counsel:** Mr. Lee Burney & Mr S. Babitu for State  
Mr. K. Tunidau for 1<sup>st</sup> Accused  
Mr. A. Ravindra Singh for 2<sup>nd</sup> to 16<sup>th</sup> Accused

**Date of Hearing:** 30<sup>th</sup> August, 2017

**Date of Ruling:** 31<sup>st</sup> August, 2017

**RULING ON NO CASE TO ANSWER APPLICATION**

1. At the closure of the Prosecution case, the Counsel for Defence make an application that the Accused persons have no case to answer. All the Accused persons are charged with Sedition contrary to Section 67(1) of the Crimes Act, 2009.
2. The test at this stage of the trial in the High Court is whether there is any evidence (touching on each element of the offence) that each accused committed the offences charged.

Sections 231(1) and (2) read as follows:

*"...231.—(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 —*

*(i) to address the court, either personally or by his or her lawyer (if any); and*

*(ii) to give evidence on his or her own behalf; and*

*(iii) to call witnesses in his or her defence..."*

3. It is well settled that, the test at this stage of the trial is whether or not there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the charge, the weight and credibility of such evidence not being matters for assessors: *The State v George Shiu Raj & Another*, Criminal Appeal No. AAU 0081 of 2005, Fiji Court of Appeal; *The State v Brian Singh*, Criminal Appeal No. AAU 0097 of 2005, Fiji Court of appeal, *Sisa Kalisoqo v Reginam*, Criminal Appeal No. 52 of 1984, Fiji Court of Appeal and *State v Anesh Ram*, Criminal Case No. HAC 124 of 2008S, High Court, Suva.
  
4. The test applied in the High Court is a different one from that in the Magistrates' Court. The test in the latter is whether, taken at its highest, a reasonable court could convict on the Prosecution case. The test in the High Court is whether there is relevant, admissible and inculpatory evidence implicating the accused in the offence charged. It is not for the Court at this stage to assess credibility or reliability of evidence, although if the evidence is "inherently vague or incredible" that would not satisfy the Section 231. If there is some relevant and admissible evidence, direct or circumstantial touching on all elements of the offence, then there is a prima facie case, and the accused must be put to their defence (*State v. Eliko Mototabua* [2004] HAC 020/02S. In *State v. Saimoni Kaitani & 3 Ors.* [2005] HAC044/04S (per Gates J)).

5. Having heard evidence of 11 witnesses called by the Prosecution, and bearing in mind Sections 231(1) and (2) of the Criminal Procedure Act 2009 and Sections 67(1) and 66(1) of the Crimes Act, I am of the view that there is a *prima facie* case exists against 1<sup>st</sup> to 15<sup>th</sup> Accused, requiring them to be called upon to make their defences on each count with which they are charged. There is no evidence against the 16<sup>th</sup> Accused Ilisapeci Sovanatabua Natau to put to her defence.

6. All Accused are charged with Sedition. Section 67(1) of the Crimes Act 2009 defines the offence of Sedition as follows:

A person commits Sedition if the he or she —

*(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do any act with a seditious intention;*

*(b) utters any seditious words;*

*(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or*

*(d) imports any seditious publication, unless he has no reason to believe that it is seditious.*

7. A "seditious intention" is an intention defined in Section 66 (1) of the Crimes Act. Sedition intention is an intent:

*(i) to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established; or*

*(ii) to excite the inhabitants of Fiji to attempt to procure the alteration, otherwise than by lawful means, of any matter in Fiji as by law established; or*

*(iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in Fiji; or*

*(iv) to raise discontent or disaffection amongst the inhabitants of Fiji; or*

*(v) to promote feelings of ill-will and hostility between different classes of the population of Fiji.*

8. The elements of the offence of Sedition in this case are that:

- (a) the accused
- (b) did an act
- (c) with a seditious intention

9. The Court has to be satisfied at this stage that there is some evidence that each accused did the act alleged in the Information and that there is evidence on which assessors could properly come to the conclusion that those acts had the tendency either to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established or raise discontent or disaffection amongst the inhabitants of Fiji.
10. In coming to the conclusion as to the seditious intention, the sedition law in Fiji requires the court to apply the legal presumption with regard to seditious intention. In other words, in determining whether the intention with which any act was done was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his/her conduct at the time and under the circumstances in which he so conducted himself/herself [Section 66(2) of the Crimes Act]. Therefore, when the alleged act (in this case for example signing a Unilateral Declaration of Independence aimed at establishing a separate State) gives rise to a presumption as to a seditious intention the law requires that presumption to be rebutted by the Defence by introducing evidence to negate the seditious intention.
11. It is open to assessors to find in this case that the acts done by the accused, looked at objectively, had the tendency to produce the effect of bringing into hatred or contempt or to excite disaffection against the Government of Fiji or raising discontent or disaffection amongst the inhabitants of Fiji. It is all about what a reasonably informed observer would think of what the accused's intention was at the time he or she was doing those actions in the circumstances of the case.
12. Therefore, ultimately the decision rests on fact finders to decide whether the accused by doing the acts alleged did intend to produce those effects by reference to all the evidence, including the documents produced in the trial and perhaps the evidence of the accused if available, drawing such inferences

from the evidence as appear proper in the circumstances in which actions were done.

13. The Prosecution relies on caution statements of each accused made to police. The Counsel for 1<sup>st</sup> Accused and Counsel for 2<sup>nd</sup> to 16<sup>th</sup> Accused in their respective written submissions concede that 1 to 5<sup>th</sup> Accused had all agreed in their respective caution interviews that they had signed the Uluda Declaration [PE2A] and the Ra Petition to the ICJ [PE2A(6)].
  
14. It appears, on the face of the Uluda Declaration, that it is a Unilateral Declaration of Independence (UDI) by the entity "Ra Sovereign Christian State" within the territorial boundaries of the Republic of Fiji and the purported effect of which is to undermine the authority of the legally established government of Fiji in the Province of Ra. Therefore, it is properly open to the assessors, having regard to the statements contained in the Declaration (which advocate a setting up of a separate state in violation of territorial integrity of Fiji) to find that the acts of signing this document viewed objectively have a tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.
  
15. The Ra Petition to the ICJ is a document intended to be sent to the International Court of Justice, the Queen of England and the Secretary General of the United Nations. It contains statements calculated to undermine the Constitution of the Republic of Fiji and condemns the notion of 'mainstreaming' and mainstreaming is interpreted as a 'sign of unprecedented racial turbulence in days to come'. It contains statements such as:..'*A Constitution that enshrines mainstreaming which mandates the extermination of native Fijians*'...This document condemns the current government as a '*military backed dictatorship under which native Fijians have seen their indigenous status usurped under the barrel of the gun and their rights and freedoms muzzed in totality*'. It also states.. '*The past eight years of military dictatorship has foistered mainstreaming upon indigenous Fijians...*' *The Government has statutised the extermination of all forms of indigenous efforts....*' Therefore, it is open to the assessors to find that, by signing a document with such statements, the signatories intended to raise discontent or disaffection amongst the inhabitants of Fiji.

16. Article 4 (1) of the Constitution of the Republic of Fiji declares the Republic of Fiji to be a secular State and recognizes the religious liberty, as recognised in the Bill of Rights, as a founding principle of the State. [Section 4 (2)] Religious belief is personal; religion and the State are separate, [Section 4(3)] and specifically states that 'no person shall assert any religious belief as a legal reason to disregard this Constitution or any other law [Section 4(3) (d)]. This basic structure of the Constitution is also relevant to the issues at hand in this case.
  
- 17 I now turn on to examine evidence against each accused separately.

**Sedition charges relating to the signing of the Uluda Declaration and Ra Petition to the ICJ**

**1<sup>st</sup> Accused (counts 1 and 2)**

18. The caution statement of the 1<sup>st</sup> Accused was read by the interviewing officer Stg. Vilitati Bari in evidence. In that statement, the 1<sup>st</sup> Accused admits signing the Uluda Declaration [PE2A] and the Ra Petition to the ICJ [PE2A(6)]. The counsel for 1<sup>st</sup> Accused in his submission does not dispute the signing by the 1<sup>st</sup> Accused of both documents.
  
19. Having acknowledged his signatures, 1<sup>st</sup> Accused had given various excuses and denials in his caution statement. He says that he was shown only two pages and that his signatures were obtained by deception. He further says that he signed on the pretext of saving the indigenous, fishing and land rights (Youbula) and retention of the Great Council of Chiefs and was not aware that they were to do with the establishment of a new government. His Counsel at times took a different stance and asserted that 1<sup>st</sup> accused signed those documents in his capacity as a witness as opposed to a declarant.
  
20. As per the answers given by the 1<sup>st</sup> accused, it appears that 1<sup>st</sup> Accused's caution statement is a mixed statement containing admissions, denials and excuses. This statement is an out-of-court mixed statement not tested in cross examination and not given under oath. Therefore, unless his claims are

substantiated on an evidential basis, the court has to accept his admission to signing and a less weight would be attached to his excuses and denials. It is a matter for the assessors, having considered all the circumstances and evidence of the 1<sup>st</sup> Accused, if available, to decide whether the placing of the signatures is an intentional act on the part of the 1<sup>st</sup> Accused. It is also up to fact finders to decide the capacity in which the 1<sup>st</sup> accused signed those documents. I therefore find that there is some evidence on the *actus reus* of the offence of Sedition against the 1<sup>st</sup> Accused.

21. In order to prove the seditious intention, the Prosecution is substantially relying on caution statement and the contents of the documents, Uluda Declaration [PE2A] and the Ra Petition to the ICJ [PE2A(6)], which the 1<sup>st</sup> accused is admitted to have signed.
22. Contents of the paragraphs 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, of Uluda Declaration has been read to the 1<sup>st</sup> Accused at the interview and he in turn had admitted that those statements would promote feelings of enmity between different communities, religious groups, and classes of the community thereby bringing hatred or excite disaffection against the current government of Fiji established by law.
23. The Uluda Declaration makes references to the Ra Petition to the ICJ and both documents have been adopted on the 28<sup>th</sup> October, 2014 and are tendered by Prosecution as part and parcel of one bound document together with the Ra Constitution. Therefore all documents should be read and understood as a whole.
24. I am satisfied that there is evidence on which assessors could properly come to the conclusion that acts of the 1<sup>st</sup> Accused had the tendency either to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established or raise discontent or disaffection amongst the inhabitants of Fiji.

**2<sup>nd</sup> Accused (Counts 3 and 4)**

25. Interviewing officer WIP Loraini Seru read the caution statement of the 2<sup>nd</sup> Accused in evidence. At question 47, 2<sup>nd</sup> Accused admits signing the Uluda Declaration voluntarily. She identified her signature at page 8 of the Uluda Declaration. At question 59, 2<sup>nd</sup> Accused identifies the Ra Petition to the ICJ which Mereoni undertook to take to the International Court of Justice. WIP Seru gave evidence that 2<sup>nd</sup> Accused identified her signature at page 15 of the Ra Petition to the ICJ.

**3<sup>rd</sup> Accused (5<sup>th</sup> and 6<sup>th</sup> counts)**

26. Caution statement of the 3<sup>rd</sup> Accused was read in evidence. At question 43 of his caution statement, he admits signing the Uluda Declaration. At question 52, he also admits signing the Ra Petition to the ICJ. He has given certain explanations why he signed. It is up to the assessors having considered all evidence lead in the trial to decide as to what weight they should give to his out of court statements.

**27. 4<sup>th</sup> Accused (7<sup>th</sup> and 8<sup>th</sup> Counts)**

Caution statement of the 4<sup>th</sup> Accused was read in evidence. At questions 29 and 30 of her 2<sup>nd</sup> caution statement, she admits signing the Uluda Declaration. She also admits signing the Ra Petition to the ICJ at questions 51 and 52 of her second caution statement. She admits having agreed, upon being explained, to the contents of those documents.

**28. 5<sup>th</sup> Accused (11<sup>th</sup> and 12<sup>th</sup> counts)**

Caution statement of the 5<sup>th</sup> Accused was read in evidence. At question 17 of his 2<sup>nd</sup> caution statement, he admits signing the Uluda Declaration. At question 28 of his second caution statement, 5<sup>th</sup> Accused also admits signing the Ra Petition to the ICJ.

**Sedition charges relating to the taking of an oath as a Minister of Cabinet and signing of the Ra Christian State Document**

29. 4<sup>th</sup> to 15<sup>th</sup> Accused are each charged with Sedition for taking an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite



disaffection against the Government of Fiji as by law established. They are also charged with Sedition for signing a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

30. Article 2 (6) of the Constitution of the Republic of Fiji prohibits any attempt to establish a Government other than in compliance with the Constitution and makes anything done to further that attempt invalid, having no force or effect.
31. Taking an oath in whatever form to serve as a cabinet minister in an unconstitutional or illegitimate entity will no doubt undermine the authority of the legally elected government of Fiji and its ministers. It is properly open to the assessors to find that the act of taking an oath as a cabinet minister in a rival entity has the tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.
32. The signatories to the document titled "Ra Sovereign Christian State" (PE2(B)) declares themselves to be democratically elected (by consensus) leaders and declare the province of Ra to be an independent and sovereign State known as the 'Ra Sovereign Christian State'. They also declare their intention to put immediate end to all self-serving governments of all persuasions in Fiji as from the date of this Declaration. They reject outright what they call the 'mainstreaming constitution of the current Government', assented to on 6<sup>th</sup> September, 2013.
33. This document makes reference to Uluda Declaration (UDI) signed on 28<sup>th</sup> October, 2014 where it is stated at paragraph 8.. *"We, people of the Ra Sovereign Christian State in exercise of our right to self-determination, believe that our subsisting common law applies unilaterally to all residents on the Ra lands and seas, and non Ra people are prohibited from performing ceremonial duties such as the worship of false gods on our lands"*.
34. The document titled "Ra Sovereign Christian State" further states: *"we also reject outright the use of the thesis written by Muslim man, Aiyaz Saiyed-Khaiyum, who is Fiji's current Attorney General and Justice Minister, and states... which documents in graphic style what he calls 'Sun Set Clause' which is the final solution*

*or 'Mainne Kampf' for the 'extermination' of the native Fijian race of people from the landscape of Fiji...".*

35. Read this document as a whole, it is open to the assessors properly to find that signatories of this document when they signed endorsed the content of this document which has the tendency to raise discontent or disaffection amongst the inhabitants of Fiji.

**4<sup>th</sup> Accused (counts 9 and 10)**

36. At question 42 of her 1<sup>st</sup> caution statement, the 4<sup>th</sup> Accused admits being sworn in as the Minister for Fijian Affairs, Culture, & Heritage & Minister for Health. At question 51, she also admits signing the document titled 'Ra Sovereign Christian State' and identifies her signature.

**5<sup>th</sup> Accused (counts 13 and 14)**

37. At question 41 of his 1<sup>st</sup> caution statement, the 5<sup>th</sup> Accused admits being sworn in as a Minister. At question 51, he also admits signing the document titled 'Ra Sovereign Christian State'.

**6<sup>th</sup> Accused (counts 15 and 16)**

38. At question 87 of his caution statement, the 6<sup>th</sup> Accused admits being sworn in as the Minister for Education. He also admits at question 89 signing the book the oath was taken. The signature is marked as PEX 2B(1).

**7<sup>th</sup> Accused (counts 17 and 18)**

39. At questions 52, 53, 55 of his caution statement, the 7<sup>th</sup> Accused admits being sworn in as the Minister for Agriculture, Fisheries, and Forests & Environment. He also admits signing the document titled 'Ra Sovereign Christian State'. The signature is marked as PEX 2B(10).

**8<sup>th</sup> Accused (Counts 19 and 20)**

40. 8<sup>th</sup> Accused, at question 54 of his caution statement, admits being sworn in as the Minister for Infrastructure and Transport. At question 53, he also admits signing the document titled 'Ra Sovereign Christian State'. The signature is marked as PEX 2B(7).

**9<sup>th</sup> Accused (counts 21 and 22)**

41. 9<sup>th</sup> Accused admits, at questions 115 and 121 of his caution statement being sworn in at the ceremony. His name appears against the portfolio -Minister for Youth and Sports in the document titled 'Ra Sovereign Christian State'. At questions 125 and 126, he admits signing the document titled 'Ra Sovereign Christian State'. The signature is marked as PEX 2B(3).

**10<sup>th</sup> Accused (counts 23 and 24)**

42. At question 54 of his caution statement 10<sup>th</sup> Accused admits being sworn in as the Minister for foreign Affairs. At question 49, he admits signing the document titled 'Ra Sovereign Christian State'. The signature is marked as PEX 2B(6).

**11<sup>th</sup> Accused (counts 25 and 26)**

43. At question 54 and 56 of his caution statement, 11<sup>th</sup> Accused admits being sworn in as the Minister for Tourism. At questions 57 and 58, he also admits signing the document titled 'Ra Sovereign Christian State'. The signature is marked as PEX 2B(8).

**12<sup>th</sup> Accused (counts 27 and 28)**

44. At question 38 of her caution statement, 12<sup>th</sup> Accused admits being sworn in as the Minister for Communication and signing the document titled 'Ra Sovereign Christian State'.

**13<sup>th</sup> Accused (Counts 29 and 30)**

45. At questions 42 and 45 of his caution statement, 13<sup>th</sup> Accused admits being sworn in as a Minister. He also admits signing the document titled 'Ra

Sovereign Christian State' as the Minister for Defence, Security and Home Affairs. The signature is marked as PEX 2B(9).

**14<sup>th</sup> Accused (31<sup>st</sup> and 32<sup>nd</sup> Counts)**

46. At question 86 of his caution statement, 14<sup>th</sup> Accused admits being sworn in as the Minister for Public Relations. He also admits signing his name after taking the oath. At question 100, he admits signing his name after taking oath. A signature appears against his name at page 11 of 12 of the document titled 'Ra Sovereign Christian State'. Therefore it is for the assessors to decide whether he signed the document titled 'Ra Sovereign Christian State'.

**15<sup>th</sup> accused (Counts 33 and 34)**

47. 15<sup>th</sup> Accused admits signing the document titled 'Ra Sovereign Christian State'. His signature is marked PEX2B(11). He denies that he was sworn in. However, at page 11 of 12 of the document titled 'Ra Sovereign Christian State', a signature appears against his name under the portfolio, Minister for Religious Affairs. He admits at question 33 that this document was brought over for him to sign. He also admits participating in the oath taking on the 3<sup>rd</sup> November 2014 at the Uluda House. Therefore, having had regard to all the circumstances, it is for assessors to decide whether he signed the document titled 'Ra Sovereign Christian State'.
48. I am satisfied that there is evidence on which assessors could properly come to the conclusion that acts of the 2<sup>nd</sup> to 15<sup>th</sup> Accused had the tendency either to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established or raise discontent or disaffection amongst the inhabitants of Fiji.

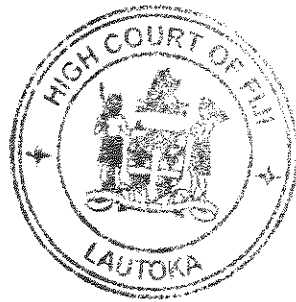
**16<sup>th</sup> Accused (counts 35 and 36)**


49. In her caution statement, 16<sup>th</sup> Accused has not admitted that she took an oath as a minister. She also denied signing a document and her signature does not appear against her name in the document titled 'Ra Sovereign Christian State'. There is no evidence that 16<sup>th</sup> accused took oaths to serve as a Cabinet Minister. There is also no evidence that she signed a document titled 'Ra Sovereign Christian State'. This fact was confirmed by the investigating

officer WIP Seru. The State concedes that there is no case to answer for the 16<sup>th</sup> Accused. I find that there is no evidence against the 16<sup>th</sup> Accused.

### Conclusion

50. There is *prima face* evidence against 1<sup>st</sup> to 15<sup>th</sup> Accused that each of them did acts with a seditious intention. Therefore, I put 1 to 15<sup>th</sup> accused to their defences in respect of each count with which they are charged. There is no case for the 16<sup>th</sup> Accused to answer. I acquit the 16<sup>th</sup> accused accordingly. I now explain 1<sup>st</sup> to 15<sup>th</sup> Accused their rights in defence.



  
Aruna Aluthge  
Judge

AT LAUTOKA

31<sup>st</sup> August 2017

Solicitors: Office of the Director of Public Prosecutions for the State  
Kevueli Tunidau Lawyers for 1<sup>st</sup> Accused  
Aman Ravindra Singh Lawyers for 2<sup>nd</sup> to 16<sup>th</sup> Accused