

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 with Mr. S. Babitu for State
Mr. K. Tunidau for 1st Accused
Mr. A. Ravindra Singh for 2nd to 15th Accused

Date of Hearing: 4th September, 2017

Date of Ruling: 4th September, 2017

RULING- MISTRIAL- II

1. After the pronouncement of the Ruling on No Case to Answer (Ruling), Counsel for 2nd to 15th Accused Mr. A.R. Singh made an oral submission for a 'Mistrial' on following grounds:
 - a. That the trial Judge had gone beyond his limit –

while the test for no case to answer is simply whether there is a case to answer or not this ruling appears very much having gone further than just the test.

- b. That there are parts in the Ruling which were never brought into evidence by the Prosecution.
 - c. that the Ruling has shifted the burden of proof to the Defence.
2. This application was made in open court when the Court resumed the trial on 4th September, 2017. Having considered the application and the objection raised by the Prosecution, the application was dismissed then and there from the bench to ensure a speedy trial. I hereby give my written reasons for the dismissal.
 - a. **The trial Judge had gone beyond his limit -While the test for no case to answer is simply whether there is a case to answer or not this ruling appears very much having gone further than just the test**
3. Counsel for 2nd to 15th Accused argued in his submission on no case to answer application that there is no evidence against 2nd to 15th Accused that they did any act with a seditious intention to put them to their defences.
4. At the no case stage, the Court has to decide that there is some evidence on each element of the offence of Sedition. In respect of the physical element of the offence of Sedition, the Court in its Ruling found on the basis of caution statements of each Accused tendered in evidence, that there is prima face evidence that 2nd to 15th Accused did an act to satisfy the physical element or *actus reus* namely that 2nd to 15th accused signed the Uluda Declaration and 2nd to 15th Accused took an oath as ministers and signed the Ra Christian State Document.
5. To test whether there is some evidence on the mental element of Sedition, Court had to look at contents of all the documents tendered in evidence in light of the legal presumption of the Crimes Act.

6. In order to satisfy the test at the no case stage, the Court can't just mark a passing remark that there is evidence of seditious intention on the part of the Accused. Instead, it has to point out at least some pieces of evidence on which the assessors could possibly come to the conclusion that Accused did the particular acts with seditious intention. It is this process that has come in for heavy criticism by the Counsel for 2nd to 15th Accused.

(b) There are parts in the Ruling which were never brought into evidence by the Prosecution

7. It should be emphasised that anything that was not led in evidence in the Prosecution case was included in the Ruling. Paragraphs 15 of the Ruling makes reference to certain parts of the Ra Petition to the ICJ. Although those parts were not read in evidence through any of the Prosecution witnesses, the entire document was tendered in evidence as part of the Prosecution case. This document was marked not merely for the purpose of identification but to prove its contents and the Prosecution relies on them to show that when 1st to 5th Accused signed this document they had a seditious intention. Therefore, entire document was evidence before this Court to be considered at the no case stage so that Court can be satisfied that there was a case to answer.

8. In the same way, the Ruling, at paragraph 32, makes reference to certain parts of the Uluda Declaration and, at paragraph 33, makes reference to certain parts of the Ra Christian State document, both the documents were tendered in evidence by the Prosecution. Therefore contents of the entire document are evidence before this Court.

9. At paragraph 16 of the Ruling, the Court has referred to certain articles of the the Constitution of the Republic of Fiji. The Counsel for 2nd to 15th Accused argues that those parts were never brought up in evidence during Prosecution case. It is true that those specific articles were not tendered in evidence as part of the Prosecution case. However, the Counsel for 2nd to 15th Accused, during cross examination, referred to the Constitution and attempted to tender certain parts of

the Constitution in evidence. At that stage, the Court clearly informed the Counsel that it will take judicial notice of the Constitution.

10. Having taken judicial notice of the Constitution, the Court considered the constitutional provisions cited at paragraph 14 of the Ruling in light of evidence led during prosecution case in order to satisfy itself that there was prima face evidence open for the assessors to properly come to the conclusion as to a seditious intention of the Accused.
11. In order to come to the conclusion that *prima face* evidence was available as to a seditious intention in relation to each accused, the Court necessarily had to refer to all the documents tendered in evidence during prosecution case including that of Mereoni's presentation and its transcribed English version. It is in evidence that, before the signatures were obtained to those documents, Mereoni who was admittedly the author of those documents had conducted series of presentations to explain the idea behind those documents and, one of such presentations, video recorded by the 3rd Accused, was fully played in Court.
12. In that presentation, Mereoni made specific reference to the current Constitution of the Republic of Fiji condemning its non negotiable principles like mainstreaming, and advocated the establishment of a Christian State. I quote verbatim the following part of transcribed English translation her presentation that made reference to the Constitution:

"The 1997 Constitution of Fiji (Yavu ni Vakavulewa) has been erased. I then asked myself, what will be the law now. If we know the law, this is one dangerous thing because we are kept in the Constitution 1997. I received a chart and I saw in that chart on page 2 it forward under non-negotiable principle of the laws of Fiji, point number 6: the mainstreaming of Fiji indigenous people in a modern progressive Fiji. Once I read that my antenna stood up as I knew these same laws was implemented to the Abiogenists, now they brought it to clear us away, same way it happens in Australia. We might say, how did we get vanished?, by shooting us with guns, no, by using the law, we use the law to legalize the extermination of one generation namely the Statutory Still, the using of the law so it looks legal but it cause the extinction of our generation. These are some of the

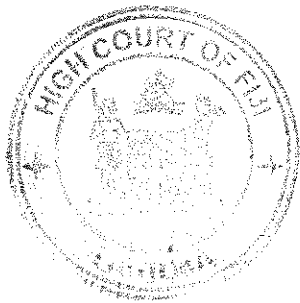
things that I discovered so I came and wrote a letter to Netani Rika at The Fiji Times and I personally took it to The Fiji Times and they told me that my article cannot be published in The Fiji Times, I don't have the right to do that, every things has been monitored"

13. The Court considered Mereoni's presentation in its entirety and the resultant documents signed by the Accused in light of the basic structure of the Constitution of the Republic of Fiji to determine whether the particular acts admitted by the Accused are *prima face* evidence on which the assessors, having regard to the statutory presumption in the Crimes Act, could properly come to the conclusion that Accused did those acts with a seditious intention.
14. Therefore, the argument of the Counsel for 2nd to 15th Accused that there are parts in the Ruling which were never brought into evidence by the Prosecution is misconceived and baseless.

c. Burden of Proof

15. The Counsel for 2nd to 15th Accused argues that the Ruling has shifted the burden of proof to the Defence.
16. In its pretrial Ruling dated 27th February, 2017, this court clearly indicated the test and standard to be applied in this trial *vis a vis* burden of proof. See: *State v Niudamu* [2017] FJHC 145; HAM30.2017 (27 February 2017). That position has never changed. At paragraph 10 and 14 of the Ruling, this Court applied just that test to ascertain whether the particular acts admitted by the Accused are *prima face* evidence on which the assessors, having regard to the statutory presumption in the Crimes Act, could properly come to the conclusion that Accused did those acts with a seditious intention.

17. The overall burden to prove the Seditious intention does not shift to the Defence and it continues to lie with the Prosecution. Nowhere in the Ruling is it stated that that overall burden shifts to the Defence. It appears that the Counsel for 2nd to 15th Accused has not grasped the test (as discussed in the pre trial ruling) to be applied in a situation where the Prosecution evidence gives rise to a statutory presumption as to the acts.
18. This Court has to apply the legal presumption in the Crimes Act. Intention to produce a particular result of the acts has to be ascertained by applying this presumption and the contents of the documents including caution statements of each accused. This presumption is part of criminal law relating to Sedition in Fiji despite its removal from English law by Section 8 of the Criminal Justice Act 1967.
19. Therefore, it is open to the assessors, having regard to the statements contained in documents to find that the acts of signing the Uluda Declaration and taking an oath as a cabinet minister, viewed objectively, have a tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established and to raise discontent or disaffection amongst the inhabitants of Fiji respectively.
20. The Prosecution case was led on this basis of pre-trial Ruling and opened their case on the basis that the Assessors would have to consider the whole of the documents which were in evidence. The Court had to look at the whole of the evidence and apply the relevant law in order to make an assessment of whether it is properly open to the Assessors to find that these were indeed seditious acts done with seditious intention.
21. The Ruling on legal issues was delivered in the absence of the assessors. Therefore, in any event, no prejudice will be caused to the Defence.
22. Application made for mistrial is dismissed.




Aruna Aluthge
JUDGE

At Lautoka
4th September, 2017

Solicitors: Office of the Director of Public Prosecution for the State
Kevueli Tunidau Lawyers for the 1st Accused
Aman Ravindra Singh Lawyers for 2nd - 15th Accused