

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 037 OF 2018S**

**STATE**

**vs**

**VILIAME KAWA**

**Counsels** : **Mr. M. Vosawale and Mr. N. Sharma for State**  
**Mr. M. Young for Accused**

**Hearings** : **9 and 10 March, 2020.**

**Ruling** : **10 March, 2020.**

**Written Reasons** : **16 March, 2020.**

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**WRITTEN REASONS FOR VOIR DIRE RULING**

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1. On 9 March 2020, the accused was charged with the following information:

***“Statement of Offence***

**UNLAWFUL CULTIVATION OF ILLICIT DRUGS: *Contrary to Section 5 (a) of the  
Illicit Drugs Control Act 2004.***

*Particulars of Offence*

*VILIAME KAWA, on the 12<sup>th</sup> day of January, 2018 at Nakasaleka, Kadavu in the Southern Division, without lawful authority cultivated 37 plants of illicit drugs known as Cannabis Sativa with a total weight of 15 kg.”*

2. In the course of police investigation, the accused was caution interviewed by police at Kadavu Police Station on 12 and 16 January 2018. During the caution interview, the accused allegedly admitted the above offence.
3. On 9 and 10 March 2020, in a voir dire hearing, the accused, through his counsel, challenged the admissibility of his police caution interview statement. He appeared to allege that police unfairly pressured him to admit the offence by threatening to arrest his wife at Sigatoka Police Station.
4. The prosecution called 5 witnesses – all police officers. The defence called only one witness, that is, the accused himself. Altogether, there were 6 witnesses, on whose evidence, the court will have to make a decision. I heard the parties on 9 and 10 March 2020. After listening to the evidence, I ruled the accused’s caution interview statements as admissible evidence. I said, I would give my reasons later. Below are my reasons.
5. The law in this area is well settled. On 13<sup>th</sup> July 1984, the Fiji Court of Appeal in **Ganga Ram & Shiu Charan v Reginam**, Criminal Appeal No. 46 of 1983, said the following. “...it will be remembered that there are two matters each of which requires consideration in this area. **First**, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what

has been picturesquely described as the “flattery of hope or the tyranny of fear” Ibrahim v R (1941) AC 599, DPP V Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ C-E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account....”

6. I have carefully listened to and considered the evidence of all the prosecution and defence’s witnesses. I have carefully examined their demeanors when they were giving evidence in court. I have carefully considered the parties’ closing submissions.
7. The voluntariness of the accused’s caution interview statements were disputed by the parties. The accused said, the police pressured him to admit the offence by threatening to arrest his wife at Sigatoka Police Station. The police denied the above. The police said they gave the accused all his legal rights. They said, they did not pressure the accused to admit the offence. They said, the accused voluntarily admitted the offence out of his own free will.
8. After considering both the prosecution and defence’s case, I came to the conclusion that the accused gave his interview statements to the police voluntarily and out of his own free will. On the evidence, I also found that the police were not unfair to the accused, while he was in their custody. Even the accused admitted under cross-examination, that the police were not harsh to him, while he was in their custody. He said, they fed him well while in custody.

9. The above were the reasons why I ruled the accused's caution interview statements as admissible evidence. The acceptance or otherwise of the accused's interview statements, at the trial proper, will be a matter for the assessors. I rule so accordingly.



  
Salesi Temo  
JUDGE

**Solicitor for the State** : Office of the Director of Public Prosecution, Suva.  
**Solicitor for the Accused** : Legal Aid Commission, Suva.