

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

**CRIMINAL CASE NO: HAC 57 of 2022**

**STATE**

**V**

**MALAKAI LUVENITOGA**

**Counsel** : Ms. Sheenal Swastika for the State  
Ms. Keli Vulimainadave for the Accused

**Hearing** : 14 August 2023

**Ruling** : 7 September 2023

**RULING**

**Introduction**

**[1]** As per the Information filed by the Director of Public Prosecutions (DPP), on 28 July 2022, the Accused is charged with the following offence:

***Statement of Offence***

**ATTEMPTED MURDER**: Contrary to Section 44 (1) and 237 of the Crimes Act 2009.

***Particulars of Offence***

**MALAKAI LUVENITOGA**, on the 14<sup>th</sup> day of April 2022, at Lautoka, in the Western Division, attempted to murder one **URAIA VOTA**.

**[2]** On 1 June 2022 and on 6 July 2022, this Court made order for the Accused to be taken to St. Giles Hospital for a complete psychiatric evaluation to be conducted on him. Pursuant to the said order, the Accused was taken to St. Giles for examination and a Psychiatric Evaluation Report, dated 28 September 2022, has been submitted to Court.

[3] On 14 February 2023, an application was made by the Learned Counsel for the Accused for a further psychiatric evaluation to be conducted on him. Pursuant to the said order, the Accused was taken again to St. Giles for examination and a Psychiatric Evaluation Report, dated 25 May 2023, has been submitted to Court.

[4] On 6 June 2023, an application was made by the Learned State Counsel, for conducting an Inquiry by this Court as to the unsoundness of mind of the Accused. This application was made under the provisions of Section 104 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”).

### **The Law**

[5] PART X of the Criminal Procedure Act sets out the **PROCEDURE WHERE ACCUSED PERSON HAS A DISABILITY** [Sections 104-109 of the Criminal Procedure Act].

[6] Section 104 of the Criminal Procedure Act (as amended) is titled “**Inquiry by Court as to the unsoundness of mind of Accused**”. For ease of reference, the entire Section is reproduced below:

*104. - (1) When, in the course of a trial at any time after a formal charge has been presented or drawn up, the court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 223 for the purposes of —*

*(a) obtaining a medical report; and*

*(b) such other enquiries as it deems to be necessary.*

*(2) If the court is of opinion that the accused person is of unsound mind so that he or she is incapable of making a proper defence, it shall postpone further proceedings in the case and shall —*

*(a) act in accordance with any law dealing with mental health; or*

*(b) in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.*

*(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he or she will be properly taken care of and*

*prevented from doing self-injury or injury to any other person, and for his or her appearance before the court or such officer as the court appoints in that behalf.*

*(4) The court may order that the accused person may be confined in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order.*

*(5) Any order of the court under sub-section (4) shall be sufficient authority for the detention of such accused person until —*

*(a) the court shall make a further order in the matter; or*

*(b) the court finding him incapable of making a proper defence shall order the accused person to be brought before it again in the manner provided by sections 106 and 107.*

- [7]** Sections 23 and 27 of the Mental Health Act No. 54 of 2010 (Mental Health Act) complements the provisions of the Criminal Procedure Act. Section 23 stipulates when detention is permissible and is re-produced below:

*23. A person may be detained for assessment in a mental health facility only -*

*(a) on a recommendation certificate given by a medical practitioner, as provided by section 24;*

*(b) on the order of a magistrate or judge, as referred to in section 27;*

*(c) on transfer from another health facility, as provided by section 28;*

*(d) on action taken by a medical director in relation to a voluntary patient under section 20; or*

*(e) action by the police officer under section 25.*

- [8]** Section 27 provides: *A person may be taken to and detained in a mental health facility in accordance with an order made by a court on the recommendation of a medical practitioner under the Criminal Procedure Decree 2009 and the Crimes Decree 2009.*

### **The Hearing**

- [9]** During the Inquiry, Court heard the testimony of Dr. Kiran Gaikwad, the Principal Medical Officer of the St. Giles Hospital. Dr. Gaikwad had completed his MBBS Degree at Pune University, India, in 1999. He is also the recipient of a Post Graduate Diploma in Mental Health from Fiji National University (FNU) and an International Diploma in Mental Health,

Human Rights and Law from Indian Law Society (ILS), Pune, India.

- [10] Since the year 2002, the Doctor has been working with the Ministry of Health. He has been serving at St. Giles Hospital for the past 12 years (since 2011). He had been Acting as Medical Superintendent of the St. Giles Hospital for about 5 years.
- [11] As per the order made by this Court on 14 February 2023, Dr. Gaikwad had conducted a psychiatric evaluation on the Accused. Pursuant to the said psychiatric evaluation, the Doctor had tendered a comprehensive Psychiatric Evaluation Report, dated 25 May 2023. The said Report was marked as 'X' during the inquiry.
- [12] The Doctor confirmed that the Accused, Malakai Luvenitoga, has a well-established history of mental illness, namely schizophrenia, since 2014. He has had 6 admissions at St. Giles Hospital since then-May 2014, October 2014, January 2017, May 2018, March 2022 and May 2023 (which was on the order of this Court). The longest admission was from 31 October 2014 to 2 December 2014.
- [13] Dr. Gaikwad also commented upon a previous Psychiatric Evaluation Report, dated 28 September 2022, which was prepared by St. Giles Hospital.
- [14] The Doctor stated that for the purpose of his latest examination, the Accused was admitted to the St. Giles Hospital for observation from 3 May 2023 to 22 May 2023.
- [15] Dr. Gaikwad testified that the Accused has been diagnosed with mental illness, namely schizophrenia and has been commenced on medications. Schizophrenia is the most chronic and disabling of the severe mental disorders, associated with abnormalities of brain structure and function, disorganised speech and behaviour, delusions, and hallucinations. It is sometimes called psychotic disorder or a psychosis. Medications are the mainstay of treatment for schizophrenia. Drug therapy for the disorder, however, is complicated by several factors: the unpredictability of a given patient's response to specific medications, the number of potentially troublesome side effects, the high rate of substance abuse among patients with schizophrenia, and the possibility of drug interactions between antipsychotic medications and antidepressants or other medications that may be prescribed for the patient. Most symptoms do get alleviated by medications and in some cases there is residual symptoms.

[16] The Doctor continued that the Accused is aware of his actions and nature and quality of conduct. When asked about legal proceedings, he did not seem to understand the role of a Judge. He stated that he has a Lawyer from legal Aid but he has already won the case. He is not fully aware of how to conduct himself in a Court room. The Accused may not have the ability to appraise the legal defences available to him or to plan legal strategy in Court.

[17] Therefore, in his opinion, Dr. Gaikwad stated that the Accused lacks the mental capacity to participate in his Court proceedings at present. He lacks the capacity to comprehend the legal proceedings. He may not be able to plan legal strategy. He has limited capacity to challenge prosecution witnesses realistically. He will not be able to answer questions during examination and cross examination in a reasonable manner.

[18] Dr. Gaikwad's conclusions, which are exclusively based on the history/information available, current observations made during the Accused's stay in hospital, current examination, personal interviews and assessment of the Accused's mental state, are as follows:

*"(1) That the accused is not fit to plead at present because he is in a relapsed state of his mental illness with delusional thoughts.*

*(2) It is highly likely that he acted under the influence of mental illness. However, he was also under the influence of alcohol at the time of the alleged criminal offence.*

*(3) He cannot be said completely fit to stand trial as he may answer during examination and cross-examination based on his delusional ideas which are not realistic.*

*(4) He needs to keep taking his medications and further improvement is possible but cannot be guaranteed.*

*(5) He can be a threat to other in the community in current state of his mind and needs to be kept in controlled environment".*

## **Conclusion**

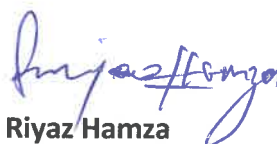
[19] Having heard the testimony of Dr. Gaikwad and carefully examining all the Medical Reports received in this case, Court is satisfied that the Accused may be of unsound mind and as such, incapable of making a proper defence in this case as at present. Therefore, there is a need for the Accused to be confined at a mental hospital or other suitable place of custody and to be given inpatient treatment over a period of time.

## **FINAL ORDERS**

[20] In the light of the above, the final orders of this Court are as follows:

1. The Accused is to be confined at the St. Giles Hospital for medical treatment and supervision for a period of 4 months from the date of this order.
2. The Officer-in-Charge of the Natabua Remand Centre is to facilitate the transfer of the Accused to the custody of the St. Giles Hospital for medical treatment and supervision forthwith.
3. The Medical Superintendent of the St. Giles Hospital is to forward a report to this Court at the conclusion of the aforesaid period of 4 months.
4. Further proceedings in this case are postponed until 24 January 2024.



  
Riyaz Hamza

**JUDGE**  
**HIGH COURT OF FIJI**

**AT LAUTOKA**

Dated this 7<sup>th</sup> Day of September 2023

<b>Solicitors for the State</b>	<b>:</b>	<b>Office of the Director of Public Prosecutions, Lautoka.</b>
<b>Solicitors for the Accused</b>	<b>:</b>	<b>Office of the Legal Aid Commission, Lautoka.</b>