

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Action No. HAC 166 of 2025

The State –v-

- 1. Neil Prakash Sharma**
- 2. Josaia Voreqe Bainimarama**
- 3. Aiyaz Sayed-Khaiyum**

For the State: Ms. Tabuakuro L., Ms. Mishra P.

For Accused 1: Mr. Clarke W., Mr. Chang K.

For Accused 2 & 3: Mr. Sharma D., Ms. Fatima G.

Date of Hearing: 4th March 2026

Date of Ruling: 9th March 2026

RULING ON PRELIMINARY OBJECTION BY 1st ACCUSED ON
ADMISSIBILITY OF EVIDENCE

1. This matter was fixed for one month Trial from 2nd March to the 27th of March 2026.
2. On the first day of Trial, 2nd March 2026, counsel for the 1st Accused Dr. Neil Prakash Sharma made an application to defer the State’s case in order to lodge an objection against the evidence that was going to be led against him in the upcoming Trial.
3. More particularly, Accused 1 objects to the admissibility of the Tender Evaluation Committee report and minutes of Meeting for CTN 66/2011 and CTN 153/2011. Counsel submits that the basis for the charges against Neil Prakash Sharma stem from the above reports, which are based on source documents, the actual tender documents.
4. The State objected firstly as to the form and the manner that this objection was raised, arguing that it should have been moved in the form of a Motion. State counsel also

submitted that this application should have been raised by virtue of section 289 of the Criminal Procedure Act 2009 at a pretrial conference.

5. In any event the State argues that this application is premature and the objection is in fact a Trial issue that should be raised with the appropriate witness whilst they are on the stand.
6. Counsel for the 2nd and 3rd Accused advised that they would not formally adopt a position and would await the Court's ruling on the matter.
7. The Court accepted that Accused 1 had made an oral application raising a preliminary legal issue for the Court to resolve before the State opened its case and called the first witness.
8. The Court then directed that the 1st Accused file and serve written submissions in support of their position by the close of business on Monday the 2nd of March. The other parties had until the close of business on Tuesday the 3rd of March 2026 to file and serve their submissions, and the matter was fixed for hearing on Wednesday the 4th of March 2026.
9. Counsel for Accused 2 and 3 advised the Court that they would not be filing any written submissions.

The Hearing

10. The 1st Accused's objection was heard on Wednesday, the 4th of March. He made oral submissions based on the written submissions already filed and he also addressed the State's written submissions.
11. Counsel for Accused 2 and 3 also made oral submissions despite not filing written submissions. Accused 2 and 3 submit that the charges against them are dependent on the counts against the 1st Accused therefore the outcome of this ruling will also affect their charges.

12. In response the State also relies on the written submissions already filed

The submissions for the 1st Accused

13. The 1st accused submits that the State intends to rely on the following documents to prove its case

Tab	Prosecution Exhibit	Document
19	PE 19	Government Tender Board List of Bidders CTN 66/2011 from Abraham Wilson to Solomone Suguta (FPBS)
20	PE20	Tender CTN 66/2011 Evaluation Sheet prepared by Solomone Suguta (FPBS)
21	PE21	MOH Tender Evaluation Committee meeting Minutes prepared by Solomone Suguta (“TEC 66 Sheet”)
37	PE 40	Government Tender Board List of Bidders CTN 153/2011 from Abraham Wilson to Nehal Kapadia (FPBS)
38	PE 41	Tender CTN 153/2011 Evaluation Template & Cost Evaluation prepared by Nehal Kapadia (“TEC 153 Sheet”)
42	PE 45	MOH Tender Evaluation Committee meeting Minutes – 20/10/11 (“TEC 153 Minutes”)

14. The objection is based on non-disclosure of source material and the fact that the TEC 66 Sheet and TEC 66 Minutes and TEC 153 Sheet and TEC 153 Minutes are inadmissible hearsay evidence because they consist of a compilation and summary of information drawn from other source material.

15. Section 14 (2) (c) and (e) of the Constitution guarantees a person accused of an offence, the following rights and protections: -

“(2) Every person charged with an offence has the right—

(c) to be given adequate time and facilities to prepare a defence, including if he or she so requests, a right of access to witness statements

(e) to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence;”

16. Section 15 (1) of the Constitution guarantees an Accused person the right to a fair Trial, and section 15 (12) provides as follows: -

“(12) In any proceedings, evidence obtained in a manner that infringes any right in this Chapter, or any other law, must be excluded unless the interests of justice require it to be admitted.”

17. The prosecution in every criminal case has a duty to disclose all relevant information to the defence and the leading authority is Rohit Ranjit Kumar vs State Criminal Appeal No. AAU 16 of 2013. Although the prosecution is not required to call evidence or witnesses it considers unreliable, fairness demands that it disclose any material in it that casts doubt on the strength of its case or reliability of witnesses it intends to call.

18. This authority is derived from earlier authorities like R vs Keane [1994] 2 All ER 478 (UK Court of Appeal Criminal Division), R vs Ward [1993] 1 WLR 619, and R vs Davis [1993] 1 WLR 613. These authorities establish the principles of materiality, the prosecutor’s duty to disclose, and the court’s role in adjudicating claims of public interest immunity.

19. The issue of non-disclosure is deeply connected to Dr. Sharma’s hearsay objection. The prosecution case entirely rests on a foundation that the procurement process in CTN 166 and CTN 153 was entirely normal from start to finish and that it would have achieved the aims of the procurement, benefit Fiji by bringing cost savings in the provision of medical infrastructure services but for the actions of Accused 1. He disputes each and every element of that foundation and a fair trial is essential to enable him to do that.

20. The prosecution has confirmed that they have possession of all of the tender documents for CTN 66/2011. However they state that it is impracticable to disclose it because of the manner in which it is bound.
21. While Government tender documents seeking bids have been disclosed, none of the tender made by all the bidders have been disclosed for CTN 66/2011 and only partial disclosure is made of CTN 153/2011 to allow the defence to properly interrogate them. Furthermore, none of the working papers are provided to enable the Defence to properly interrogate the bids and the assessment process as recorded in the TEC 66 sheet and TEC 153 sheet. In addition, the parties suffer the same disadvantage in relation to the TEC 66 minutes and TEC 153 minutes because they clearly draw their conclusions from the contents of their respective sheets.
22. This means that it will be impossible for defence counsel and courts to test the accuracy of the TEC sheets, any of the evidence of the TEC deliberations, the witnesses that will be called in relation to that exercise.
23. The inherent risk in accepting the accuracy of the reports is further demonstrated by the TEC 153 sheet and TEC 153 minutes, which recorded that the model proposed by Hospineer was a “closed system” and therefore excluded. Subsequent disclosure by the State revealed that this conclusion was incorrect. The error was identifiable only because the State happened to disclose relevant evidence contradicting the recorded conclusion. This raised a critical question: what additional errors may be contained within the TEC 66 sheets, TEC 153 Minutes that the defence cannot detect due to the State’s continuing non-disclosure?
24. The prosecution has sought to justify its failure to disclose the full tender documentation on the basis that disclosure was said to be impractical. However as learned counsel for the Prosecution acknowledged on the record, this is an old case, and the State has had ample opportunity to resolve any practical difficulties and provided full disclosure. The most recent opportunity arose in or about November 2025, when the prosecution (incorrectly) advised both the Court and the defence that it

- had disclosed all material in its possession. It was only after counsel for Dr. Sharma specifically requested the tender documentation that the State then revealed that it did, in fact hold the complete set.
25. The prejudice to Dr Sharma's defence and the other Accused is self-evident.
 26. The basic rule at common law is that hearsay evidence is inadmissible in criminal proceedings and it renders inadmissible "any statement other than one made by a person while giving oral evidence in the proceedings....as evidence of any fact or opinion stated." There are common law exceptions to the rule in common law and statute. Those common law exceptions (res gestae, public information, reputation as to character, reputation or family tradition) are not available to the Prosecution in this case to provide an exception to the hearsay rule against admissibility.
 27. Archbold makes it clear that any new or additional exception to the hearsay rule must be created by statute (Myers vs DPP [1965] AC 1001). Unlike in the United Kingdom, New Zealand and Australia, Fiji has enacted no legislation expanding the statutory exceptions to the hearsay rule. Accordingly, Fiji remains governed by the common law principles applicable to hearsay. The only exception is section 4 of the Evidence Act 1944, but that does not apply to the documents that is being objected to.
 28. In the case of Makita (Australia) Pty Ltd vs Sprowles [2001] NSWCA 305 (NSW Court of Appeal) the Court emphasised the importance of disclosures and tendering of the material and information that underlie a report. The case deals with expert evidence and report and the rationale for the case also applies to the current case.
 29. The 1st Accused submits that the facts in the Myers case are closely analogous to the current case. Each of the TEC 66 sheet, TEC 66 minutes, TEC 153 sheet, and TEC 153 minutes constitute a record derived from summaries, assessments or opinions – such as whether a company submitted a bid or whether a proposed system was "closed" or "open" – all of which are themselves drawn from other source materials, namely the tender documents submitted by the tenderers. This reflects the classic form of hearsay identified in Myers, in which reports or records contain information supplied by third

- parties (in that case the manufacturer's employer responsible for recording the vehicle's details). As in Myers the impugned records here are not based on the personal knowledge of the witness but are instead secondary accounts of information originating from others and thus fall squarely within the common law prohibition on hearsay.
30. In each of TEC 66 sheet and TEC 153 sheet, this record was prepared by "Solo S" and "Arun R" in TEC 66 sheet and "Neha K" and "Asaeli R" in TEC 153 sheet. These witnesses prepared these sheets from information derived from other sources.
31. In Myers, the parties had accepted that such reports or summaries are hearsay. The issue was whether an exception could be found for it and there was none.
32. In Makita, the Court makes the essential point which is that a report must be supported by *admissible means the facts* that corroborates them. This means that each of the specific tenders must be tendered and rendered admissible by the usual means (by the makers of the tenders).
33. In answer to the State's submissions that this challenge was too late and should have been made earlier in the proceedings pursuant to section 289 of the Criminal Procedure Act 2009 prior to the Trial, Accused 1 submits that inquiries were made with the prosecution, but no disclosure of the source material was forthcoming. The second point is that the prosecution has been very slow in finalising its witness list (only 1 week before the Trial). The third point is that prosecution intimated to all parties in November 2025 that it had made full disclosure.
34. Section 289 does not negatively impact nor does it change the law on hearsay. The rule is a well-established common law principle that exists independently of procedural provisions such as section 289. It is also noteworthy that the section does not prevent a party from objecting to the admission of evidence that is clearly in breach of the rule against hearsay. If section 289 purported to remove an accused's right to object at trial, it would have said so.

35. Accused 1 therefore submits that TEC 66 sheet ad TEC 66 minutes and TEC 153 sheet and TEC 153 minutes be wholly excluded on the grounds that they are hearsay.

36. The 1st Accused submitted the following case authorities: -

- i. Makita (Australia) Pty Ltd vs Sprowles [2001] NSWCA 305
- ii. R vs Keane [1994] 2 All ER 478
- iii. Kumar vs State FJCA 62; AAU 16 of 2013 (26 May 2017)
- iv. Myers vs Director of Public Prosecution [1965] AC 1001
- v. Rex vs Patricia Wilson [2022] NICA 74 (9 December 2022)
- vi. R vs Secretary of State for the Home Department Ex Parte Simms & another [1993] 3 All ER 400
- vii. Pierson vs Secretary for the Home Department (HL) 577
- viii. The State vs Davendra Singh Criminal Case No. 17 of 1996 (29 September 1997)

Submission for the 2nd and 3rd Accused

37. Even though they had not filed any written submissions in this matter, counsel for the other 2 Accused persons also made oral submissions.

38. The 2nd and 3rd Accused endorse the submissions of the 1st Accused. They submit that the charges against them individually are dependent on the allegations against the 1st Accused therefore they adopt the position taken by the 1st Accused.

The submissions by the State

39. The Applicant (Accused 1 Neil Prakash Sharma) is charged with 2 counts of Abuse of Office contrary to section 139 of the Crimes Act 2009; 2 counts of Breach of Trust by Person Employed in the Public Service contrary to section 200 of the Crimes Act 2009

40. The Trial date has been fixed from the 2nd to the 27th of March 2026. This application was made on the first day of Trial.

41. The State notes that the challenge is two-fold, firstly that the minutes are derived from primary documents as such it is hearsay and secondly, that the non-disclosure of the source documents is prejudicial to the 1st Accused.
42. The issue before the Court is whether the Court should exclude the Ministry of Health Tender Evaluation Committee schedule and minutes for Tender CTN 66/2011 and CTN 153/2011 on the basis of hearsay and non-disclosure of source documents.
43. The State opposes the application and invites the Court to consider the context of the criminal charges. The charge arises from the breach of the Procurement Regulation 2010. In considering the Procurement Regulations 2010, it must be read in conjunction with the Procurement Policy Framework.
44. The argument that the minutes are hearsay is baseless and without merit. The minutes challenged by the 1st Accused are as follows: -
 - i. Proposed prosecution Exhibit 19 Government Tender Board List of Bidders CTN 66/2011 from Abraham Wilson to Solomone Suguta
 - ii. Proposed prosecution Exhibit 20 Tender CTN 66/2011 Evaluation sheet prepared by Solomone Suguta
 - iii. Proposed prosecution Exhibit 21 MOH Tender Evaluation Committee Minutes prepared by Solomone Suguta
 - iv. Proposed prosecution Exhibit 49 Government Tender Board List of Bidders CTN 153/2011 from Abraham Wilson to Nehal Kapadia
 - v. Proposed prosecution Exhibit 41 Tender CTN 153/2011 Evaluation template & cost evaluation prepared by Nehal Kapadia
 - vi. Proposed prosecution Exhibit 43 MOH submission of Laboratory Equipment tender evaluation for CTN 153/2011
45. The State submits that all documents above from the Government Tender Board including the Ministry of Health Tender Evaluation Committee schedule and minutes

for CTN 66/2011 and CTN 153/2011 are statutory records and requirements under the Procurement Regulation 2010 and Procurement Guidelines 2010.

46. Secondly, section 30 of the Procurement Regulation 2010 requires a tender for any procurements of goods valued above \$30, 000 in 2011.

47. The tender process is governed by principles of transparency, fairness, open competition, value for money and ethical use of government resources under section 3 of the Regulation.

48. Section 42 of the Procurement Regulation 2010 states,

“Evaluation of Bids

42.-(1) All bids received are to be evaluated in accordance with the evaluation criteria that were set up for that particular tender and in accordance with the Procurement Guidelines.

(2) The overall evaluation criteria shall be value for money, which may not necessarily be the lowest cost.”

49. The intended prosecution exhibits for the Prosecution Exhibits 19, 20 and 21 for the Tender CTN 66/2011 is essentially a record by virtue of the Regulation. This principle also applies to proposed prosecution Exhibits 40, 41 and 43.

50. Section 41 (3) of the Regulation permits the Board Secretary of the Government Tender Board to open all bids and record details in the tender register.

51. The State will call the maker of the documents. For prosecution Exhibit 19, Mr. Abraham Wilson is listed as a witness of the State. He will testify at trial about the letter and its content.

52. Mr. Solomon Suguta is the maker of the document for prosecution Exhibits 20 and 21, he is also a prosecution witness and he will testify to the contents of the document.

53. The State will also lead to testimony from Ms. Millie Low and Ms. Maire Wise who are prosecution witnesses about the Regulation; the procedures within the Fiji Procurement Office and the events surrounding CTN 66/2011 and CTN 153/2011.
54. The State submits that for the proposed prosecution Exhibits 40, 41 and 43, the maker of the documents is no longer available and this will be confirmed by FICAC witnesses and the Police. The State will also lead evidence from Mr. Solomonu Suguta and Mr. Ravendra Prasad as members of the tenders evaluation committee for CTN 153/2011 that they have personal knowledge of the creation and contents of these tender documents.
55. The State submits that the Ministry of Health Tender Evaluation schedule and minutes for tenders CTN 66/2011 and CTN 153/2011 are essentially a report that falls under section 133 of the Criminal Procedure Act 2009.
56. The State will call witnesses to testify to the creation, existence and contents of these documents.
57. The Ministry of Health tender records are not hearsay, but a report compiled with the procurement Regulation 2010 and the Procurement Guidelines 2010.
58. These reports are an integral part of the tender process as required under section 44 of the Regulation, which provides: -

Award by Board before signing a contract

44 Subject to provisions of regulation 48, approval of the Board is required before a contract is awarded to the successful bidder.”

59. The State submits that the records identified in the prosecution trial bundle are necessary in exercise of the power of the Government Tender Board under section 44 of the Regulation.

60. In general, the procuring Ministry tenders schedule and minutes must be submitted to the Government Tender Board as per regulation 44 of the Procurement Regulation to allow the Board to make a decision.
61. The State contends that the 1st Accused has misrepresented the disclosures served by the State.
62. The handing over notes by Mr. Waisea Bati of FICAC to Police during the investigation on 23rd March 2023, was disclosed as second phase disclosures to the 1st Accused on 16 February 2024. The handing over notes clearly shows that FICAC only had possession and custody for bidding documents submitted by suppliers for CTN 153/2011. Consequently, the Police only received bidding documents for CTN 153/2011.
63. There was no bidding document for CTN 166/2011 seized by FICAC during their investigation in 2012.
64. The bidding documents for CTN 153/2011 was disclosed in late October 2025 with the exclusion of 3 bidders namely Yuli Trading Corporation, Abbot and Meddent. All other bidding documents have been disclosed.
65. The state has invited the 1st Accused to view the manuals submitted by the 3 bidders above but they have not shown any interest.
66. Since the 3rd of March 2024, the 1st Accused has confirmed receiving the second phase disclosures in which the handing over notes particularise and confirm that bidding documents for CTN 66/2011 were not seized by FICAC in 2012.
67. The State submits that the non-disclosure of the 3 bidders namely Yuli Trading Corporation, Abbot and Meddent is not prejudicial to the 1st Accused. the 1st Accused has failed to demonstrate how such failure has prejudiced his defence.

68. The Court will ultimately decide on the weight to be attached to all the documentary evidence. The State therefore humbly requests that the application to exclude the Ministry of Health tender evaluation minutes for CTN 66/2011 and CTN 153/2011 based on hearsay be denied and the matter proceed to Trial.

69. The matter is now set for Ruling on this preliminary objection.

Analysis

70. In ruling on this preliminary objection, the Court must first address whether this matter was properly placed before the Court.

71. The State submits that this challenge should have been raised earlier by virtue of section 289 (and 290) of the Criminal Procedure Act 2009. In failing to do so, they are now stopped from raising this issue at this stage.

72. Section 289 appears at Part 18 of the Criminal Procedure Act 2009, and 289 sets out the objective of this Part of the Act. Section 290 is the operative section and for the purposes of this application, the relevant section is section 290, which provides as follows: -

Pre-trial orders

290 (1) Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to—

- (a) any determination as to the most appropriate locality of the court at which the trial should take place, and the transfer of the proceedings to the most appropriate court;
- (b) compelling the attendance of any witness or the production of any evidence at the trial;
- (c) compelling the provision by the prosecution to the defence of any briefs of evidence, copies of documents or any other matter which should fairly be provided to enable a proper preparation of the defence case;
- (d) a challenge to the use of any report or other evidence that may unfairly prejudice the defence case;
- (e) a challenge to the validity of the charge, complaint or information as disclosing no offence under the law;

- (f) a challenge to the proceedings on the grounds of the breach of any fundamental human right the accused person, or any applicable human rights issue;
- (g) any matter concerning the giving of an alibi notice and the information to be provided in such a notice; and
- (h) the signing of agreed facts under section 135(1) of this Act.” (Emphasis added)

73. Section 290 (2) provides that the Court may accept such applications “at any time that the Court determines” and section 290 (3) provides that the Court “may make any orders necessary to protect the rights of any party to the proceedings...”

74. This application was made by the 1st Accused, through his counsel on the first day of Trial before any evidence was led. The State and the other Accused have been served with his submissions setting out the basis for his objection to these documents. They are therefore aware of the 1st Accused’s position, and I find that this application is properly before the Court.

75. The principles of hearsay are well established and can rightly be stated to be trite law. In Horncastle [2009] EWCA Crim 964, Lord Thomas CJ defined it as follows: -

“the law of England and Wales has always insisted that it is ordinarily essential that evidence of the truth of a matter be given in person by a witness who speaks from his own observation or knowledge. It uses the legal expression “hearsay” to describe evidence, which is not so given, but rather is given second hand, whether related by a person to whom the absent witness has spoken, contained in a written statement of the absent witness, given in the form of a document or record created by him or otherwise.”

76. In the United Kingdom, exceptions to the general rules on hearsay have been codified in the Criminal Justice Act 2003. In Fiji only the Civil Evidence Act 2002 at Part 2 (sections 3 to 9) codifies statutory exceptions to the hearsay rule in civil proceedings.

77. There is no equivalent provision in the Evidence Act 1944, although it can be argued that section 4 allows for the admissibility of business or trade records in criminal proceedings, even though the author of these records may not be available to give evidence.

78. The Court has also been invited by the State to consider these records of the tender assessments as documents that may be admitted pursuant to section 133 of the Criminal Procedure Act 2009.

79. The purpose of section 133 is set out at section 133 (1), which provides as follows: -

Admission of signed plan or report

133 (1) Any plan, report, photograph or document purporting to have been made or taken in the course of an office, appointment or profession by or under the hand of any of the persons specified in subsection (3), may be given in evidence in any trial or other proceeding under the provisions of this Act, unless the person shall be required to attend as a witness by—

- (a) the court; or
- (b) the accused person, in which case the accused person shall give notice to the prosecutor not less than 14 clear days before the trial or other proceeding.”

80. Section 133 (3) then identifies the types of officers who can give evidence on such reports as follows: -

“**133 (3)** The following persons shall be the persons to whom this section shall apply—

- (a) medical practitioners and medical officers;
- (b) Government analysts and chemists and laboratory superintendents employed by the Government;
- (c) registered and Government land surveyors;
- (d) examiners of weights and measures;
- (e) veterinary officers, livestock officers and veterinary assistants;
- (f) the officer in charge of the Criminal Records Office;
- (g) engineers holding a degree in any relevant engineering discipline;
- (h) authorised examiners appointed under the provisions of the Land Transport Act 1998;
- (i) dental practitioners and dental officers;
- (j) survey technical assistants employed by the Government;
- (k) police photographers; and
- (l) scientists holding a degree in science relevant to botany, chemistry, microbiology or any other scientific discipline relevant to forensics.”

81. The wording of this provision and where it appears in the CPA shows that this list of authorised officers is meant to be exhaustive. It cannot be extended to include the documents referred to in this current application and the officers who prepared it.

82. Having answered the above questions, the Court will now determine the challenge to the admissibility of the Tender Evaluation Committee report and minutes of Meeting for CTN 66/2011 and CTN 153/2011.

83. This challenge comes before any evidence has been led. The 1st Accused is inviting this Court to exclude the above documents on the basis that they are inadmissible because they are hearsay as they are based on source documents prepared by the companies that submitted their bids.

84. The 1st Accused is charged with 2 counts of Abuse of Office and 2 counts of Breach of Trust by a Person in a Public Office.

85. For the first count it is alleged as follows: -

- i. **NEIL PRAKASH SHARMA** between August 3, 2011, to September 13 2011 at Suva in the Central Division, being employed in the public service as Minister of Health in the Republic of Fiji
- ii. abused his position as the Minister by intentionally failing to comply with statutory requirements for tenders stipulated under the Procurement Regulations 2010
- iii. for the Ministry of Health Tender CTN 66/2011 and actively engaged in acts to undermine CTN 66/2011 in favour of bidder, Hospital Engineering & Consultancy Ltd also known as Hospineer
- iv. which was an arbitrary act that was prejudicial to the rights of other bidders in CTN 66/2011

86. For the second count it is alleged as follows: -

- i. **NEIL PRAKASH SHARMA** between October 18 2011 to October 20 2011, at Suva in the Central Division, being employed in the public service as the Minister of Health in the Republic of Fiji,
- ii. abused his position as the Ministry of Health by intentionally failing to comply with statutory requirements for tenders stipulated under Procurement Regulation 2010
- iii. for the Ministry of Health Tender CTN 153/2011 and actively engaged in acts to undermine CTN 153/2011 in favour of bidder, Hospital Engineering & Consultancy Ltd also known as Hospineer
- iv. which was an arbitrary act that was prejudicial to the rights of other bidders in CTN 153/2011.

87. For the third count it is alleged as follows: -

- i. **NEIL PRAKASH SHARMA** between August 3, 2011, to September 13 2011, at Suva in the Central Division, being employed in the public service as the Minister of Health of the Republic of Fiji,
- ii. in the discharge of his duty committed a breach of trust by intentionally manipulating the tender process for Ministry of Health Tender CTN 66/2011
- iii. in favour of Hospital Engineering & Consultancy Ltd also known as Hospineer that was against the interest of the other bidders in CTN 166/2011.

88. For the fourth count, it is alleged as follows: -

- i. **NEIL PRAKASH SHARMA** on September 13 2011, at Suva in the Central Division, being employed in the public service as the Minister of Health of the Republic of Fiji,
- ii. in the discharge of his duty committed a breach of trust by intentionally manipulating the tender process for Ministry of Health Tender CTN 153/2011
- iii. in favour of Hospital Engineering & Consultancy Ltd also known as Hospineer and securing benefits for Hospineer that was against the interests of the other bidders in CTN 153/2011.

89. For counts 1 and 2, the State must establish beyond a reasonable doubt that at the relevant times, the 1st Accused held a public office, that he abused his office by intentionally failing to comply with statutory requirements for tenders stipulated under the Procurement Regulations 2010, that he effectively undermined tendered CTN 66/2011 and CTN 153/2011 in favour of a bidder Hospineer.

90. For counts 3 and 4 the State must establish beyond a reasonable doubt that the 1st Accused held a public office at all relevant times, that he abused this office by committing an arbitrary act, namely by intentionally manipulating the tender process for the Ministry of Health in favour of one bidder against the interest of other bidders.

91. The requirement is that this evidence must be relevant and admissible. The Court will then assess the evidence in its totality and contextually, usually after all the evidence is before the Court. In doing so, the Court will then decide what weight to give to each piece of evidence led in support of the four counts.

92. This application is unusual as ordinarily such challenges are made during the Trial or at the conclusion of the Trial. The Court is not prepared to make such a determination before any evidence has been led.

93. The Court will therefore not discard these documents at this stage, and the 1st Accused is at liberty to renew the challenge at the appropriate time during the Trial.

94. We will now proceed with the State's case.



Mr. Justice Usaia Ratuveli
Puisne Judge



cc: - Office of the Director of Public Prosecutions
 - Howards Lawyers
 - R. Patel Lawyers