

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

**CRIMINAL CASE NO: HAM 241 OF 2025**

**BETWEEN**

**STATE**

**APPLICANT**

**AND**

**ANARE LEQETI RAUBECI**

**RESPONDENT**

Counsel: Ms. E. Cabemaiwai for Applicant  
Mr E. Wainiqolo for Respondent

Dates of Ruling: 27 February 2026

**RULING**

[Evidence via Zoom-Vulnerable Witness- s131(2)(b) CPA- Interests of justice]

1. The Respondent, in the substantive matter (HAC 42 of 23), is charged with one count of Rape contrary to Sections 207(1) and (2)(a) of the Crimes Act 2009. Before trial, on 17 September 2025, the State filed a Notice of Motion supported by an affidavit of Mr Laisiasa Baleilevuka, seeking the Court's permission/directions to take evidence via Zoom from the complainant, Holly Ann Harmon, and her de facto partner, Sigmund Wisniewski. Both are

citizens of the United States of America (USA), where they currently reside. The application is made pursuant to Sections 131(2)(b) and 295 of the Criminal Procedure Act (CPA).

2. The Respondent is objecting to the application on the following grounds:
  - I. The affidavit in support filed by the Applicant is inconsistent with the provisions of the High Court Rules 1988, particularly Order 41 Rule 9(2).
  - II. The complainant and her de facto partner are both adults aged 52 and 53, and they cannot be deemed vulnerable witnesses either because of their age or disability.
  - III. The taking of evidence via Zoom from a remote location is prejudicial to the Respondent and not in the interests of justice due to the following:
    - a. That the right recognised in Section 14(2)(a) of the Constitution dealing with the “Right of the Accused Person” (right to be presumed innocent) would be violated if the State’s application is allowed.
    - b. When receiving evidence via Zoom, it is impossible for the Court to observe the demeanour and the reaction of the witnesses properly. In a case where the prosecution is heavily dependent on the credibility of the complainant, the Court is denied the opportunity to test her sincerity or insincerity if her evidence is taken via Zoom.
    - c. That the taking of evidence via Zoom will be unfair to the Respondent.
    - d. The Court is not in a position to verify whether the witnesses were coached to give evidence and whether the questions could be sent with the answers.

- e. There exists a motive for the State to send the accused's identity via the website for questioning and comments. It would be prejudicial to the Respondent.
  - f. The Respondent will be denied a fair trial. The Court must ensure that every legal right is accorded to the accused.
  - g. If the taking of evidence via Zoom is allowed, the Respondent has minimal benefit in cross-examining the witnesses.
3. The Respondent contends that the affidavit in support filed by the Applicant is inconsistent with the provisions of the High Court Rules 1988. This preliminary objection is misconceived. The High Rules do not apply to criminal proceedings. The Order 1 Rule 8(2) of the High Court Rules provides that the '*Rules shall not apply to any criminal proceedings in the High Court*'.
  4. The CPA sets out the procedure for recording evidence from a remote location in a criminal proceeding. Sections 295 and 296 of the CPA [under Part XX – Protecting Vulnerable Witnesses] deal with the recording of oral evidence from vulnerable witnesses. Section 131(2) of the CPA applies generally and is not confined to vulnerable witnesses<sup>1</sup>. The Applicant relies on both these provisions.

Vulnerable Witness [Sections 295 & 296 of the CPA]

5. The Applicant claims that both the complainant and her de facto partner, Sigmund Wisniewski, are vulnerable witnesses.
6. Section 295 of the CPA governs the procedure to record oral evidence from vulnerable witnesses. The section provides:

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<sup>1</sup> State v Hurtado [2016] FJCA 115; AAU00148.2015 (30 September 2016)

(1) Before the commencement of any trial, a prosecutor may apply to a judge or magistrate for directions as to the procedures by which the evidence of a vulnerable complainant or witness is to be given at the trial.

(2) The judge or magistrate shall hear and determine an application made under subsection (1) in chambers, and shall give each party an opportunity to be heard in respect of the application.

(3) The judge or magistrate may call for and receive any reports from any persons whom the judge or magistrate considers to be qualified to advise on the effect on the complainant or the vulnerable witness of giving evidence in person in the ordinary way or in any particular mode provided for in section 296.

(4) In considering what directions (if any) to give under section 296, the judge or magistrate shall have regard to the need to minimise stress on the complainant or the vulnerable witness, while at the same time ensuring a fair trial for the accused.

(5) A judge or magistrate may hear and consider an application by either party made during the course of any trial for an order prescribing the procedures by which the evidence of a vulnerable complainant or witness is to be given in the trial.

7. Section 296 of the CPA provides for modes in which evidence may be given by vulnerable complainants or witnesses. Relevant parts of the section state:

296 (1) On an application under section 295, the judge or magistrate may give any of the following directions in respect of the mode in which the evidence of a vulnerable complainant or witness is to be given at the trial —

(a) ...

(b) where the judge or magistrate is satisfied that the necessary facilities and equipment are available, a direction that the complainant or vulnerable witness shall give his or her evidence outside the courtroom but within a Court precinct, or from some other suitable location, the evidence being transmitted to the courtroom by means of closed-circuit television or such similar quality secure audiovisual electronic means.

8. In Fiji, it is not uncommon for the courts to use video conferencing technology in the hearing of cases. In *State v Hurtado*<sup>2</sup>, the court referred to at least two cases<sup>3</sup> in which the prosecution was allowed to lead evidence from overseas witnesses via Skype in criminal trials pursuant to section 295 of the CPA<sup>4</sup>. In those cases, the witnesses were foreign complainants of rape who had returned to their respective countries before the trial commenced in Fiji.

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<sup>2</sup> [2016] FJCA 115; AAU00148.2015 (30 September 2016)

<sup>3</sup> *Lotawa v State*, unreported Criminal Appeal No. AAU0091 of 2011; 5 December 2014, *State v Singh* Misc. Case No. HAM005 of 2012; 7 March 2012)

<sup>4</sup> *Supra* [1] @ [28]

9. To apply Section 295 and to give directions under Section 296 regarding the special modes in which the evidence is to be given at the trial, the Court ought to be satisfied that the complainant and her de facto partner are ‘vulnerable witnesses’.
10. The CPA does not define the notion of a ‘vulnerable complainant/ witness’. *In State v Nasilokia*<sup>5</sup>, this Court adopted the interpretation given in Section 271 (*evidence of vulnerable persons: special provision*) of the Criminal Procedure (*Scotland*) Act 1995 in defining the notion of ‘vulnerable witness’. The section provides:

(1). For the purposes of this Act, a person who is giving or is to give evidence at, or for the purposes of, a trial is a vulnerable witness if—

(a) the person is under the age of 16 on the date of commencement of the proceedings in which the trial is being or to be held (such a vulnerable witness being referred to in this Act as a “child witness”), or

(b) where the person is not a child witness, there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of—

(i). mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or

(ii). Fear or distress in connection with giving evidence at the trial.

(2). In determining whether a person is a vulnerable witness by virtue of subsection (1) (b) above, the court shall take into account—

(a). the nature and circumstances of the alleged offence to which the proceedings relate,

(b). the nature of the evidence which the person is likely to give,

I. the relationship (if any) between the person and the accused,

(d). the person’s age and maturity,

I. any behavior towards the person on the part of—

(i). the accused,

(ii). Members of the family or associates of the accused,

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<sup>5</sup> HAC 81 OF 2023 (10 June 2024)

(iii). Any other person who is likely to be an accused or a witness in the proceedings, and

(f) such other matters, including—

(i). the social and cultural background and ethnic origins of the person,

(ii). The person's sexual orientation,

(iii). The domestic and employment circumstances of the person,

(iv). Any religious beliefs or political opinions of the person, and

(v). any physical disability or other physical impairment which the person has, as appear to the court to be relevant. (Emphasis added)

11. Both the complainant and her de facto partner in this case are adults in their mid-fifties. Therefore, they are not vulnerable by virtue of their age<sup>6</sup>. There is no evidence that they are suffering from any mental disorder. The complainant, by virtue of being a woman, is not qualified to be a vulnerable witness. Then the Applicant must satisfy this Court that the quality of evidence of these witnesses will be diminished by reason of fear or distress in connection with giving evidence at the trial<sup>7</sup>.

12. In her email to the State Counsel, which is attached to the State's supplementary affidavit, the complainant states:

*Please be advised that, after speaking to my physician, I believe coming back to Fiji to testify will only further impact my PTSD from this event. It has caused me enough trauma, and I cannot picture being there again without anxiety. Please understand.*

13. No medical certificate from a doctor or mental health therapist has been tendered to confirm that the complainant is suffering from Post-Traumatic Stress Disorder (PTSD) after the alleged incident. The State has not even filed an affidavit from the complainant to show that she is suffering from post-PTSD. Therefore, the State's claim is unsubstantiated.

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<sup>6</sup> In our law, a child means an individual who has not reached the age of 18 years

<sup>7</sup> Section 295(4) of the CPA

14. In *Nasilokia*<sup>8</sup>, the court was satisfied that the complainant was a vulnerable witness. The alleged rape incident had left the complainant traumatised. The perpetrator had used a remote controller and a screwdriver to penetrate the complainant's vagina. After the incident, she was fearful for her safety and fled to the USA, where she later sought asylum. At the time of the trial, the complainant couldn't leave the USA because of her pending refugee application. It was practically impossible for the prosecution to secure the complainant's physical presence in court. The court, having been satisfied that the complainant was a vulnerable witness, allowed the application under Section 295 and also under Section 131(2) in the interest of justice.
15. Whereas in the present case, the prosecution has failed to satisfy the Court that the complainant and her partner are vulnerable witnesses who face a significant risk that the quality of their evidence will be diminished by fear or distress in connection with giving evidence at the trial. Therefore, they are not qualified under Section 296 of the CPA to present evidence via Zoom.

Section 131(2) of the CPA

16. Section 131(2) of the CPA is of general application irrespective of whether the witnesses are vulnerable or not. The section provides:

131 (1) Subject to any other provision of this Act, all evidence taken in any trial under this Act shall be taken—

- (a) in the presence of the accused; or
- (b) when his or her personal attendance has been dispensed with, in the presence of his or her lawyer (if any).

**(2) Nothing in this section shall prevent a judge or magistrate from authorising that appropriate arrangements be made for —**

- (a) taking of evidence from a remote location; or**
- (b) the use of any other procedure or means by which evidence may be taken during, or for the purposes of the trial —where issues of safety or the interests of justice require the use of such means (Emphasis added)**

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<sup>8</sup> Supra [5]

17. This section does not specify what a remote location is. It can be argued that the remote location includes even a foreign country. Therefore, the Court is authorised to make appropriate arrangements for the taking of evidence from the USA, which is a remote location.
18. The Court of Appeal in *Hurtado*<sup>9</sup> held that the phrase ‘*any other procedure or means*’ in 131(2)(b) of the CPA contemplates the use of Skype or similar technology to receive oral evidence from witnesses during the trial. Skype is no longer available as a social media platform, and Zoom is one such technology currently available to this Court.
19. Section 131(1) sets out a general rule that all evidence must be received in the presence of the accused (or his or her lawyer if the personal attendance of the accused has been dispensed with). The plain reading of this section does not suggest that the witnesses must be physically present in court for their testimonies to be received in the presence of the accused<sup>10</sup>.
20. Under Section 131(2), the courts have the power to take evidence from a remote location or to use any other procedure or means by which evidence may be taken during the trial, where issues of ‘safety’ or the ‘interests of justice’ require the use of such means. In the present case, no witness safety issues have been raised. The crucial question then is whether the interests of justice require the use of Zoom to receive oral evidence from the overseas complainant/witness.

#### Interests of Justice

21. "In the interests of justice" is a legal standard requiring courts to make decisions that are fair, equitable, and just in all circumstances. It acts as a discretionary principle allowing judicial officers to weigh factors like fairness to parties, public good, and procedural integrity over rigid rules. Its application depends on the context of the legislation<sup>11</sup>.

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<sup>9</sup> Supra [2]

<sup>10</sup> The view taken by the Court of Appeal in *Hurtado* at [37] is respectfully differed.

<sup>11</sup> Re Chapman & Jansen (1990) FLC 92-139, per Nicholson CJ). In the context of a criminal statute, Malcolm CJ referred to the phrase in *Mickelberg v The Queen* (No 3) (1992) 8 WAR 236 and said at p 252: Quoted in *Hurtado* at [37]

22. The interests of justice require courts to ascertain the truth, ensure the conviction of the guilty, acquit the innocent, and uphold public interest through a fair trial, which is a fundamental principle of criminal law, often referred to as the "due administration of justice"
23. The interests of justice are not confined to the interests of an accused. It encompasses the interests of the public. Justice is not a one-sided endeavour focused solely on the rights of the accused, but rather a balanced process that includes the interests of the public and the prosecution. Therefore, in coming to a just conclusion in this matter, this Court is required to strike a right balance between those competing interests.
24. Taking of evidence via video conferencing (e.g., Zoom, Skype, or specialised Audio-Visual Links - AVL) from a distant location in criminal proceedings presents significant challenges to the right to a fair trial, particularly concerning the confrontation of witnesses, the ability to assess credibility, and the effective participation of the accused.
25. While remote technology has been accepted as a necessary alternative, courts have emphasised that it should only be used when necessary, and with robust safeguards to ensure that the "essential" components of a fair trial are not lost. The Respondent, in his objection, has raised some concerns *vis-à-vis* his right to a fair trial. They appear to be based on some of the concerns raised by the Court of Appeal in *Lotawa v State*<sup>12</sup> regarding the taking of evidence via Skype. The Court in *Lotawa* observed at [6]:

Skype is a relatively new medium used extensively in social media and for personal contact between parties in place of telephones. It is noted that it has been used in Courts for the taking of evidence in Canada, Sri Lanka, Australia and in Fiji and as such it has been a very useful medium for the admission of evidence in 2 obvious circumstances. First, for the protection of a "vulnerable" witness, provided for in sections 295 and 296 of the Criminal Procedure Decree 2009 and secondly for the good administration of justice, to hear a witness from abroad pursuant to section 131(2) of that Decree. Evidence by "skype" although convenient and immediate, suffers of course from the vagaries of any other electronic medium in that it can crash, perform erratically or be deceptive as to colour, sound and light. The quality of its transmission will depend on the quality of the equipment being used at each station and in particular the cameras both at transmission and reception. It is impossible when receiving evidence by "skype" to properly observe the demeanour and reactions of a witness: in a case heavily dependent on credibility, the witness' words are often no match for his or her reaction to questions or for his or her display of sincerity or insincerity in giving evidence. It is therefore a much inferior method of receiving evidence, inferior to live *viva voce* evidence and for these reasons alone, although allowed by s.131(2) and section 295, it should be used only rarely

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<sup>12</sup> [2014] FJCA 186;AAU0091.2011(5December)2014

for vulnerable witnesses and hardly ever for convenience reasons. In any event as Gamalath JA says care must be taken by the presiding Judge to comply with the procedure set out in s.295 and state judicially why he is allowing evidence to be adduced by that medium.

26. I would first deal with the key issues raised by the Respondent and other issues identified across legal and empirical studies concerning the right to a fair trial.

#### Impairment of Credibility Assessment and Demeanour

27. Remote technology often prevents judicial fact finders (judges/magistrates/juries) from seeing a witness's body language, hand gestures, or full posture, which are critical for assessing credibility. Some judges, however, believe that video conferencing allows them to better observe a witness's facial expressions and demeanour on screen, facilitating an assessment of credibility<sup>13</sup>.
28. The "dehumanising/desensitising barrier" of a screen can lead to "empathetic detachment," where decision-makers struggle to connect with or properly assess the emotional state of a witness. The inability to observe the witness's full demeanour and body language makes it harder to detect whether a witness is lying or being coached.
29. The demeanour can be used to assess a witness's credibility, though its reliability is debated, and it is crucial to avoid stereotypes<sup>14</sup>. in sexual cases. In the absence of supporting evidence, the courts should be cautious about placing undue weight on demeanour alone, as reactions to trauma vary widely, and it cannot displace objectively verified facts<sup>15</sup>. The primary assessment of a witness's truthfulness must come from the content of testimony and its consistency with other independent evidence<sup>16</sup>.

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<sup>13</sup> State v Nasilokia [2024 ] FJHC 408; HAC81. 2023 (10 June 2024 )

<sup>14</sup> Balekana v State [2024] FJCA105 (4 June 2024)

<sup>15</sup> Dauvucu v State [2024] FJCA 108 (30 May 2024)

<sup>16</sup> State v Parshotam Criminal case No: HAC 117 OF 2023 (27 November 2025)

### Limitations on Cross-Examination and Confrontation

30. The Respondent claims that his counsel would derive little benefit in cross-examining the witnesses if the taking of evidence via Zoom is allowed. The identity of the proposed witnesses has been revealed to the Defence in advance. The Prosecution is relying on the statements these witnesses had already given to the police, which were disclosed to the Defence. The right of an accused to cross-examine witnesses for the prosecution will not be affected by the use of Zoom.
31. However, I concede that the effectiveness of cross-examination is somewhat affected in the absence of a courtroom atmosphere. The formal, intimidating environment of a courtroom, which normally encourages truth-telling, is lost when a witness testifies from a remote location, sometimes reducing the solemnity of the evidence. However, in a sexual case, it serves a useful purpose also as the counsel may find it harder to "intimidate" a witness who is not physically present in court.
32. In *Hurtdato*, the Court of Appeal was concerned that witnesses who give evidence from overseas via live link (Skype) escape accountability because domestic courts lack jurisdiction to hold them responsible for perjury or contempt if they lie on oath. There is indeed a risk that an overseas witness may not give truthful evidence via Skype because of the lack of accountability. However, witnesses who take the stand often lie under oath despite knowing the consequences of perjury and contempt. While the risk of perjury and the lack of accountability via Zoom/video-link are significant, legal and judicial experience often shows that in-person testimony is not a panacea for truthful evidence.

### Violation of Equality of Arms and Confidentiality

33. The Respondent claims that the Court is not in a position to verify whether the witnesses were coached to give evidence and whether the questions could be sent with the answers. It is challenging to guarantee that a remote witness is not being coached, prompted, or pressured by third parties present in the room but invisible to the camera. The challenges in

guaranteeing the integrity of remote witness testimony are significant, as traditional courtroom controls like exclusion orders are difficult to enforce when a witness is not in the physical presence of the court.

34. The answer, of course, is for the court to build safeguards into the remote testimony protocol that will prevent witness coaching from occurring in the first place. The risk can be eliminated by asking the witness, before testimony begins, to lock all doors, turn his/her camera 360 degrees to show the entire room, and confirm no one else is present. The witness can be instructed not to use cell phones and required to remain focused on the camera and unmuted during the testimony.
35. The concern that witnesses could receive questions and answers in advance is not exclusive to remote testimony, as this type of misconduct can occur regardless of whether the testimony is given in person or remotely. While remote testimony can increase the risk of undetected coaching, the same ethical rules regarding witness preparation apply to in-person proceedings. Therefore, this risk is not only associated with the proposed special arrangement to take evidence.

#### Cyber Security issues

36. Without proper controls, sensitive or private information discussed during the trial could be recorded, hacked<sup>17</sup>, or shared, putting witnesses at risk. However, Zoom is known to feature robust in-built encryption<sup>18</sup>. For maximum privacy, users can enable end-to-end encryption (E2EE), ensuring only participants hold the keys<sup>19</sup>. In the present case, however, no such security risks have been raised by the Respondent, the witnesses or the Prosecution. No application has been made for a closed court proceeding, raising privacy issues.

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<sup>17</sup> Hacking means to obtain unauthorised access to someone's computer system to seek information or perform an illegal activity.

<sup>18</sup> Encryption is the method of changing data to allow only those who are part of the conversation to access it

<sup>19</sup> Zoom provides robust in-built security, utilizing 256-bit AES-GCM encryption by default for all audio, video, and screen sharing in transit.

## Technical and Procedural Issues

37. Technical issues associated with Zoom and similar video conferencing platforms can significantly undermine the reliability of virtual testimony, as technical failures often result in lost, delayed, or distorted information. Technical lags, even a few seconds, associated with internet speed can disrupt the natural flow of questioning, reducing the ability to pick up on subtle cues during cross-examination. The delays could be misattributed to the witness's personality, leading the court to perceive them as less credible or evasive.
38. The Court of Appeal in *Lotawa* discussed some of the technical issues that are associated with Skype and other electronic media used for video conferencing. Frequent technical glitches, poor audio-visual quality, or low-resolution screens can severely limit the ability to understand or engage with the testimony, often leading to deceptive outcomes. The Court, however, has the benefit of monitoring all these technical issues and has the discretion to discontinue or disallow the taking of evidence using remote technology if it hinders a fair trial, reversing its earlier decision to allow it.

### How dock identification affects a witness giving evidence via Zoom/Skype?

39. Concerns have been raised that the prosecution could send the accused's identity electronically for questioning and comments. There is a risk that a witness testifying remotely could be coached or prompted by someone off-camera, making the identification less authentic. The Court has suggested a solution for such scenarios in paragraph 34.
40. Dock identification, the process where a witness identifies the accused in court becomes highly problematic when conducted via video conferencing tools like Zoom or Skype, as it significantly diminishes the reliability and probative value of the identification. The combination of remote testimony, potential screen resolution issues, and the inherent

suggestiveness of the dock setup can render such identifications unsafe, particularly if there is a long delay after the incident<sup>20</sup>.

41. When a witness is asked to identify an accused over a video link, he/she is often looking at a screen where the accused is clearly presented, making it an unreliable process. If a witness is prompted to pick out the person in the dock via a camera, it is considered highly suggestive and of "very little probative value". In cases of virtual testimony, particularly with elderly witnesses or those with weak vision, the lack of in-person, close-up observation or even the absence of glasses during a video call makes identification through a screen unreliable<sup>21</sup>.
42. If the accused is the only visible person on the screen, it acts as a "single-person line-up," which is generally considered unfair. If a witness is to identify an accused, the accused should not simply be sitting alone in a box on a screen.
43. In *State v Waqanivalu*<sup>22</sup>, this Court, in the circumstances of that case, introduced a solution to address these concerns. The prosecution witness, who was giving evidence via Skype from England, was prompted to identify the accused in court. It was not a fleeting glance case as the witness had spent a considerable time with the accused, having driven the accused from Suva to Lautoka. The witness had also recognised the accused in a video that went viral on social media soon after the robbery. There was a proper foundation for a dock identification. Yet the court was concerned about procedural fairness and selected ten people of similar build as the accused and asked them to come before the camera one after the other for the purpose of identification. The accused was picked out from the ten people who came before the camera. This type of identification was considered safer than a typical dock identification because the accused was not just a lone figure on the screen.

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<sup>20</sup> The Supreme Court of India in *Raj Kumar @ Bheema v State of NCT of Delhi* 25 November 2025 recently deemed dock identification via video conferencing unsafe, particularly after a long delay. The Court held the dock identification of the appellant by PW-18, recorded through video conferencing nearly 8.5 years after the occurrence, to be unsafe and unreliable, particularly given the witness's advanced age, admitted weak distance vision, and the absence of spectacles during her virtual deposition.

<sup>21</sup> *Supra* 11.

<sup>22</sup> [2024] FJHC 320; HAC195.2016 (24 May 2024)

44. The disclosures and the agreed facts in the substantive matter reveal that the Respondent was in the company of the complainant for a considerable time before the alleged offence. It is agreed that on the day of the alleged offence, the complainant and her de facto partner were on a yacht named “Gipsea”, drinking alcohol together with the Respondent. Since there is a proper foundation for dock identification, no prejudice will be caused to the Respondent if the witnesses were invited to identify the Respondent via video link, after taking all the precautions discussed above.

#### Access to Justice

45. Although the medical reports tendered do not support the claim that the complainant is suffering from PTSD, they confirm that she was expected to undergo a surgical operation in February 2026. Her partner’s email reveals that she has no desire to return to Fiji, as she is preparing for surgery, a hysterectomy due to cervical cancer. The surgery has been confirmed by a letter issued by the Operating Room, Main Hospital, Geisinger<sup>23</sup>.
46. Due to the complainant’s health condition, Mr Sigmund does not wish to come to Fiji to give evidence, leaving his ailing partner behind.
47. The complainant and her partner were on holiday in Fiji when the alleged incident occurred. They have since returned to their home country and cannot be expected to remain in Fiji until their evidence is taken at the trial. Their return to Fiji for the trial would entail substantial airfare and hotel accommodation expenses, to be paid by the taxpayers of Fiji<sup>24</sup>.
48. The disclosures reveal that the complainant and her partner are crucial witnesses for the prosecution. If the attendance of essential witnesses cannot be secured in court, the prosecution may be forced to file a *nolle prosequi*—a formal notice that the prosecutor is abandoning the case. If cases are dismissed solely because witnesses cannot attend due to

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<sup>23</sup> Annexure “c”

<sup>24</sup> The email (Annexure B) shows that the ODPP had offered to bear those expenses.

legitimate reasons, it weakens the administration of justice and allows perpetrators to escape conviction.

49. Fiji's heavy reliance on the tourism industry, which contributes approximately 40% to the nation's GDP and serves as the primary source of foreign exchange and employment, makes the security of tourists paramount. Failure to adequately prosecute crimes against visitors, particularly when modern technology allows for remote evidence, can significantly damage the country's reputation and economy.
50. The use of video links for evidence in criminal proceedings is a widely recognised, pragmatic adaptation in modern legal systems. It serves to balance the fundamental right to a fair trial with practical constraints, such as witness unavailability, safety concerns, or the need to prevent case collapse due to logistical issues<sup>25</sup>.
50. Remote technology allows witnesses located anywhere in the world to testify without the expense or time commitment of travelling to a courtroom. It provides a necessary alternative for witnesses with mobility issues, health concerns, work commitments, or child-care obligations that prevent physical attendance. Remote testimony can be crucial for victims of violent crimes or sensitive cases, allowing them to testify from a safe, comfortable environment rather than facing the accused in person. Studies have shown that virtual platforms can increase participation rates, reducing "no-shows" and allowing more individuals to engage with the legal system, promoting access to justice.
51. The remote evidence will help this Court to resolve a serious crime. All the facilities and equipment are available to this Court to take evidence from overseas. The witnesses will give evidence under oath and be cross-examined by the Defence. The Court will take all precautions to avoid inherent weaknesses associated with the taking of evidence via the proposed video conference tool -Zoom.

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<sup>25</sup> K v K England and Wales High Court (Family Division) (17 May 2005)

- 52 I do not see substantial prejudice being caused to the Respondent that would undermine his right to a fair trial if the the application is allowed. The interests of justice will be served if the application is allowed.
53. Having carefully weighed the pros and cons discussed above, the application to use Zoom as the mode of taking evidence of the complainant and her de facto partner from overseas is allowed.



Aruna Aluthge  
Judge

27 February 2026

At Lautoka

Solicitors:

- Office of the Director of Public Prosecution for Applicant
- Law Solutions for Respondent