

**IN THE MAGISTRATES' COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

Criminal Case No. 347 of 2023

STATE

v.

- 1. JOSAI VOREQE BAINIMARAMA**
- 2. SITIVENI TUKAITURAGA QILIH**

For the State: Mr. D. Toganivalu, Acting Director of Public Prosecutions & Ms. N. Shankar for the Director of Public Prosecutions

For the Accused: Mr. D. Sharma & Ms. G. Fatima of R. Patel Lawyers

NO CASE TO ANSWER RULING

A. INTRODUCTION

1. **Josaia Voreqe Bainimarama** (the first Defendant) and **Sitiveni Tukaituraga Qiliho** (the second Defendant) are charged as follows:

Count 1

Statement of Offence

Attempted to Pervert the Course of Justice contrary to section 190 (e) of the **Crimes Act 2009**

Particulars of Offence

Josaia Voreqe Bainimarama sometime between July, 2020 and September 2020 at Suva in the Central Division, attempted to pervert the course of justice by telling **Sitiveni Tukaituraga Qiliho**, the Commissioner of Police of the Republic of Fiji, to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019.

Count 2

Statement of Offence

Abuse of Office: contrary to section 139 of the **Crimes Act 2009**

Particulars of Offence

Sitiveni Tukaituraga Qiliho on the 15th day of July, 2020, at Suva in the Central Division, being employed in the civil service as the Commissioner of Police of the Republic of Fiji, directed the Director of the Criminal Investigations Department Serupepli Neiko and Inspector Reshmi Dass to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, in the abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of the University of the South Pacific.

B. THE STATE'S CASE

2. The State and the Defence agreed to the following facts pursuant to section 135 of the **Criminal Procedure Act 2009**. These facts are deemed proved beyond reasonable doubt¹:

- “1. The first Accused is Josaia Voreqe Bainimarama.
2. The first Accused was the Prime Minister of the Republic of Fiji in 2014 until 2022.
3. The second Accused is Sitiveni Tukaituraga Qiliho.
4. The second Accused was appointed on 10 November 2015 as the Commissioner of Fiji Police by his Excellency the President of Fiji, Ratu Epeli Nailatikau.
5. The second Accused was suspended as the Commissioner of the Fiji Police Force on 26 January, 2023 by his Excellency the President, Ratu Wiliame Katonivere.”

¹ See **Ali v. State** [2011] FJCA 28; AAU0041.2010 (1 April 2011).

3. During the course of trial, the State with consent from the Defence tendered the Statements of 16 witnesses pursuant to section 134 of the **Criminal Procedure Act 2009**. By consent, it is admissible in evidence to the like extent as oral evidence to the like effect by that person.

4. **Prosecution Witness 1: Emi Vakacegu** is the personal assistant for the Prime Minister, the Hon. Mr. Sitiveni Ligamamada Rabuka. She took over that post on 23 December 2022 and she reports directly to the Prime Minister. Prior to that she was the Personal Assistant to the former Permanent Secretary for the Office of the Prime Minister, Mr. Yogesh Karan. She handles all administrative issues and correspondences for the Prime Minister. When she took over from the previous Personal Assistant, no handing over was done. When she walked into the office of the Personal Assistant on her first day, there were only empty files and one cabinet. No documents from the last year or the previous years were in the office. When she started in the role she had to start from scratch. That is the extent of her evidence per her statement to the Police. Nothing ultimately turns on this evidence.

5. **Prosecution Witness 2: Susan Kiran** was Secretary to Cabinet. She served in that position from 2014 under the Bainimarama led Government to at least the date she had written her statement, namely 18th January 2023. Her role was to oversee the cabinet office which provides administrative assistance to the Cabinet of the Government of Fiji. On 1 February 2023 she received a search warrant for original or certified copies of letters of appointments, contracts, and personnel files for Aiyaz Sayed Khaiyum and Josaia Voreqe Bainimarama for the period they had been members of parliament. The Police also required a police statement for the appointment of the above person or any other necessary documents and information. She provided police officers the personnel files of Mr. Aiyaz Sayed Khaiyum and Mr. Josaia Voreqe Bainimarama. Their personnel files contained their Oath, Ministerial Assignments from 2007 to 2022 and she also provided to the Police their leave matrixes for the two periods: 2014 – 2018 and 2018 – 2022. She further stated that the Prime Minister and Ministers do not have a contract of service as their appointments are made pursuant to the provisions of section 92 and section 95 of the 2013 Constitution, and the oaths they took before his Excellency, the President of the Republic of Fiji serves as the key document for their appointment in office. She states that their portfolios are confirmed through the gazette of ministerial assignments and their remuneration and

benefits are guided by the **Parliamentary Remuneration Act 2014**. That is the extent of her evidence per her statement to the Police.

6. **Prosecution Witness 3: Elesi Waiwalu** was appointed to be Assistant Hansard Reporter to the Parliament of Fiji in 2014. In 2015, she was appointed to be Secretary to the Director Legislative Services and in 2016 she was appointed to be the Acting Senior Secretary to the late former Speaker of Parliament – Dr. Jiko Luveni for a period of 06 months. She was then transferred to the Library Unit of Parliament and in 2021, she became Secretary to the Director Legislative Services. On 1st February 2023, the date she wrote her statement, she was the Acting Deputy Committee Clerk and in that capacity she attended to executive duties for the Secretary General to Parliament Mrs. Jeanette Emberson. On 2nd February 2023, she provided the Oath of Affirmation of Member of Parliament of Hon. Josaia Voreqe Bainimarama and the Hon. Aiyaz Sayed Khaiyum which took place on the 24th of December 2022 to the Police. She also included the Gazette of the Vacancy of Parliament whereby the notice that the seat of Hon. Aiyaz Sayed Khaiyum became vacant dated 06th January 2023.

7. **Prosecution Witness 4: ASP Devika Narayan** is Manager Records and Registry at the Fiji Police Force Headquarters, a position she has held since 10 February 2022. She enlisted with the Fiji Police Force on 30 August 2004 and as at the date of her Statement, has served 19 years in the Force. The core roles and responsibilities of the position of Manager Records and Registry is enshrined under Force Standing Order Number 15 and the position holder reports directly to the Coordinator and Director Human Resource Management. The duties of the position mainly involves ensuring the safe keeping, update of records and managing of all personnel files of all police officers enlisted into the Fiji Police Force under the Regular Force and Special Constables cadre, giving action to and sorting out all incoming correspondences, ensuring the weekly production of the Force Routine Orders, including the formalization of all directives and policies issued by the Commissioner of Police and other Chief Officers. The Manager Records and Registry is also responsible for ensuring the processing of subordinate reenlistment, preparing of leave allowance, updating of leave records, preparation of leave compensation for officer attrition as a result of dismissals, terminations, resignations or deaths. Her statement was in response to an ongoing investigation against SSP Mesake Waqa Regimental Number 1940. SSP Waqa joined the Fiji Police Force on 29th May 1989. He is an active member of the Fiji Police

Force and is based at CID Headquarters and, as at 06th February 2023, held the post of DCID. SSP Mesake Waqa has served in the following police stations: Basic Recruits Course at the Fiji Police Academy (1989), Central Police Station (1989), Traffic/CPS (1991), Crime OPS (1993), CP's Special Task Force (2004), CID/Major Crime (2007), Peacekeeping Duty South Sudan (2012) and promoted to Corporal in the post of Crime Officer/Suva Tourism Police Unit, promoted to Sergeant in the post of Senior Investigator/CPSCID (2005), promoted to the post of Inspector of Police to the post of Investigator Major Fraud (2009) and transferred from CID to DCO/Eastern (2013) and promoted to Assistant Superintendent of Police in the post of Divisional Crime Officer (2015). He was transferred from DCO/East to DCO/South in 2016, promoted to Superintendent of Police in the post of DCO/South in 2017 and was promoted to Senior Superintendent of Police in the post of Director CID in 2018.

8. **Prosecution Witness 5: A/Sgt. 3618 Ilikimi N.** serves with the Economic Crime Unit in the Anti-Money Laundering & Proceeds of Crime Unit based at CID HQ, 53 Suva Street, Suva. On the date of his statement, 15 February 2022, he was attached to the CID HQ Taskforce Team which deals with cases of national interest. He recalled that on Tuesday 14th February 2023 at about 3.27pm, whilst at the Video Recording Interview room at CID HQ, former Prime Minister Mr. Josaia Voreqe Bainimarama called in voluntarily for interview. At the waiting room, he effected the arrest of Mr. Josaia Voreqe Bainimarama, informed him of the reason for his arrest and cautioned him that he was not obliged to say anything unless he wished to do so but that whatever he said could be taken and may be given in evidence. Mr. Bainimarama understood the caution put to him and A/Sgt. 3618 Ilikimi N. left the room as Mr. Bainimarama consulted with Legal Aid representatives for legal advice.
9. **Prosecution Witness 6: Detective Inspector of Police Waisiki Baleilevuka** is based at CID Headquarters at the Economic Crime Unit as an investigator and he has served in that Unit for the past 17 years. As an investigator, his role is to conduct investigations into fraud matters that are reported through the office of the D/CID. He also assists other units and stations in conducting investigations into other major cases as directed. On 9th March 2023 at 3.15pm, he went to Lot 8, Domain Road, Suva with A/IP Paula Kaikai, D/Sgt 4597 Wainiu Vuadreu, and DC 5156 Tomasi Dabecuva to arrest Mr. Josaia Voreqe Bainimarama. Upon arrival at his residence, they were informed that he was out and they

asked if he could be contacted as they needed to see him. Mr. Josia Voreqe Bainimarama arrived and he approached Mr. Bainimarama, and informed him that they needed to take him to CID Headquarters. He then effected Mr. Bainimarama's arrest whereby he informed Mr. Bainimarama of the reason of his arrest, and of his constitutional rights. He was then escorted to CID Headquarters and when they arrived, he handed Mr. Bainimarama to A/ASP Josua Vosataki of the Organized Crime Office for Mr. Bainimarama to be formally charged.

10. **Prosecution Witness 7: Acting Inspector Paula Kaikai** is based at CID/HQ at the Major Crime Unit. On 8th February 2023, he was part of the Task Force Team that conducted an investigation into a case of alleged Abuse of Office against Commissioner of Police Brigadier General Sitiveni Qiliho and others. At 8.56am, he informed Mr. Qiliho, in the presence of his lawyer Mr. John Rabuku, that he was effecting arrest on him. He informed Mr. Qiliho of his constitutional rights as an arrested person as stipulated in section 13 of the Constitution. Mr. Qiliho was first advised of the reason for his arrest and the offence for which he was arrested, and he advised him of the likely charge against him. This was communicated to Mr. Sitiveni Qiliho in the English language which he understood.

11. **Prosecution Witness 8: Sunia Maniala** is a police officer by profession based at the CID/HQ Taskforce Unit. On 9th March 2023 at 3.07pm at CID/HQ, he personally arrested Mr. Sitiveni Tukaituraga Qiliho in the presence of his lawyers, namely Mr. Devanesh Sharama and Ms. Gul Fatima. Mr. Qiliho had called in voluntarily to CID/HQ after being informed via phone call. During the arrest, he touched Mr. Qiliho and informed him of the reason for his arrest. Mr. Qiliho was informed that the Police would continue his caution interview which had been suspended on 14th February 2023 in relation to the allegation of Abuse of Office, whereby he instructed the Police to stop the investigation of the University of the South Pacific case, vide CID/HQ/PEP 12/7/19, and that is the reason such case was filed away. He cautioned Mr. Qiliho that he is not obliged to say anything unless he wished to do so, but what he said may be taken down in writing and given in evidence. Mr. Qiliho was given all his rights including his right to remain silent. He understood his rights and did not wish to make a complaint. He was the investigating officer of the case against Josia Bainimarama and Sitiveni Qiliho. He recalled that on 3rd July 2023 at 4.00pm, he personally approached Director Narcotics Bureau, Senior Superintendent of Police Seru

Neiko, to find out if SPP Neiko had made a note of the phone conversation between them and Mr. Sitiveni Qiliho on 15th July 2020, in which SSP Neiko stated that he did not make any other note apart from his police notebook. SSP Seru Neiko was asked if he had lodged a report against Mr. Sitiveni Qiliho's conduct to stop the investigation of the USP case CID/HQ/PEP 12/7/19, and SSP Seru Neiko said no. A/ASP Reshmi Dass was approached at CID/HQ in relation to records kept during the discussion of serious cases at CID/HQ which she stated that no one recorded the discussion because it was only presentations to senior officers, and there were confidential matters to be discussed. Upon enquiry to A/IP Mereisi, she provided the file which was stored and saved on her desktop titled Administration. The two PowerPoint file documents highlighting the USP case against Winston Thompson and others was prepared by her for the Economic Crime Unit presentation to Director CID. One was prepared on the 27th of October 2020 at 12.37pm, and the other presentation was prepared on the 01st of December 2020 at 10.58pm, the time and date taken from the properties of the two PowerPoint presentation documents.

12. **Prosecution Witness 9: Susana Vuniani** is the Administrative, Litigation and Registry officer at the Office of the Director of Public Prosecutions. She started work at the Office of the Director of Public Prosecutions in 2017. In her role, she oversees the smooth flow and monitoring of investigation files. This involves receiving police investigation files, receiving notices from court, entering information regarding the case details into the ODPP database, and overseeing the return of investigation files to respective police stations after being advised by the Office of the Director of Public Prosecutions. Police officers approached her in relation to the movement of Police Investigation File CID/HQ/PEP 12/7/19, which was dispatched to the Office of the Director of Public Prosecutions for perusal and legal guidance. According to the Office of the Director of Public Prosecutions Registry Records, the said Police Docket CID/HQ PEP 12/7/19 was received by her office on 18th June 2020. On 23rd June 2020, the said Police Docket was returned to CID/HQ for further investigations. From that time to 16 March 2023, the day of her statement, the said Police Docket never returned to the Office of the Director of Public Prosecutions. \
13. **Prosecution Witness 10: Semal Nitlesh Kumar** is the liaison officer for Vodafone Fiji. As liaison officer he is in charge of providing call records, registration details, M-Paisa Statements, mobile data history, IMEI tracking and general requirements for search

warrants. On 19th April 2023, a police officer from CID/HQ approached him at his office and wanted to clarify the results of a search warrant report that the IT department had provided to the Police on March 17, 2023. He confirmed that mobile number 9906989 was activated in 2012 and registered to Ameer Husain. Later the number expired and was terminated by Vodafone because the customer did not reactive the number. In 2014, the number was activated as post-pay to the Fiji Police Force under a Sitiveni and the said number was terminated on 30th January 2023 on the request of the Fiji Police Force. The registration of the number as a prepay number will remain as is unless the number is re-registered and re-cycled to another customer. In the case of a number that is changed from pre-pay to post pay, sometimes the previous registration details of a customer remains the same. The post pay number is not registered to a person under a company name under the user of the number. In respect of registered number 9906989 that was registered to Ameer Hussain in 2012, he confirmed that in 2014, the number was activated under the Fiji Police Force to Sitiveni Qiliho.

14. **Prosecution Witness 11: Amelia Kamsoo** is a police officer based at the Fiji Police Communication Unit. She is in charge of the administration of the Communication Unit, and her role is to deal with all Vodafone issues and the allocation of police phones to police officers and to prepare phone bills on a monthly basis and forward bills to Police accounts for settlement. Police Officers from CID/HQ approached her on 20th April 2023 and wanted to clarify the user of mobile phone number 9906989. To the best of her knowledge and understanding, the said mobile number 9906989 was used by the former Commissioner of Police Sitiveni Qiliho. When he was appointed to the post of Commissioner of Police in 2015, he was already in possession of phone number 9906989. He wanted to continue using that phone number so she registered that phone number with the approval of Vodafone and she then applied for the change of plan so that the number would come under the Fiji Police Force allocation. He continued to use the phone until she applied to Vodafone for its disconnection in January, 2023.

15. **Prosecution Witness 12: A/ASP Josua Vosaki** is an investigator in the Major Crime Unit based at CID Headquarters at 53 Suva Street, Suva since June, 2019. On 9th March, 2023 at 5.48pm, at the OC/Major Crime Office, he formally charged Josaia Voreqe Bainimarama for one count of Abuse of Office contrary to section 139 of the **Crimes Act 2009**. He was charged in English whereby all his rights were put to him in the presence of his counsel,

Mr. Devanesh Sharma. W/Sgt. 4024 Lavenia Qereqeretabua was his witnessing officer. The charge completed at 6.16pm.

16. **Prosecution Witness 13: A/ASP Petero Tupici** joined the Fiji Police Force in 1990. He works at the CID Headquarters as an investigator in the Major Crime Unit. On 09th March 2023 at 6.21pm, he formally charged Sitiveni Tukaituraga Qiliho for the offence of Abuse of Office. The charge completed at 6.47pm. D/Sgt. 3650 Semi Volikitikoro was his witnessing officer. Mr. Qiliho was given his constitutional rights and he opted to be charged in the English language.
17. **Prosecution Witness 14: D/IP Suliasi Dulaki** has been a police officer with the Fiji Police Force since December 05th, 2005. He is based at the CID Headquarters, 53 Suva Street, Suva. He has served in the Fraud & Anti-Money Laundering Unit where he conducted investigations, individually or as part of a team, into fraud related offences, money laundering and proceeds of crime offences, illicit drug related offences, sedition cases, and other offences referred to him by his supervisors. For six months prior to 05th July 2023, he has been with the CID Taskforce Team based at CID Headquarters, 53 Suva Street, investigating cases referred to them by the Director CID. On 08th February 2023 at 9.46am, he caution interviewed and video recorded the interview under caution of suspended Commissioner of Police Sitiveni Tukaituraga Qiliho. A/Inspector Paula Kaikai was his witnessing officer. The interview was conducted in English and Mr. Qiliho was accorded his constitutional rights. He understood the allegation put to him and also the cautionary words put to him per Judges' Rules No. 2. There was no threat, force, promise or any inducement brought to bear against Mr. Qiliho to enable him to give the answers to his interview and he voluntarily signed the discs containing the record of his Interview.
18. **Prosecution Witness 15: Ato'ese Morgan Tuimaleali'ifano** wrote a statement dated 15 May 2020 regarding an allegation of abuse of office by University of the South Pacific Pro Chancellor Winston Thompson and former Vice Chancellor Rajesh Chandra. He was employed by the University of the South Pacific in 1977 and he has been an associate professor in history at the University of the South Pacific since 2008. He was a former President of the Association of USP Staff and on 15 May 2020 was a member of that Association. On 8 July 2019, he accompanied the General Secretary of the USP Staff Union to lodge a formal complaint at the Totogo Police Station, Suva. The complaint was entered

in the Police Station as Serial No. 303.07/19 and dated 8 July 2019. The nature of the complaint was that while holding the office of Pro Chancellor and Chair of the USP Council from 2016 to 2018, Mr. Winston Thompson aided and abetted the act of abuse of office by Professor Rajesh Chandra. He further alleged that Professor Chandra had committed two acts of abuse while holding the office of Vice Chancellor and President (VCP) of USP from 2013 to 2018. He noted that the particulars of the abuse of office is contained in a confidential paper written by current USP Vice Chancellor Professor Pal Aluwhalia titled “Issues, Concerns and Breaches of Past Management and Financial Decisions”, that appeared in the public domain on 10 May and June 2019. Annexed to Prof. Tuimaleali’ifano’s Statement was the confidential paper and articles by Samisoni Pareti and Peni Komaisavai published in *Island Business*. According to Prof. Tuimaleali’ifano, the paper contained two specific allegations of deferred payments of Professor Chandra’s:

- (1) back-pay of 2016 – 2018 salary, and
- (2) allowances claimed for Professional Development Leave taken in September and October 2018 (3 months prior to Prof. Chandra’s end of contract in Dec. 2018).

It is alleged that both deferrals had been approved by the USP Pro Chancellor and Chair of Council, Mr. Winston Thompson. In his statement, Prof. Tuimaleali’ifano expressed his view that the conduct by Mr. Winston Thompson was illegal and in violation of the University of the South Pacific’s mandate to its stakeholders, namely staff and students, governing council of the 12 member countries and two development partners. He asked that Mr. Winston Thompson and former Vice Chancellor Rajesh Chandra be charged and prosecuted for breaches of Fiji’s laws.

19. Prosecution Witness 16: Ilima Jone Finiasi wrote a statement on 15th May 2020. On 8 July 2019, in his capacity as the Secretary General of the University of the South Pacific Staff Union (USPSU), he had lodged a complaint at the Totogo Police Station and it was assigned the complaint number 303/07/19. The USPSU received an allegation of University mismanagement which was widely made available through public domain on 10 May 2019 and 17 June 2019 (Pareti and Komaisavai in *Island Business*). These allegations amongst other allegations of mismanagement by Pro Chancellor Mr. Winston Thompson involved:

1. Deferred payment of backpay of former VCP/P 2016 – 2018
2. Deferred payment of Professional Leave allowance for former VCP/P
3. Responsibility allowance for Mr. Jai Karan, the Director Strategic partnership, communications and marketing (SPAC)
4. Financial delegation breach and attempted use of 2019 VCP contingency fund.

He expressed his concern at learning of these allegations of serious mismanagement at the senior most level and he expressed his view that it was in the interest of the union that the allegations be pursued..

20. The State also tendered the following documents by consent.

21. **Prosecution Exhibit 1: Fiji Police Minute Sheet No. 01** which was a minute by A/SSP S. Neiko in his capacity as Director CID dated 17 June 2020 to the Director of Public Prosecutions forwarding CID HQ PEP 12/07/2019 for his perusal and legal guidance. In that minute, he explained that the case was in relation to the University of the South Pacific saga whereby a complaint had been registered with Police by Ilima Jone Finiasi who made allegations against the Pro Chancellor, Mr. Winston Thompson, for mismanagement. Based on their preliminary investigations, they could confirm that there were some breaches of USP's internal policies and guidelines that resulted in some major decisions causing loss to the Institution as per the BDO Investigations Report dated 21 August 2019. Given the nature and circumstances of the allegations made and the current hyped up situation at USP, he sought the DPP's legal guidance and advice to assist them in aligning their investigations to the criminal aspects of the matter only. He noted in the minute that a statement had also been provided to the Police by a former President of the Association of USP staff and current member, Ato'ese Morgan Tuimaleali'ifano, who confirmed accompanying the General Secretary, Ilima Finiasi to lodge the complaint against Mr. Winston Thompson and former Vice Chancellor and President Rajesh Chandra that between 2016 to 2018 they violated processes within USP and abused their office resulting in mismanagement of USP resources. A statement was recorded from Dulari Doras Turagabeci Trail, Director Assurance and Compliance at USP who highlighted the following allegations:

- (i) That Pro Chancellor Mr. Winston Thompson abused his authority in approving Professional Development Leave of VCP on 15th August 2018 including the period 2014 to early 2016, a period prior to the formulation of the Professional Development Policy. Among other issues, also highlighted was the payment of airline tickets and per diems amounting to \$20, 041.07 to former VCP.

Findings of the BDO Investigation Report revealed that the said amount should be refunded and that the PDL should have been taken as annual leave, hence a calculated amount of \$42, 765 together with the \$20, 041.07 should be refunded.

- (ii) That USP's former Interim Human Resources Director, Dhiraj Bhartu facilitated a cash bonus payout, amounting to \$2, 804.35 for Shobna Kiran, USP's Manager Payroll; *and*
- (iii) That USP's former Interim Human Resources Director facilitated cash bonuses amounting to \$5, 417.96 to Jandra Karan, USP's Director Development, Marketing, Communication and Alumni.

The docket also contained other relevant documents and the statements recorded by USP's internal investigation team to substantiate the claims. At that stage, they anticipated the likely offence of Abuse of Office contrary to section 139 and Conspiracy to Defraud – obtaining a gain contrary to section 327 under the Crimes Act, and he indicated that they looked forward to receiving the DPP's legal guidance.

22. **Prosecution Exhibit 2** is a letter from the then Chief of Intelligence, Investigation and Prosecutions (CIIP), Assistant Commissioner of Police (ACP) Biu Matavou. The letter is dated 25 August 2020 and it is addressed to Mr. Ilima Finiasi. The reference reads "Follow-up on progress of Police investigation vide report No. 303/07/19". The letter reads:

"Reference is made to the above and to your letter dated 18 August 2020 to the Acting Commissioner of Police, Mr. Rusiate Tudravu, regarding the same. Be advised that the investigation file is with the Director of CID after perusal by the Director of Public Prosecution (DPP) and has advised further investigation to be done. The investigation team at the CID Headquarters are currently working on the areas that the DPP have highlighted. In the process of the investigation, your office will be advised of the progress."

A copy of the letter is received by the CID/HQ Registry on 25 August 2020 and it is sent to DDEC for her file.

23. **Prosecution Exhibit 3** is a series of Police Minutes for CID HQ PEP 12/07/19, namely Minutes No. (7), (8), (10), (11), (12), (13), (14) and (15).

Minute No. (7) is written by A/ASP Rajesh Kumar, Manager Major Fraud to Deputy Director Economic Crime. The minute is dated 10th July 2020. He re-submits CID HQ PEP 12/07/19 and brings to D/DEC's attention the work that had been done in respect of State Counsel's from the DPP's office request:

- (i) Personnel files for all suspects had been obtained except for Job Description of Dhiraj Bhartu. Winston Thompson did not have any Job Description by virtue of his post. Copies of the personnel file for Rajesh Chandra was attached as (D-6) and Shobna Kiran was attached as (D-38).
- (ii) Statement of Veronica Yuen (A-4) had been recorded and was attached.
- (iii) Documents were obtained and attached as (D-9), (D-19) – (D-23) and a calculation of costs was explained by (A-4).
- (iv) Statement of Ravinesh Shankar (A-6) had been obtained who confirmed that Shobna Kiran's appeal was not heard during the Staff Appeal Committee meeting. Audio recording was in the possession of Investigating Officer. Salaseini Malo (A-7) confirmed that the appeal for Jaindra Karan was not heard in the meeting.

He asked for further advice on the nature of allegation against each suspect and indicated that a copy of the BDO Report was attached as D-2 and indicated that the original of the Report was in the possession of the Investigating Officer. He also indicated that a copy of the statement of Dulari Trail (A-3) was attached and he indicated that the original was retained in the original file along with her audit report.

Minute No. (8) is written by Deputy Director Economic Crime to the Manager Major Fraud. The minute is dated 31 August 2020 and via that Minute D/DEC returned CID HQ PEP 12/07/19 for his necessary action and via that minute she attached the feedback provided by CIIP to the complainant dated 25 August 2020. She directed the investigating officer to prepare for the identified suspects Video Recording Interview.

Via Minute No. (10) dated 4 January 2022 A/SP Rajesh Kumar in his capacity as Acting Deputy Director of Economic Crime forwards CID/HQ/PEP 12/07/19 for filing as directed by CIIP during the presentation of serious cases at CID/HQ. He indicates via that Minute

that the docket is properly compiled and submitted to DCID's office due to verbal instructions by COMPOL to not carry out further investigations.

In response, via responding Minute (11), DCID directs DDEC to file away and update record.

In Minute No. 12, A/DDEC writes to Manager Major Fraud indicating that the case has been filed. He directs MMF to advise the complainant and return exhibits if any, and to re-submit the file for filing with copy of the advice letter attached.

Via Minute No. 13, A/SP R. Taoka in his or her capacity as D/DEC writes to DCID submitting CID HQ PEP 12/07/19 for perusal and further directions. A summary of facts was also attached and by way of background A/SP Taoka explains that the case had been filed by former DCID SSP Mesaka Waqa on 6th January 2022, that on 10th July 2020 ASP Rajesh Kumar had indicated by minute that the queries raised by the ODPP in their letter dated 23rd June 2020 had been attended to, and that the only pending tasks was to obtain the job description of Dhiraj Bhartu and Winston Thompson, and that they had obtained confirmation from Doras Trail that neither suspects had specific job descriptions. The minute ends with the note that all suspects had yet to be brought in for Video Record Interviews for the allegation of abuse of office.

Minute No. 14 references the received stamp by the CID/HQ Registry and Minute No. 15 is a minute from Director CID dated 31st January 2023 addressed to DDEC. Via that minute, Director CID returned CID HQ PEP 12/7/19 for continuation of investigation. Director CID asked DDEC to direct the Investigating Officer to finalize all pending investigations for the case and to comply with DPP's instructions as per their letter dated 23rd June 2020. He directed DDEC to ensure that all suspects were interviewed under caution and he directed DDEC to open a separate preliminary inquiry and to appoint an investigator to investigate the reason why the case had been filed. Director CID noted that in his Minute No. 10, A/SP Rajesh had mentioned that there had been verbal instructions by COMPOL not to carry out investigations and he indicated that that needed to be investigated and he directed DDEC to direct investigations accordingly. The minute ends with a direction to submit progress by 10th February 2023.

By Minute No. 16 dated 1st February 2023, DDEC writes to MMF returning CID HQ PEP 12/07/19 for continuation of investigations. DDEC directed MMF to finalize all pending issues in the case as highlighted in para. 2 and 3 of Director CID's minute number 15 dated 31st January 2023 and to submit progress by 09th February 2023.

24. **Prosecution Exhibit 4** is Mr. Josaia Voreqe Bainimarama's Oath for Ministers sworn at Suva on 20th November 2018. It is signed by Mr. Bainimarama before his Excellency, the President of the Republic of Fiji. It reads:

"I, **Josaia Voreqe Bainimarama**, being appointed as Prime Minister, swear that I will be faithful and bear true allegiance to the Republic of Fiji and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise to hold my office with honour, dignity and integrity, to be a true and faithful counsellor, not to divulge any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability. So help me, God!"

It also contains Mr. Josaia Voreqe Bainimarama's Oath of Allegiance sworn at Suva on 20th November 2018. It is signed by Mr. Bainimarama before his Excellency, the President of the Republic of Fiji. It reads:

"I, **Josaia Voreqe Bainimarama**, swear that I will be faithful and bear true allegiance to the Republic of Fiji, according to law, and I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji. So help me, God!"

By Legal Notice No. 1 signed by Mr. Josaia V. Bainimarama in his capacity as Prime Minister, the following ministerial assignment is made:

"To: Rear Admiral (Retired) Josaia Voreqe Bainimarama

Prime Minister and Minister for iTaukei Affairs, Sugar Industry and Foreign Affairs
In exercise of the powers vested in me as the Prime Minister of the Republic of Fiji under section 92 (3) of the Constitution of the Republic of Fiji, I hereby assign to myself in my capacity as the Prime Minister and Minister for iTaukei Affairs, Sugar Industry and Foreign Affairs, the responsibility for the conduct of the following Government businesses, divisions and written laws (subject to the provisions of any other written law) –

Business	Division
(a) <i>Office of the Prime Minister</i>	<i>Office of the Prime Minister</i>
Coat of Arms of Fiji	Cabinet Office
Commission of Inquiry	
Constitution of the Republic of Fiji	Mahogany Industry Council

Honours and Awards	
Other minority groups (e.g. Kioa Island, Melanesian Community)	Constitutional Offices Commission*
People's Charter	
Promissory Oath	<i>Office of the President</i>
Rabi Island Affairs	
Rotuma and Rotuman Lands	
(b) <i>iTaukei Affairs</i>	<i>Ministry of iTaukei Affairs</i>
Dispute Resolution	iTaukei Affairs Board
Education and Training	iTaukei Development Fund Board
iTaukei Affairs	iTaukei Fisheries Commission
iTaukei Fishing Rights	iTaukei Lands Appeals Tribunal
iTaukei Lands	iTaukei Lands Commission
	iTaukei Land Trust Board
(c) <i>Sugar Industry</i>	<i>Ministry of Sugar Industry</i>
Sugar Reform	Sugar Unit
(d) <i>Immigration</i>	<i>Department of Immigration</i>
Deportation	
Immigration	
Passports	
(e) <i>Foreign Affairs</i>	<i>Ministry of Foreign Affairs</i>
Aid and Training	
Development Assistance	
Diplomatic Relations	
Marine Spaces	
Treaties and Conventions	<i>[Note: * indicates the responsibilities and is subject to any provision as to independence of office]</i>
(f) <i>Responsibility for all written laws regulating the businesses of (a), (b), (c), (d) and (e) above including in particular, the following Acts and subsidiary legislation made thereunder –</i>	
....”	

Listed in the Ministerial Assignment are all the Acts and subsidiary legislation relevant to the assignment made.

25. **Prosecution Exhibit 5** is Mr. Sitiveni Tukaituraga Qiliho's Letter of Appointment as the Commissioner of Police signed by his Excellency the President of the Republic of Fiji, Major General (ret'd) J.K. Konrote. It is dated 26th February, 2021 and is received by the office of the Commissioner of Police on 2nd March 2021 and it reads:
"Pursuant to section 129 (4) of the Constitution of the Republic of Fiji, and on the advice of the Prime Minister as Chair of the Constitutional Offices Commission, following consultation with the Minister responsible for the Fiji Police Force, please note that you will continue as the Commissioner of the Fiji Police Force for a period of three (3) months or until such time a substantive appointment is made following an open merit recruitment process."
26. **Prosecution Exhibit 6** is Mr. Sitiveni Tukaituraga Qiliho's Contract of Employment made on the 23rd of September 2021. It is a contract between the Prime Minister of the Republic of Fiji (as Chair of the Constitutional Offices Commission) for and on behalf of the Government of the Republic of Fiji) of the one part and Sitiveni Tukaituraga Qiliho of the other part and it is a contract employing Mr. Qiliho as Commissioner of Police for a period of 05 years with effect from 16 September 2021. Per that contract he is entitled, amongst other things, to an official mobile phone. It is signed by Mr. Bainimarama for and on behalf of the Government of the Republic of Fiji, and Mr. Qiliho.
27. **Prosecution Exhibit 7** is a Letter notifying Mr. Qiliho of his Suspension as Commissioner of the Fiji Police Force. It is signed by his Excellency the President of the Republic of Fiji, Ratu Wiliame M. Katonivere. It is dated 26th January 2023.
28. **Prosecution Exhibit 8** is a letter from Brig.-General S.T Qiliho in his capacity as Commissioner of Police advising the Acting Minister of Defence & National Security & Foreign Affairs that Deputy Commissioner Rusiate Tudravu would be acting as Commissioner of Police for the period 24th May 2019 to 16th June 2019 and indicating via that letter that Mr. Tudravu has been advised to ensure the efficiency and effectiveness of the organization was maintained at all levels.

29. **Prosecution Exhibit 9** is then Colonel Sitiveni Tukaituraga Qiliho's letter of appointment as Acting Commissioner of the Fiji Police Force by his Excellency the President of Fiji, Ratu Epeli Naulikau. It is dated 10th November 2015 and it reads:

"1. Pursuant to section 129 (4) and 163 (2) of the Constitution of the Republic of Fiji, and on the advice of the Honourable Prime Minister as Chair of the Constitutional Offices Commission and following consultation by the Honourable Prime Minister with the Minister responsible for Police, I hereby appoint you to act as the Commissioner of the Fiji Police Force with effect from 11 November 2015.

2. Your acting appointment will be for a period of 3 months or until such time when a substantive appointment is made to the position of the Commissioner of the Fiji Police Force."

30. **Prosecution Exhibit 10** is Mr. Sitiveni Tukaituraga Qiliho's Contract of Employment made on the 29th of March 2016. It is a contract between the Prime Minister of the Republic of Fiji (as Chair of the Constitutional Offices Commission) for and on behalf of the Government of the Republic of Fiji and Mr. Sitiveni Tukaituraga Qiliho as Commissioner of the Fiji Police Force and it is a contract employing Mr. Qiliho as Commissioner of Police for a period of 05 years with effect from 4 March 2016. It is signed by Mr. Bainimarama for and on behalf of the Government of the Republic of Fiji, and Mr. Qiliho.

31. **Prosecution Exhibit 11** is the Force Standing Orders. According to the Force Standing Orders:

"1. A docket is only a means to an end, i.e. the detection and successful prosecution of the offence. The writing up of a docket will, therefore, not be regarded as a duty, which takes priority over investigation. Nevertheless, the writing up of the docket is not to be unnecessarily delayed and in any case will be written up and completed, as far as progress in the investigation permits, within fourteen days of a complaint being made.

2. Until the investigation is completed, the progress of the enquiry will be set out step by step in the Investigation Officer's Investigating Diary and the Investigating Officer should use this diary as the basis of his/her investigation.

Handing Over Notes: Dockets

3. ...

Movement of Dockets

6. The Director Major Investigation Department shall submit dockets to the Director of Public Prosecution's office for advice. Such dockets may be so submitted only by the Director CID and therefore shall be forwarded to him by Divisional Crime Officers/Divisional Police Commanders and not submitted by them direct to the Director of Public Prosecution's Office.
 - a) Cases which the Attorney General has requested be submitted to him. (Perjury cases etc.) From the date investigation initiated. **21 days**
 - b) All cases which require sanction to prosecute by Attorney-General, whether or not such sanction has been granted before the completion of the investigation initiated. **21 days**
 - c) All cases in which Government servants in the course of their official duties are alleged to have committed offences. From the date firstly reported. **14 days**

Skeleton Dockets

7. ...

Minuting of Dockets

8. It will be seen that dockets in certain classes of offences must be submitted to colony level for the information of the Attorney General or to seek instructions from him. Dockets in other types of offences be submitted to Police Headquarters, for advice on legal points or clarification of procedure. Dockets in the second category will not be submitted to Director CID without prior reference to the Divisional Crime Officer (by telephone if necessary) who may be in a position to give the advice or clarification necessary and thus avoid delay in clearing the point.
9. On initial submission to Police Headquarters, for whatever reason, either before or during the course of active investigations, Divisional Crime Officers will state in their minute the precise purpose of submission. Such vague expressions as:
 - a) "Submitted for directions."
 - b) "Submitted for instruction."
 - c) "For your information and necessary action."

will not suffice and are unacceptable without amplification. The following are examples of appropriate minutes applicable to particular circumstances:

- a) "Submitted for attorney Generals authority to proceed with Preliminary Inquiry on the facts disclose in the summary (or precis)."
- b)

- c) ...
- d) ...
- e) ...
- f) "Submitted for Crown Counsel to prosecute the case as the accused has been committed to the Supreme Court for trial."²

Allocation of Docket Numbers

- 10. All dockets will be registered and bear an appropriate serial number allocated by the Station of origin. One docket number only will be allocated irrespective of the number of offences disclosed and Crime Register number allocated.
- 11. Where a series of offences are committed by one person or by the same gang at the same date, time and place, investigations into these offences will be embodied in the one docket, which will record as many Crime Register numbers as there are offences committed, but only one docket number will be allocated, e.g.

...

- 12.

Typing

- 13. ...

Summary of Facts

- 14. ...

- 15. ...

- 16. ...

Investigating Diaries

- 17. The Investigating Diary is a record of the proceeding of the investigating officer, written up day by day until the final report on the case is submitted. Should investigations be commenced by any other officer that officer will write up a diary to show the action he has taken and hand it to the Investigating Officer for filing in the Docket.
- 18. The Investigating Diary will contain the Crime Register number, the time at which information respecting the commission of the offence was received by the Investigating Officer and the means by which the information reached him/her. It will record the immediate action taken by the Investigating Officer such as telephoning or otherwise conveying instructions to subordinates, requested assistance and the time he/she

² The Court either received an outdated version of the Force Standing Orders, or the Force Standing Orders are in need of an update.

commenced and closed his investigations for the day. If the Investigating Officer visits the scene he/she will record the time of arrival and what exactly he/she observed at the scene, what he/she discovered, what others discovered and reported to him/her, what exhibits were handed to him/her and by whom and the time when handed over and the condition they were in; what action he took and what instructions he/she gave to others; what places he visited in the course of his investigation; what s/he discovered at those places; the persons s/he questioned and what information he/she obtained from them. The Investigating Officer will record the time and place at which every arrest is made and by whom effected, if there is a post mortem that fact will be recorded; also, the fact of the holding of a Magistrates inquiry into the death and finding. The Investigating Officer will not repeat the recorded statements of witnesses. Every page of the investigation diary will be numbered as will every entry. At the conclusion of each day's investigation the Investigating Officer will sign the last entry and rule a line horizontally under it and across the page. When the Investigating Officer mentions a particular fact, which appears in any statement or elsewhere in the docket, he/she will quote the reference, i.e. (B-4) or (D-2). The Investigating Officer will note submissions of forms, reports, memos and letters, whether or not copies of these are included, as (D) folios in the docket. The Investigating Officer will note in his/her diary efforts made to contact persons required for interrogation. Often two or three day's elapse waiting to contact a witness who is sick or absent in the ordinary course of business. An entry in the Investigating Officer's diary will explain the cause of delay.

19. In all cases of serious crime the first officer on the scene shall submit a diary which will be enclose in the docket whether or not he/she is the Investigating Officer.

Tagging of Dockets

20. ...

Rank, Number and Name of Investigating Officer

21. ...

Statement of Suspect

22. If there is only one suspect, that statement should be marked (B-1) and not B. There may, perhaps, be another suspect later on and confusion would then be caused.
23. When recording the statement of a suspect you should take care not to say anything to him/her which might suggest a line for him/her to follow.
24. It is generally a mistake to let a suspect know what you have found about the case.

25. An important matter, which is often lost sight of by Investigating Officers, is the question of alibi of the suspect. If the suspect says that at the relevant time (i.e. at the time of the offence) he/she was elsewhere, find out from him/her who his/her witnesses are who can prove this. Then you must contact them straight away, before the particulars of the time. If you have found that the suspect's alibi is false, produce those witnesses in court and get them to say what they have told you.

Folios

26. The docket cover provides for four types of enclosure: (A), (B), (C) and (D) folios. The (D) series is for all enclosure other than statements, and Investigation Diaries. If dockets grow bulky a second cover may be used for (D) folios only. This second cover will bear the docket number and brief leading details only. It will be marked clearly "(D) FOLIO ONLY" and will include an index recording in number series all folios enclosed and indicate their nature.

27. ...

Minutes and Minute Sheets

28. The Station and Docket number will be shown at the top right hand corner of each minute sheet. A line will be drawn down the center of each minute sheet or alternatively, the sheet folded down the middle, so that minutes are confined neatly to one half of the page. Whenever practicable minutes will be recorded in typescript, they will be numbered serially and no blank spaces left. Paragraphs of each minute will be numbered. Each minute sheet will be numbered serially and no blank spaces left. Paragraphs of each minute will be numbered serially, i.e. sheet No. 1, then sheet No. 2. When submitting dockets, minute sheets must be in proper sequence.

29. 50

Results of Case

51. The results of case at paragraph 10 of the docket will not be taken too literally. This space is commonly used only to show results of prosecution but when there is no prosecution or other court proceedings it will also be used to show the final results of police action. For example, if the docket concerns a murder and suicide, the Investigating Officer will enter the Magistrate's decision, even if no enquiry has been held. If the investigation is one in which the case is closed "undetected" this fact will be shown on page 4 with a brief note explaining the reason; e.g. "stolen property unidentifiable", or similar remarks, as appropriate to the circumstances.

52....

Docket Movements

53. Docket movements will be recorded in the Case Register in blue-black ink for local movements and in red when sent out of the Station area or when brought up for direction to the Office in Charge Police District at a station other than his/her Headquarters Station, Divisional Police Commander, Divisional Crime Officer, or any Police Headquarters Officer.

Submission and Filing of Dockets

54. The following dockets shall be forwarded to D/CID as follows: -

a) **Within 21 days of an Accused person being charged in Court:**

- i. Cases which are within the sole jurisdiction of the Supreme ³Court.
- ii. Cases which the Director of Public Prosecutions has requested to be forwarded.
- iii. Cases which require Director of Public Prosecutions' sanction to prosecute.
- iv. Cases in which police officers and Government servants are alleged to have committed offences.

b) **Within 60 days of original report:**

Cases in which police officers and Government servants are alleged to have committed offences.

55. Only the Director CID shall have authority to direct the closure and filing of docket concerning cases listed in para 54 above.

56. The following dockets shall be submitted within 60 days to Divisional Crime Branch Officers who shall have authority on behalf of the Divisional Police Commanders to direct closure and filing: -

57. The following dockets shall be submitted within 60 days to the officer in charge police districts (in Northern Division to the Divisional Crime Officer) who shall have authority to direct closure and filing: -

Cases which are punishable by imprisonment not exceeding two months and/or a fine of not more than 40.

58. In order to ensure that dockets are submitted to Divisional Crime Officers and Officer in Charge Police Districts within the stipulated time it will be necessary for these officers to maintain a "Bring Up" Register in which will be noted the dates on which such dockets are due. Should dockets not be submitted within the stipulated time, local reminder action will be taken.

³ Now the High Court.

59. Divisional Crime Officers and Officers will be provided with the days on which the dockets they are authorized to close must be submitted to them by a form as shown at schedule II sent to them by OC/Criminal Records Office. OC/Criminal Records Office will despatch these forms having ascertained the relevant dates from the duplicate sheets of the case Registers submitted to him.

60. Nothing in this order shall prevent the commonsense submission of any docket to higher command for advice. D/CID may call at any time for any docket to be submitted to him.

...”

32. **Prosecution Exhibit 12** are notebook entries of **Prosecution Witness 21: A/ASP Reshmi Dass**. The relevant notebook entry reads:

“WEDNESDAY 15th July, 2020

0920hrs At Economic Crime Unit CID/HQ reported in for duty. At the office compiling Lautoka PEP 41/6/18

1040hrs At the office called by D/CID – A/SSP Seru Neiko to call COMPOL

1043hrs At D/CID’s office, SSP Seru rang COMPOL and I spoke to him regarding case from USP. He asked if I had brought someone from USP to record statement last 2 weeks. I advised him that I brought the witness Ravinesh Shankar on 30/6/20 and that was the last time I met with him. COMPOL informed that one vehicle was moving around the witness house every day. He instructed me to stop the investigation against Winston Thompson & others as FICAC had closed the file as it’s USP’s internal process. It’s from PM’s office. At CID/HQ D/CID’s office briefed D/CID – A/SSP Seru about the conversation with COMPOL.

1055hrs Called back to the office and advised A/MMF A/ASP Rajesh about the status of the case.

1130hrs *Seen at CID HQ R Kumar*
At the office received call from Dulari Trail she asked if we are doing surveillance on Ravinesh Shankar’s house as he had raised this with VCP & HR that 3 vehicles from CID are doing surveillance on his house. I informed her that we are not doing the surveillance on his house. At the office advised A/ASP Rajesh about the conversation with Doras Trail he

instructed to inform Doras to ask Ravinesh to get the particulars of their vehicles doing the surveillance. I rang to Doras and told her to ask Ravinesh to get the vehicle details. At Economic Crime Unit CID/HQ reported off duty.”

33. **Prosecution Exhibit 13** are Notebook entries from the Notebook of **Prosecution Witness 25 SSP Serupepeli Neiko**. The relevant entries read:

“WEDNESDAY 15th JULY 2020

0700 Reported in for duty at the office.

0800 Commenced with the attendance to official administrative and investigation correspondences.

1040 COMPOL called from his official number 9906989 through my official number 9905707 and asked why we still investigating the USP matter when FICAC has revealed that it was an internal administrative issue for USP to (*sic*) with it internally. COMPOL asked for the IO to be called to the office so he could talk to her. IO – IP Reshmi Dass was called into the office and the mobile phone was on speaker mode so that the instructions from COMPOL could be heard. COMPOL asked IO about Ravinesh Shankar who is an USP staff that was brought in for questioning. The IO replied that Shankar was brought in for her statement. COMPOL directed that we are to close the USP investigations file since FICAC has revealed that it was administrative issues within USP.”

34. **Prosecution Exhibit 14** is **Prosecution Witness 21: A/ASP Reshmi Dass’s** Investigation Diary in P.E.P No: CID/HQ PEP 12/7/19 Station ECU CID HQ. It reads:

“Date/Time	Diary No.	Particulars
	1	At Major Fraud Unit/CID HQ I was instructed by SP Loraini Seru (DDEC) to have a meeting with Doras Trail of USP in respect of one case reported by them.
	2	At USP board room had meeting with Doras Traill, A/IP Osea with staff of USP regarding the allegation against the Pro Chancellor, VCP Rajesh Chandra and other staff for abuse of office.
18/07/2019	3	A team consisting D/IP Rajesh Kumar, D/Sgt 3201 Avinesh

Maharaj, W/Sgt 3840 Mereisi, D/Cpl Osea and A/Cpl 3704 Temesi executed search warrant at USP for all the original documents and uplifted the documents.

13/07/2019 4 At Major Fraud office started recording statement of Doras Trail and asked her to start compiling the original documents in respect of the allegation.

5 At Major Fraud office email to Doras Trail for the documents and she stated that they will compile the documents and bring it over to CID/HQ

14/02/2020 5 At Major Fraud Office received the instruction from ASP Rajesh to carry out the investigation into the alleged case of Abuse of Office

15/02/2020 6 At the office read through the documents in the file.

06/05/2020 7 At Major Fraud office completed the statement of Doras Trail. Advised her to make arrangements of the witness statements

15/05/2020 8 At the office received the statements of the complainant Ilima Jone Finiasi and A M Tuimaleali'fano from USP

25/05/2020 9 At the office I was instructed to compile the docket for onward submission for independent legal advice to ODPP

08/06/2020 10 At the office handed over the file to SP Loraini Seru to be sent to ODPP

27/06/2020 11 At the office received the file from MMF to complete the pending tasking as raised by Ms. Prasad of ODPP.

28/06/2020 12 At the office rang to Ms. Doras Traill to make arrangement of the witnesses for their statements

-/06/2020 13 At the office recorded statement of Veronica Yuen accountant of USP

14 At the office recorded the statement of Petra Sigavata Head of Section & Secretary to council of USP

15 At the office requested Sgt 3201 Avinesh to record the statement of Salaseini Malo Associate Manager Regional Campuses of USP

	16	At the office recorded statement of Ravinesh Shankar Manager Talent Acquisition & Management of USP
01/07/2020	17	At the office recorded statement of Maciu Raikoti Assistant Accountant of USP
02/07/2020	18	At the office recorded statement of Sweetika Rajini Kumar Assistant Manager OD/L of USP
06/07/2020	19	At the office handed over the file to A/ASP Rajesh (MMF) for onward submission after completion of the issues raised by ODPP.
15/07/2020	20	At the office I was called by A/SSP Seru Neiko (Acting DCID) to call the COMPOL
	21	At DCID's office A/SSP Neiko rang and gave the phone to me. When I answered the call, he said Commissioner speaking and asked me about the USP case. He asked me if I had brought someone from USP to record statement last 2 weeks. I told him I brought the witness Ravinesh Shankar on 30/06/20 and that was the last time I met with him. Compol informed that one vehicle is moving around his house every day. He instructed me to stop the investigation against Winston Thompson and others as FICAC has closed the file as its USP's internal process, its from PM's office. After the conversation I informed A/ASP Rajesh Kumar (MMF) of the status of the case and what had Compol said.
	22	At the office received a call from Doras Traill and she asked if we are doing surveillance on Ravinesh Shankar's house as he had raised this with VCP & HE that 3 vehicles from CID are doing surveillance on his house. Informed her that we are not doing the surveillance on his house.
16/10/2020	23	At the office received the file from admin to complete the issues raised by SP Loraini Servu (DDEC)
17/10/2020	24	At the office rang to Doral Trail to arrangement for the witnesses statement
19/10/2020	25	At the office of VCP Professor Davindra Pal Singh

		Ahluwhalia recorded his statement
	26	At the office recorded statement of Kolinio Boila Executive Director Finance of USP
20/10/2020	27	At Lodhias Travel Services at Shop #1 Kwong Tiy Plaza, Marks Street, Suva executed search warrant for the payments done for the purchase of ticket for VCP Rajesh Chandra, uplifted documents and recorded statements of Vinod Mishra, Director of Lodhias Travel Services.
	28	At the office requested A/IP Osea Tunidau to record statement of Anita Datt cashier at USP
	29	At 1 st Floor Caines Janif Building, Victoria Parade, Suva recorded the statement of Fay Yee Chartered Accountant and Lay Member of Council at USP
21/10/2020	30	At USP recorded statement of Krishna Sami Raghuwaiya Senior Lecturer and Secretary General at USP
04/01/2022	31	At the office handed over the file to A/SP (A/DDEC) upon his verbal instruction.”

35. **Prosecution Exhibit 15** is the Program of Events and Minutes of the USP Council Special Meeting of 29 & 30 August 2019. Part A contained items for discussion which required the decision of the Council and this included confirmation of the resolutions by the Council on Matters related to the Paper titled “*Issues, Concerns and Breaches of Past Management and Financial Decisions*”, to consider matters arising from the Minutes other than those appearing elsewhere in the agenda, to consider the Report by BDO on the Investigation into Matters related to the Paper titled *Issues, Concerns & Breaches of Past Management and Financial Decisions*, to consider a Report by the Chair of the Audit & Risk Committee’s review of the Draft investigation Report at the ARC Special Meeting held on 16 August 2019 and explanation regarding the decision to restrict the circulation of the Report prior to the Council meeting; and to consider the Response by the FICAC on the Allegation in the Paper titled, “*Issues, Concerns and Breaches of Past Management and Financial Decisions*.” Part B related to the Code of Conduct for Members of Council which was for the Council’s information only.

An Extract of Page 3 of the Confidential Minutes of the 88th Meeting of the USP Council held at the Conference Room, Holiday Inn, Port Vila, Vanuatu on Thursday 16 and Friday 17 May 2019 following the completion of items in Parts A & B of the agenda formed part of the Minutes for **Prosecution Exhibit 15**. The Minutes show that after following due process and ensuring that conflicts of interest were declared and those in conflict had left the room, the Council held a Confidential Session to deliberate on and address the recent allegations that had surfaced to the media relating to “*Past Management and Financial Decisions*” and which had implicated the former Vice-Chancellor and Chair of Council. The Council agreed that no minute taking would be done during that session and only the resolutions agreed by Council would be drafted and presented to members when the Council meeting reconvened after the lunch break. The Council approved the following resolutions:

“(i) Council supports the investigation currently underway by FICAC.

(ii) Council requests an independent investigation on all matters related to the Paper on Past Management Decisions to report to the Audit & Risk Committee (ARC), Terms of Reference to be developed by ARC and circulated for approval to Council by 31 May 2019 and receipt of confirmation by Council members by Friday 7 June 2019. The ARC will secure an independent investigation organization with a report to a Special Meeting of Council by the end of August 2019 in Nadi, Fiji. ARC will seek EOI from member states for expertise that could assist in the development of the TOR and oversight of the investigation.

(iii) Council requests that Hon. Loau Keneti Sio, Minister for Education, Samoa and Hon. Fauoa Maani, Minister for Education, Tuvalu be asked to meet with the Pro-Chancellor and Vice-Chancellor & President to consolidate their relationship and ensure a positive environment for governance and management.

(iv) The Council requests that all communication with the media regarding this matter be cleared through the Chair of ARC and the Deputy Pro-Chancellor.

(v) The Council requests that the Chair of ARC takes the responsibility to update the University on progress.

The Resolutions were *Moved* by the Minister for Education, Government of Kiribati, *Seconded* by the Minister for Education, Government of Tonga and *Passed* unanimously by the Council.”

Prosecution Exhibit 15 also contained the BDO Report dated 21 August 2019 regarding Investigations it had conducted at USP per its Terms of Reference. BDO Auckland had been instructed by the Audit and Risk Committee of the University of the South Pacific (“USP”) to undertake an investigation into the allegation raised in a paper tabled by Vice-Chancellor Professor Ahluwalia at a Meeting of the Council of USP on 15 and 16 May 2019 in Vanuatu. The paper was titled, “Issues, Concerns, and Breaches of Past Management and Financial Decisions.” The objectives of the BDO investigation was to independently determine the existence of possible breaches as reported in the Paper “Issues, Concerns and Breaches of Past Management and Financial Decisions.” BDO investigated each of the allegations, tested the allegations against USP Statutes/Ordinances/Policies and suggested improvements, recommendations where applicable; and they listed their sources of information for the purposes of preparing the Report at Appendix 2.

The BDO Report notes that “the University of the South Pacific has been operating within the South Pacific for just over 50 years – it celebrated its golden jubilee in 2018. Established in 1968, USP is one of only two universities of its type in the world, the other is based in the West Indies. USP was established by Royal Charter on 4 February 1970. In essence, this means that USP “...has all the powers of a natural person, including the power to own property in its own right. The grant of Charter creates a corporate entity, free standing, public in nature. Unlike other corporate forms it has no shareholders or owners....The grant of the Charter was not made to the Member countries and territories, the effect was rather to create a corporate body which does not exist in any particular place.” The governments of the 12 member countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Samoa, are significant stakeholders in USP. USP has campuses in all member countries. The main campus, Laucala, is in Fiji. The Alafua Campus in Samoa is where the School of Agriculture and Food Technology is situated, and the Enalus Campus in Vanuatu is the location for the School of Law. USP is governed by its own Council, which includes representatives of the member country governments, academic staff, students and community and business leaders, the Pacific Islands Forum Secretariat, Secretariat of the Pacific Community, the American Council of Education, the Privy Council, Australia and New Zealand. The Senate is the academic authority of USP, responsible for matters such as teaching and research. The Council and the Senate are served by committees working in

such areas as Finance, Human Resource Management and Academic Planning. Other committees deal with special projects and day-to-day work of USP. The ceremonial head of USP is the Chancellor. USP's Chancellors have been drawn from the leaders of USP's member governments and include Prime Ministers, Presidents and Heads of State. The Pro Chancellor is Chair of Council and the executive head of USP is the Vice-Chancellor. The Vice-Chancellor is assisted by two Deputy Vice-Chancellors and two Vice-Presidents. The Senior Management Team is responsible for the welfare of the USP community. The Executive Director of Finance is concerned with control of University finances. The Director Human Resources manages USP's human resources."

According to the BDO Executive Summary:

"In this report, we have investigated a significant number of allegations and a number of which have been able to be substantiated and some are not able to be substantiated. We have set out in Table 2 a summary of the allegations and our findings. The detail of each allegation and our investigation is set out in our report in Section 3 Investigation Outcomes.

Our current view on the evidence reviewed to date, is that while the majority of the allegations are within the VCP's ordinance, however, when analyzed critically they do not make commercial sense. We are of the view that further investigation is required and a number of Policies and Ordinances require significant alignment and stronger oversight from the Executive Committee and Council.

We note that similar themes and control weaknesses were identified by KPMG in its capacity as USP's internal audit service provider. These HR and payroll concerns were reported in accordance with USP's standard internal audit reporting process across three main reports (each commissioned as part of the 2017 Internal Audit Plan)...These conclusions within these reports point clearly to a need for greater oversight, control and management of the HR and Payroll functions at USP. While we have not performed a detailed review of, or independently verified, KMPG's work, it appears to be comprehensive. Our outcomes and observations suggest that the recommendation raised by KPMG have only been partially implemented, or in some cases, not at all."

36. **Prosecution Exhibit 15** also contains a letter written by Reshmi Aslam, then Acting Deputy Commissioner of the Fiji Independent Commission against Corruption, to the

Chairperson of Council, University of the South Pacific. It is dated 1 July 2019. The letter reads:

“RE: FICAC INVESTIGATIONS INTO USP MATTERS

1. We write with reference to the above subject matter.
2. Subsequent to a complaint received, FICAC commenced an investigation into various abuse of office issues alleged against several staff members of USP. There were the allegations submitted by the Vice Chancellor Professor Pal Aluwhalia (VC) to the Executive Committee of the Council and later submitted to FICAC for investigations by a senior staff member. Apparently, most of the allegations were of administrative nature such as purported non-compliance to the relevant procedures stipulated within USP.
3. Due to the large number of issues raised and voluminous documents involved, it is expected that the investigations would take several months to complete. Meanwhile, we learnt that the Council also intends to carry out an investigation by engaging an independent agency. We respect the decision of the Council to carry out the independent investigation and as such, FICAC would cease its investigation into this complaint in order to avoid any duplication of work.
4. All material retrieved during the investigation shall be kept in the safe custody of FICAC and shall be delivered to the investigators nominated upon the advice of Council.
5. Further, FICAC had also received a complaint against VC (Professor Pal Ahluwalia) that he, during the Council meeting in Vanuatu, alluded to the fact that FICAC had leaked the investigation material especially his report to the social media. This was a serious allegation as divulging investigation material to a third party is a criminal offence within the legal frame work FICAC operates. As such, this matter was also investigated to verify the accuracy of VC’s claim against FICAC.
6. During this process, FICAC officers interviewed VC and requested him to provide cogent evidence to substantiate his claim. Nevertheless, he could not provide any cogent evidence. Instead, he relied on distant hearsay as his grounds. It was appalling to find that a person of this caliber, who was able to collate some 500 pages of documentary evidence to substantiate his allegations was relying on far-off hearsay as basis for his allegation against FICAC. This conduct of VC is not only mischievous but also capable of misleading the members of the Council.

7. On the other hand, FICAC officers were able to locate 2 separate copies of this document from the Assurance and Compliance section and the HR office respectively. The copy of the HR had uncanny resemblance to the document that appeared on Social Media. As such, it is doubtful whether these documents were kept in a confidential manner within USP or not. The copies of the relevant search lists are annexed for the ease of reference.
8. We wish to reiterate, as per the inquiry findings, that there is no basis to allege that FICAC had leaked this document to any third party. When FICAC officers visited the USP for the purpose of this investigation and also for other matters that had nothing to do with this investigation, VC had made it a point to meet with the officers personally indicating his keen interest in having FICAC investigations into these matter, but unfortunately, he failed to verify the same with FICAC before he made the baseless allegation.
9. We bring these matters to the kind attention of the Council. Should the Council require any further clarification or assistance, please contact the undersigned.”

Prosecution Exhibit 15 also contains a copy of a FICAC Search List in respect of FEP 111/19 and it contains the USP Council – Code of Conduct. The Preamble to the USP Council Code of Conduct reads:

“Members of Council are subject to a range of legal duties, which they take on when they assume office. Most of these duties have a moral and ethical content as well in the sense that they seek to ensure that Council functions according to the highest standards of good governance, and in the interests both of all stakeholders in the University and the external communities which it serves.

As the primary governing organ of the University the Council and its members, collectively and individually, must perform their functions, not only effectively and efficiently, according to high standards of moral and ethical conduct. As such a governing organ the Council must provide an excellent model of corporate behavior for the University and the wider communities.

Whether viewed from a legal or an ethical perspective the duties of members of Council are generally of two kinds. The first are duties of competence, diligence and/or prudence, especially in, but not confined to, the area of decision making. These are expectations that members will take an active and informed role in the governance of the University through the medium of the Council. There are also expectations that members, whilst not experts

in any particular field of management, will perform their duties and functions in a manner that will conform to reasonable standards of competence.

Being a fiduciary requires a concentration on the interests of the University rather than the personal interests of the member or of third parties who are alien to or remote from those interests. Those who are appointed to Council enter a fiduciary relationship with the University as a legal entity at the time of their appointment. The relationship is a multi-faceted one in respect of the kinds of duties which it imposes on a member of Council. It requires honesty in the performance of a Council-related tasks. It requires that the confidentiality of information of the institution be protected and not misused for purposes foreign to, or possibly in competition with, those of the University. It insists that powers be exercised for the proper purpose for which they were given and that the limits of those powers not be exceeded or otherwise abused.

A person who becomes a member of Council is put in a position of power and authority. Such a position creates an expectation of competence in performance and the exercise of a high degree of good faith and trust. It requires both responsibility and accountability in ethical and in legal terms in order to ensure that the power and authority is exercised for those who are the proper beneficiaries of it: in this case the University as a whole, its particular stakeholders as well as the communities which are served by them...”

37. **Prosecution Exhibit 16** is the Minutes of the Special Meeting of the USP Council held at the Video Conference Room 1, Japan-Pacific ICT Center, Laucala Campus, Suva, Fiji from 10.00am to 4.00pm, Friday 4 September 2020. Mr. Winston Thompson, Pro Chancellor & Chair of Council, Ms. Aloma Johansson, Deputy Pro-Chancellor & Deputy Chair of Council [also Chair of Finance & Investments Committee and Co-Opted Member], Professor Pal Ahluwhalia, Vice-Chancellor & President, and Mr. Mahmood Khan, Chair of the Audit & Risk Committee (ARC) [also Fiji Government Representative] were recused from the meeting. Professor Sushil Kumar declared his conflict of interest in respect of Item 2.1 Report from the Special Executive Committee. The Council resolved to approve the Motion agreed by the Council body, namely, that based on the detailed and painstaking work undertaken by the Special Executive Committee, that found as at 24 August 2020, there had been no Allegations where the consensus or clear majority view were deemed material, that the proceedings initiated against the VCP is terminated. The Secretariat was

to communicate the Council's decision as outlined to the VCP, the University body and the Media Outlets in the same text.

38. **Prosecution Exhibit 17** is the Minutes of the Meeting of the Executive Committee (1/19) held on Wednesday 6 March 2019, from 10.00am – 4.00pm in the New Administration Conference Room, Laucala Campus, Suva *via video conference with Melbourne*. Amongst other things, “the Committee received a report from the Director Assurance and Compliance on the Whistleblowing Policy which has now become operational since its approval by Council in October 2017. To date 5 cases have been reported, one was sent to the Pro-Chancellor via the PS Education Fiji and the other 4 to the Assurance and Compliance Unit. The Committee was also asked to approve changes to the Whistleblowing Policy which will further protect whistle blowers and the independent role of the Assurance and Compliance Unit. The Committee considered the issues raised and made suggestions for improvement as follows:

- That the changes to the Whistleblowing Policy be in track changes for ease of reference to what was being requested.
- That dates be provided to the Summary Report of Whistleblowing & Report Fraud Cases so that the length of time it takes to revolve matters can be determined.
- Any issues to do with stealing money should be immediately reported to the police.
- In terms of additional resources required, Internal auditors, KPMG, would provide the backup services needed by the DAC office.
- Disciplinary action should be taken against staff members who blocked provision of information for any case.
- That the responsibility for escalating reports be moved from the Council Secretariat to the Pro-Chancellor and the Chair ARC.

The Committee was informed that a proper Risk Register will be established which will have scores attached and owners made aware of their responsibility to manage their respective risks. The VCP also clarified that while the Director ARC is a direct report, he regarded the unit as an independent office.

The Committee resolved

- (i) to note the report from the Director Assurance and Compliance on the Whistleblowing Policy; and

- (ii) that the changes to the Whistleblowing Policy be brought back to the Committee in track changes for clarity on what is being requested for amendment.”

In addition, the Committee discussed Past Management Decisions (ECI/19/6.3). The paper had been circulated before close of business on Friday 1 March 2019. According to the Minutes, “(m)embers were not happy that such a lengthy paper was circulated so late resulting in their not being able to give it the proper scrutiny that EC papers deserved. The Chair advised the Committee that the paper sets out many aspects of the administration of the former VCP. It was unfair to expect the committee to deliberate on a set of issues which have direct implications on another individual. The paper represented one side of the picture and it was important in terms of natural justice to also let former VCP see the allegations and present his response before the Committee can deliberate on the paper. It was agreed that the internal auditors should be called also to advise on the process to follow given that some of the allegations appeared to be serious. The Committee was asked to note that the paper was the outcome of 4 months of whistle blowing received from staff as well as strict financial measures instituted from 1 January this year. It did not bear any malice and was to ensure that the type of activity did not occur again. The Committee resolved that the paper remain strictly confidential and be handed back to the VCP and Director Assurance and Compliance for safe keeping. The DAC would draft a statement to be circulated to EC members clarifying that the document was for the Committee only and that the internal audit unit would carry out the due diligence required before coming back to the Committee for its deliberations.” Mr. Winston Thompson as Pro-Chancellor of the University was Chair, and Professor Pal Ahluwalia was present in his capacity as Vice-Chancellor and President of the University. It had been Professor Pal Ahluwalia’s first meeting of the Committee.

39. **Prosecution Exhibit 18** is the Minutes of the Special Meeting of the USP Council held at the Video Conference Room 1, Japan-Pacific ICT Center, Laucala Campus, Suva, Fiji from 10.00am to 4.00pm, Friday 19 June 2020. Mr. Winston was present as Pro-Chancellor and Chair of Council, Ms. Aloma Johansson was present as Deputy Pro-Chancellor and Deputy Chair of Council, and Professor Derrick Armstrong was present as Acting Vice-Chancellor and President of the University. Also present was Mr. Mahmood Khan, one of five

members appointed by the Government of Fiji and Chair of the ARC. The Council “considered the Agenda presented before them and agreed on the following:

- That item 1 to 4 would not be discussed in this Meeting on the basis that members had read and considered the reports. Thus, matters under 1 to 4 be taken as read and discussions to start under Item 5: *“To determine whether the decision of the Executive Committee to suspend the Vice-Chancellor and President was made in bad faith and should be overturned.”*
- That an additional items be included as Item 6: *“A Motion for the Pro-Chancellor & Chair of Council to Step Down during the Process of the Vice-Chancellor & President being Independently Investigated.”*”

During the meeting, a “motion presented earlier by the Government of Samoa was raised...and seconded by the Government of Tokelau as read: *“That the Pro-Chancellor be recused from Chairing this Meeting and that the President of Nauru takes on the role of Chair. Further that, the Deputy Pro-Chancellor and the Chair of the Audit & Risk Committee also be recused from this meeting.”* A vote was taken on the Motion and the “outcome of the vote resulted with 22 members who voted that the PC, DPC and Chair ARC to be recused, 7 members voted against this and 2 members abstained from voting. Following the vote the PC, DPC and Chair ARC recused themselves and vacated the meeting room. H.E the President of Nauru thereafter assumed the role as Interim Chair for the rest of the meeting.” During its discussion, the Council “was reminded that suspending a Vice-Chancellor is not a practice in most Universities. In terms of accepted good governance practices, a good governance process includes the opportunity to investigate before determining the extent of materiality. The list of allegations presented in the Papers before the Council are not of a serious nature that would merit immediately suspension of a VCP. Moreso, the suspension of the VCP is not a matter to be taken lightly and preceding discussions had highlighted that due process was not followed. The VCP was appointed as academic leader of the University and thus the Council should offer him fair treatment on the matter as hand. This does not mean that the Council ignores the charges that are put forward under the Allegations but the Council as the governing body, deals with them in line with the processes outlined under the University’s governing instruments....The relationship between the PC and VCP was also raised for discussion. The Council was reminded that this impasse was lengthily discussed and efforts to resolve this had started since the 88th Meeting of the USP Council and then the Special Council Meeting of August

2019; however, the relationship has not improved since. While acknowledging that this is a problem that has led to the present issues that Council has to deal with, it is not a matter than can be easily resolved at this Meeting. The Council therefore agreed to defer discussions regarding the impasse between the PC and the VCP and focus mainly on the following:

1. Revisit the decision of the Special EC meeting of 8 June 2020 and reverse the suspension of the VCP.
2. Agree on the way forward to address the Allegations levelled against the VCP but adhering to the University's good governance process.

It was noted that there should be caution when using the words "bad faith" when referring to the EC decision of 8 June 2020. It must be recognized that the EC's membership is comprised of respected Government Ministers from five (5) of the USP member countries and other members appointed to EC by Council based on their caliber, expertise and values. The EC members have the best interests of the University at heart. For Council to say that the decision was done in bad faith would impinge on the members' integrity as office bearers and question Council's initial decision to appoint them to represent Council on the EC. This is an area that the Council has to address carefully when deciding on the resolutions for this Meeting. The Council therefore agreed that the immediate way forward is to 'set aside' the decision of the Executive Committee Meeting of 8 June 2020 and reinstate the Vice Chancellor & President Professor Pal Ahluwalia. The Allegations levelled against the VCP will be addressed following the right procedures as outlined under the *University Statutes* and the *Ordinances for the Discipline of the Vice-Chancellor*."

40. **Prosecution Exhibit 19** is a paper from the Director Assurance & Compliance titled "Update on the implementation of the Whistleblowing policy 1.6.1.26" to the Council Executive Committee drafted and compiled by Ms. Miriama Michael, Senior Internal Auditor and reviewed and endorsed by Mrs. Dulari Doras Traill, Director Assurance & Compliance on 27 February 2019. The paper presented to the Executive Committee (EC) an update on the implementation of the current whistleblowing policy and procedure, proposed changes to the current whistleblowing policy 1.6.1.26, challenges faced by the Assurance and Compliance Team, and a summary of Whistleblowing and Reported Fraud Cases.

41. **Prosecution Exhibit 20** is the Minutes for the Special Meeting of the USP Council held at the Convention Center, Tanoa International Hotel from 9.00am to 6.00pm on Thursday 29 and Friday 30 August 2019 in Nadi, Fiji. During the meeting, the Resolutions by the 88th Council on Matters related to the Paper titled "*Issues, Concerns and Breaches of Past Management and Financial Decisions*" and the extract of page 3 of the Confidential Minutes of the 88th Council were confirmed. The Chair then invited the BDO Auckland Team to present its investigation report and respond to questions put forward by the Council. The Council noted the Letter by the Fiji Independent Commission against Corruption (FICAC) on the Allegations in the Paper titled, "*Issues, Concerns and Breaches of Past Management and Financial Decisions*". The Council made resolutions concerning the matters under discussion and the Council noted the Code of Conduct for Members of Council.
42. **Prosecution Exhibit 21** is the Minutes of the Meeting of the Executive Committee (2/19) held on Wednesday 17 April 2019 from 10.00am in the New Administration Conference Room, Laucala Campus, Suva. Amongst other things, the Executive Committee discussed EC2/19/6 and the following is noted from the Minutes:
- “7. PAST MANAGEMENT DECISIONS (EC2/19/6)**
- The Committee noted that in the last EC meeting, the Paper on Past Management Decisions was late in circulation and members were not happy to receive such a lengthy paper so late and not have proper time to give it the proper scrutiny that EX papers deserved.
- The Committee had then resolved that the Paper remain strictly confidential and be handed back to the VCP and the Director Assurance & Compliance (DAC) for safekeeping. The DAC was requested to draft a statement to be circulated to EC members clarifying that the document was for the Committee only and that the internal audit unit would carry out due diligence required before coming back to the Committee for its deliberation.
- The Chair stated that it was an incomplete report since the former VCP who was mainly involved in those issues did not have any input so the decision was that the DAC was to get a fuller story that should get the views of the former VCP and others mentioned in the document. The former VCP has informed the Chair that he has never been contacted so an explanation was expected by the DAC.

Discussions

- The DAC informed the Committee that in terms of the investigations the DAC's responsibility was to make sure that the Assurance & Compliance office collected all relevant statements and evidences before talking to the main person of interest which in this case is the former VCP. This is the standard and formal process of investigation undertaken in any civil setting or law enforcement setting.
 - The DAC had decided that morning to hand over to FICAC 9 cases and was instructed by FICAC not to disclose the cases that were reported as FICAC did not want any information being taken out that can impair their ability to further investigate the cases.
 - The Committee was advised that there could be implications on funding by the Government of New Zealand and the Government of Australia and USP.
 - The Committee was advised that FICAC will be visiting the University this week to collect all the information pertaining to the investigation reports that the DAC had delivered to FICAC.
 - The Committee was cautioned not to be drawn into controversy and not be seek talking and sharing information to outside parties, given that all are members of this committee and are privy to what is going on.
 - The Committee resolved:
 - (i) to note the verbal update from the Director Assurance & Compliance regarding the Allegations on Past Management and Financial Decisions.
 - (ii) that if anyone is asked about these matters, they will respond by saying that, "not able to comment at this time".
43. **Prosecution Exhibit 22** is the 1 July 2019 letter written by Reshmi Aslam in his capacity as Deputy Director of the Fiji Independent Commission against Corruption which was annexed to **Prosecution Exhibit 15** and which was noted by Council in the Minutes that constitute **Prosecution Exhibit 21**.
44. **Prosecution Exhibits 23, 24, 25, 26, 27, and 28** are FICAC search lists for File No. 111/19.

45. **Prosecution Exhibit 29** is a Transcript of Extracted Audio Recording from 17th September 2020 at 11.28.00am. It reads:

Mr. Rusiate Tudravu	Sir, we...can we discuss later on this some of the investigation that are currently pending. Just wanted have clarification on the our stand that USP thing, it's...we discuss it later or tou sa veitalanoa ga.
Mr. Bainimarama	Oh I suggested earlier to Tuks to stay away from that investigation.
Mr. Rusiate Tudravu	The issue here now is...because they are saying that the audit is already been done now then the complainant is asking what we are doing because they know that the DPP has already directed us ah to if we can just interview those ah...that is our stand and then I came to talk with DPP...well DPP told me that's operational matter you need to do it because you will be answerable to that. I have had advised them the guidance that it was given and that his stand to me so I just want a clarification on...because we are holding everything up and they are pushing. They want feedback on...we are holding all the investigations.

The full transcript was not tendered into evidence. The learned Acting Director of Public Prosecutions sought to tender only this portion into evidence at trial and there being no objection by learned counsels for the Defendants, this was the portion of the audio transcript from that day and that meeting that was tendered into evidence at trial.

46. **Prosecution Witness 17: Dulari Doras Turagabeci Traill** was the first prosecution witness called to the stand for examination. She testified that she was employed by the University of the South Pacific (USP) as Director Assurance and Compliance. She testified that she had been employed by USP for a little over 6 years. Prior to joining USP, she was the Manager Compliance for the Pacific ANZ Banking Group and had worked for that

organization for a period of almost 4 years. Prior to that she had worked for KPMG as their Risk and Compliance Manager and prior to that she had worked with the Fiji Revenue and Customs Authority as a tax auditor and team leader for fraud and tax evasion for approximately 7 years. She graduated from USP in 2001 with a BA in Accounting. She furthered her studies and graduated with a Postgraduate Certificate in Fraud Mitigation from LaTrobe University in 2006 and a MA in Commerce for Professional Accounting in 2013 from USP. She commenced employment at USP at the end of May 2017. She joined USP as their Director Assurance and Compliance, a second line oversight role. In that role she provides visibility to the Vice Chancellor as to the environment the University operates within to ensure that USP's operations, policies, procedures, records, financial data and other important investigations and functions have integrity, that USP investments and assets are deployed and used in the way it is intended, and that USP is protected from abuse, misuse and fraud, and to ensure that USP's organizational culture encourages efficient use of resources, and operational effectiveness. When she joined USP in May 2017, she did a quick review of USP's risk management and compliance environment to help her ascertain how well USP was managing its risks, how well it had visibility, how it managed its incidents, and the way it complied with its own policies and procedures. She picked up that USP did not have a Whistleblowing policy nor did it have a policy to report and look into fraud related matters. She worked with USP's HR team at the time and with other senior leaders to get these policies in place. By year end, the two policy documents were endorsed and in place. The policies would have had to be endorsed at Council level and so by October or November 2017, the Whistleblower Policy would have likely come into effect. They felt the need to put the policy in place at USP to ensure that USP had a good organizational culture and a key feature is that stakeholders feel free to report matters they would not ordinarily feel free to report through direct channels for fear of victimization. After the policy was endorsed at USP, they set out to do social awareness of the Policy in 2018 and their first stop was with Senior Management, *i.e.* the Chancellor, the Vice-Chancellor Prof. Rajesh Chandra, the Deputy Vice-Chancellors, Deans Dr. Jokhan and Dr. Kendrayate and the Director Finance at the time. At the Senior Management meeting she stressed that she would not go to the other departments if Senior Management did not endorse what the policy was, what it entailed and what it stood for, and she left that day confident that she would do what was right and that she had made that known to the then Vice Chancellor. She then provided a verbal summary of investigation results and outcomes per **Prosecution**

Exhibit 20. She indicated in open court that she faced resistance and direct interference from current and former senior office holders within USP. She was aware of Professor Pal Ahluwalia's Past Management decision report but she took care to note that a number of allegations in that Report had been investigated by her team as part of their business as usual operations. The Report related to people at the very top of the USP leadership structure – the Chair of Council, Mr. Winston Thompson, former Vice Chancellor and President Prof. Rajesh Chandra, the former interim Chair of Human Resources, Mr. Dhiraj Bhartu, the Executive Director Strategic Partnership & Alumni, Mr. Jaindra Karan, Dr. Angela Jokhan, and Ms. Shobna Karan, Payroll Manager.

47. The allegation against Mr. Thompson was that Mr. Thompson had authorized payment of money for professional development leave which is supposed to be provided, under the policy, to upskill themselves for their role as members of the senior management team but in this instance, the allegation was that the professional development leave allowance was approved by the Chair Mr. Thompson for Prof. Chandra to write a book about his experiences as the Vice Chancellor of USP but that was not permitted under the policy. Her understanding was that under the policy that payment is only permitted to allow members of the senior management team to up-skill themselves so that they could become better leaders of the university. The allegation in respect of Ms. Kiran had to do with bonuses that were paid out to her through a letter endorsed by Mr. Thompson that she signed off on without the consensus of his Staff Appeal Committee that looks into any appeals made to the Staff Review Committee which the Staff Review Committee had rejected. Another allegation in relation to Ms. Kiran had to do with back pay made out to and facilitated by Dr. Angela Jokhan outside university policy, procedure and agreements with the university.
48. After receiving the reports from Professor Ahluwalia on 6 March 2019, the Executive Committee had summonsed Ms. Traill to update them on their Whistleblowing Reports and Policy. She had not been appraised prior to that day of the fact that Professor Ahluwalia had prepared a report or that his report had been scheduled to be tabled. As she shared an update with the Executive Committee of Council she was questioned by certain members of council as to whether she had reported to the police or not. She said that they were trying to determine at which point they would lodge their report and whether they would have a

meeting with the Fiji Independent Commission against Corruption (FICAC) or the Fiji Police Force to determine whether a report should be lodged or not. This would be part of USP's business as usual processes. Their work was about ensuring that these incidents did not happen again and where improvement was needed, to ensure that that happened. That was their area, but whatever needed to be handled by law enforcement would get moved straight to law enforcement. After she conducted her update, she left for her office. She was then recalled by the Executive Committee of Council and was told that they had decided that the Report handed over by Professor Ahluwalia would be handed over to her and her team to investigate. Part of the Report was already the subject of her and her team's investigations. She picked up the Reports and took it back to her office and started work on it. Mr. Thompson had wanted her to start interviewing Prof. Chandra and report to the Executive Committee. She had replied that they would only interview him after they had collected all the evidence and if they felt there was a case, they would then interview him but she asked Mr. Thompson to please allow the process to take its course without any interference by him.

49. On 16 April 2019, she had made an appointment with Mr. Tagicaki of FICAC. She went to FICAC and lodged her report there. She had been concerned about information and material that was under the control of Mr. Thompson that she was not permitted access to. She discussed the evidence she and her team had gathered with the FICAC officers. She discussed her concerns about high profile persons of interest and she was told in that meeting that FICAC would apply to have the investigations sanctioned and once sanctioned they would then apply for search warrants and uplift documents from the relevant departments in the university. FICAC did obtain search warrants and they uplifted documents from different departments and they also uplifted a copy of the Past Management decisions – a paper that Professor Ahluwalia had prepared and submitted to the Executive Committee of Council. After FICAC had taken documents from her office, the officers started liaising with her team and her and they started doing interviews and started taking statements from staff. Her office was their liaison point and they arranged access to persons to be interviewed and to the records that needed to be uplifted. They started their investigations and they were in constant communication. However, after the Council meeting in Vanuatu, there was a change in terms of FICAC's activities on campus. FICAC officers met with them and they said that they had been given instructions to stop

investigations. They indicated that they were disappointed but they had been given instructions to investigate Professor Ahluwalia about the leakage of his report because a complaint had been made to them about that leakage. She did see a letter from the FICAC commissioner. It was seen by her after it had been written. It had been delivered in July 2019 but they did not see it until the month of August 2019. She was shown **Prosecution Exhibit 22** and she confirmed that that was the letter that she saw. Before they had received a copy of this letter, they had tried to contact FICAC but they had just gone silent.

50. She had been present at the Executive Committee meeting of 17 April 2019. She had reported to the Committee on the work that they had doing and she had discussed with the Executive Committee about ensuring that they handled all internal processes and by ensuring that what needed to be referred to law enforcement be referred to law enforcement. Council resolved that the matters raised by Professor Ahluwalia would go to an independent body. Other than that, their business continued as normal. The independent body brought in by USP to investigate Professor Ahluwalia's complaint was BDO New Zealand. They came to USP to carry out work on Professor Ahluwalia's Past Management Decisions Report and they came up with suggestions to improve USP's work environment to ensure that USP processes were not abused and to ensure operational capacity was enhanced going forward. After the BDO Report was tabled, they were then able to move forward to disciplining staff who had breached USP policies and procedures. The staff disciplinary ordinances and processes kicked in and staff were terminated in instances of gross misconduct. The matter was referred to the Fiji Police Force around the time the FICAC investigators had decided that they were not going to proceed with investigations. Union leaders filed a complaint with the Police and the Police then paid her a visit so she informed them that FICAC investigations had prematurely stopped. She then gave them her full statement since USP had never attempted to stop the investigation process itself. It had been fully endorsed by the university right up to the Council level and it had been the decision of the FICAC commissioner to stop the investigations himself. When approached by the Police she wrote out her statement about all the investigations her team had carried out. She remembered telling Director CID that she no longer wanted FICAC to be involved in the investigations and that USP would give the Fiji Police Force its full support. She was also hopeful of being able to take legal action to recover lost revenue to individuals who had not been entitled to receive them in the first place. She provided them a statement about

the investigations they had carried out and her office provided access to witnesses, assistance in uplifting documents they needed and facilitated access to the relevant papers that needed to be uplifted from the relevant departments.

51. Under cross-examination, Ms. Traill confirmed that the Executive Council was a sub-committee of Council. It made decisions on behalf of Council, some of which would go back to Council for its endorsement. Major decisions that impacted the university would need to go back to Council. On 17 April 2019 when she came to the Executive Committee to report she had informed the Executive Committee that she had lodged a report with FICAC. Nine cases had been lodged with FICAC, and the Ahluwalia Report and other allegations had been uplifted by FICAC. She confirmed that after the BDO Report was submitted, another process kicked in and a number of people were disciplined. She explained that their processes were separate and independent of the BDO Report. She testified that while she was aware of the Ahluwalia Report she had not helped him to prepare that Report. She explained that he had his own team of officers, his own Executive Officer, and other stakeholders from the HR office who had helped him put his report together. She agreed that they had been directed to keep it strictly confidential to ensure that due process of investigations was protected. On 6 March 2019 she had been very clear in her deliberations with the Executive Committee that she would be reporting to law enforcement. She had absolute discretion about the matter of reporting to law enforcement. She had not provided a full report to the Executive Committee on 17 April 2019 because FICAC had urged some caution about the amount of information that was disseminated about the reports made to them. When referred to **Prosecution Exhibit 22**, she confirmed that she was the senior USP staff member referred to in that letter. She testified that the cases that had been sent to FICAC were cases established to a *prima facie* level. She had not been aware that the Professor Ahluwalia report had been leaked to the media as she had been in the hospital at the time, but she later became aware of that fact. She confirmed that Council did not choose to challenge FICAC's conclusions.
52. **Prosecution Witness 18: Kuliniasi Saumi** testified next. He is a FICAC investigator who has been employed with FICAC for the past 15 years. He is currently Manager Investigations Central & Eastern. In 2019, he had held the position of Chief Investigations and Mr. Tagicaki had held the position of Manager Investigations. He recalled receiving a

complaint from USP in 2019. A senior staff of the Audit & Compliance Unit, Ms. Doras Traill, had approached FICAC. She had come personally to see Mr. Tagicaki. He had been a part of that meeting alongside other officers. There had been a few allegations contained in a document that she had brought with her and she had given them a copy of that document. She went through the allegations, and they discussed the complaint, and she explained some of the difficulties she had been having at USP. They processed the complaint through their internal Whistleblowers process. Ms. Traill's complaint was processed up to FICAC's management and it was formally registered on 17 April 2019. It went through the normal process of investigations and analysis and on 24 April they received a formal directive to proceed with their investigations. The Deputy Commissioner, Reshmi Aslam had given them the directive to conduct investigations but he received the file from Manager Investigations on the 24th. He called his team together and they conducted a plan of action and they then prepared search warrants and on the 25th his team and two other teams conducted Phase 1 of their investigations, the search and seizure. They proceeded to USP and executed the search warrants they had obtained on the office of the Vice Chancellor, the Finance department, HR, Secretariat, and the Audit & Compliance office. This process took several hours and after they had seized all these documents from the university, they recorded the documents they seized via their search lists and they proceeded back to the FICAC office where they placed all the documents they had seized in safe custody.

53. Following Phase 1, they moved on to Phase 2 which involved a thorough analysis of all the documents seized and they recorded their relevant findings, and identified witnesses that they felt they could go to thereafter. It took a few weeks to complete Phase 2. During the same period, they also made frequent visits to USP, meeting different people, interviewing them and getting comments from them about documents and collecting information about the documents they had commented on. There were a number of allegations listed in the document given to them and when they proceeded with their analysis, there was evidential material covering each issue. He remembered a particular issue they had initially focused on had been the abuse and mismanagement of allowances paid to relevant staff at the university. Substantial amounts of money had been paid and they focused on the process of payments to personnel and as they collected these documents, they could identify people in higher authority who were implicated. They were

able to clearly identify persons who were involved, and there were facts and findings available on the material gathered that was incriminating. He remembers presenting these findings to the then Deputy Commissioner and they made recommendations for the way forward. They recommended that they proceed to the caution interview process and bring in those implicated to respond formally to the material they had gathered, the allegations, and their specific facts and findings. Upon receiving the then Deputy Commissioner's agreement, they then proceeded on with their work but a few days later while they were still finalizing statements, and making arrangements to get people to come in for their interviews, he was informed by Manager Investigations to call off the investigations. He was told this by Mr. Tagicaki who informed him that there were new developments within USP and there was a decision made to cease investigations. He then had a personal meeting with the Commissioner who then explained to him why he had decided to stop the investigations.

54. Under cross-examination, he testified that he had asked the then Deputy Commissioner personally as to why the investigations had to cease, and during that discussion the then Deputy Commissioner had explained to Mr. Saumi that there was a new direction for USP. They had decided to conduct an audit from BDO into the mismanagement. After that discussion, they ceased their investigations. They received a request from Mr. Mahmood Khan to return all documents and the Commissioner approved that request. After that FICAC had nothing further to do with the matter.
55. **Prosecution Witness 19: Rusiate Tudravu** testified next. He is now a consultant but prior to that he served in the Fiji Police Force from 1982 to 2021. He rose through the ranks from Constable to Deputy Commissioner of Police and he was Acting Commissioner of Police from 2020 to 2021 whilst the current Commissioner was on study leave overseas. He was to administer section 129 of the **Constitution**, which is to administer the administration and operational running of the Fiji Police Force and from time to time receive directives and instructions from his line Minister if there was a need for it. He took up the acting appointment in August 2020 as near as he could recall. Mr. Qiliho was studying in London at the time. Mr. Qiliho returned in August 2021 and they undertook a handover and Mr. Qiliho then took over after his return. He confirmed attending a National Security meeting on 17 September 2020 in his capacity as Acting Commissioner of Police. The

Commissioner of Police is a member of the National Security Council. The meeting was held at the Prime Minister's Office boardroom. Present during that meeting was the then Prime Minister Mr. Frank Bainimarama, PS PM's Office Mr. Yogesh Karan, former Minister for Defense & National Security Mr. Inia Seruiratu, former Minister for Infrastructure Mr. Jone Usumate, former Minister for Health Mr. Ifereimi Waqainabete, former Commander RFMF Mr. Viliame Naupoto, Padre Ilaitia Seruvatu, PS National Defense & Security Mr. Manasa Lesuma and two other ladies from the Ministry of Defense.

56. Mr. Tudravu testified that during that meeting he had briefed them on the posture and security landscape. He wanted to discuss with the Chair of the National Security Council the investigations in relation to USP. It was crucial, he felt, for the Council to know about the investigations based on the then current stand-off between the then Government and USP and other member countries, Ssince the Government had publicly stated their stance in respect of USP, he saw it fit to let the National Security Council know what was happening. He had been warned about possible issues arising because of students and the unions going forward and so he wanted to know what the stand of Government was in respect of the USP investigations. The investigations had been conducted by CID investigators at the time, he said. The information he gave to the National Security Council, he had received prior to arriving at the meeting via a verbal briefing from ACP CIIP Mr. Biu Matavou. He then gave his briefing at the National Security Council meeting. He raised in the National Security Council that there was a minute from the DPP's office to ACP Intelligence and Investigations, wanting to know the outcome of the investigations. When he asked what he was to tell the DPP, he was informed by the Chair that he had already informed Tuks to stay away from the investigations. He interpreted that to mean that he was to stay away from the investigation. Tuks, he testified, is the current Commissioner of Police. That is the name close senior military officers call Mr. Qiliho up at the RFMF. It is the short form of Tukaituraga, Mr. Qiliho's middle name, they normally call him that, he said. When shown a copy of **Prosecution Exhibit 29**, he confirmed that that was an accurate recording of what was said in that meeting. Following the meeting, he called ACP Biu Matavou to stop investigations as that was what had been conveyed to him by the Chair of the National Security Council.

57. Under cross-examination, he testified that as Acting Commissioner of Police he was in charge of the administration and operations of the Fiji Police Force per section 129 of the **Constitution**. Administrative matters were discussed with the then Minister of Defense & National Security, Mr. Inia Seruiratu. The USP complaint was made in 2019 and the current Commissioner was present in office at the time. As Deputy Commissioner he did not deal with investigations. It was his understanding that the unions at USP had lodged a complaint with the Fiji Police Force. He confirmed that investigations had been afoot prior to his meeting with the National Security Council on 20 September 2020. He confirmed that if a file is closed within the Fiji Police Force, there is a procedure stipulated in the Force Standing Orders that needs to be followed. Director CID had power to stop investigations and the closure of a file would occur following an analysis. There must be a minute and in that minute, there must be reasons given for the closure of the file. DCID will then direct the closure of the file, and the file will then be filed. As Acting Commissioner, he had a fair idea of what went on but he did not get into the *nitty gritty* detail of each individual file. The issues at USP had been ongoing and the stance of Government had been made known and he had wanted to know the position of the Government, especially the point of view of the Chairman of the National Security Council about the stance of Government toward their investigations. He confirmed that he had not been present when Mr. Bainimarama had had his conversation with the current Commissioner, Mr. Qiliho. He confirmed under cross-examination that Mr. Bainimarama had not said "stop the investigations." He confirmed under cross-examination that he had interpreted Mr. Bainimarama's response to mean that. He said that he was aware that if he did not comply he would lose his acting appointment and he testified that that's what happened to him later. He had disagreed with a position taken, and he lost his job. He understood from that conversation that the Chair had wanted the investigations stopped so he relayed what he was told to ACP Biu Matavou. He had learnt prior to the meeting that the USP investigations were afoot and when he went to the meeting he learnt that the Chair of the National Security Council had suggested to the Commissioner to stay away from the investigations. He interpreted what the Chair of the National Security Council had said to mean stop the investigations so he directed ACP Biu Matavou to stop the investigations. He does not know if the investigations did in fact stop thereafter because a few months later he was told to resign. He does not know what happened to the file thereafter.

58. **Prosecution Witness 20: Biu Matavou** then took the stand. He testified that he had joined the Fiji Police in 1982 and had spent 39 years in the Fiji Police Force prior to retiring. During his time in service, he served as an investigator for 12 years, was Commander of the Fiji Police Academy, Director Fiji Intelligence Bureau, and Deputy Police Commander Southern Division before his promotion to the position of Chief of Intelligence and Investigations (CIIP) in 2016. On 17 September 2020, Acting Commissioner of Police (A/COMPOL) Tudravu called him and told him that he, Tudravu, was heading over to brief the National Security Council on the USP case. He called for the file which was then brought to his office. He saw a letter from the DPP advising that the file was still ongoing and recommending that 5 suspects be interviewed in respect of the USP case. By file he meant the Police Docket. He testified that the file had been brought to him by DCID, SPP Seru Neiko. After looking at the Police Docket, he gave it back to SSP Seru Neiko that same day. After that, at or before 10.00am, A/COMPOL came by his office on the way to the National Security Council meeting, and he briefed A/COMPOL on the status of that investigation. He told Mr. Tudravu that investigations were still ongoing and that there was 4-5 suspects to be interviewed in respect of the case. After that briefing, A/COMPOL went on to the National Security Meeting and at around 12.00pm that day, he received a call from A/COMPOL telling him that he, A/COMPOL, had been told to stop the investigations. When he asked A/COMPOL as to who had directed that the investigations be stopped, A/COMPOL replied, “*Naba dua*” and when he asked him who he meant by “*Naba dua*”, A/COMPOL replied, “The Prime Minister, Voreqe Bainimarama.” They discussed the matter for a while and he was very disappointed by the position taken by the National Security Council. He then called DCID and advised him of the decision made by the National Security Council.
59. Under cross-examination, he confirmed that files are filed away by DCID during Docket Inspections across the country due to insufficient evidence. Minutes have to be kept in the docket itself to indicate that the docket had been filed. DCID has to endorse the closing of the file. Once the docket is filed, it is kept for five years in the archives. All divisions have their own archive. DCID is not obliged to seek endorsement from a higher authority before filing away. The DPP also provides advice to DCID in cases of national interest, and DCID may file away based on a decision by the DPP for insufficient evidence such as in instances where the DPP has made the decision to file a *nolle prosequi* in court. When the USP case

was first reported they had presented a power-point presentation to the current Commissioner of Police. He confirmed that he had written a letter to Mr Finiasi: *see Prosecution Exhibit 2*. He had never met Mr. Finiasi. He said that in 2021 Surend Sami was CIIP. He thinks DCID in 2022 was Mesake Waqa. He is not sure what happened after he retired. He testified that "File away and update record" means "Stop investigations and close the file." According to the minutes contained in **Prosecution Exhibit 3**, the USP investigations were closed on 6 January 2022 as endorsed by DCID. He confirmed that the file remained open after 17 September 2020 and that it is his understanding that the file remained open until it was filed away on 6 January 2022. He confirmed that he did not seek directives from the then Prime Minister nor any member of the National Security Council about the file after 17 September 2020 and he confirmed that he did not seek clarification from the current COMPOL after his return from overseas study leave.

60. **Prosecution Witness 21: Reshmi Dass** took the stand next. She testified that she is currently an Acting Assistant Superintendent of Police. She has served 25 years in the Fiji Police Force. She is currently Acting Deputy Director Economic Crime. In 2020, she was a senior investigator within the Major Fraud Unit, a unit that falls under Economic Crime. On 15 July 2020, she had a discussion with DCID. She had been called by DCID, SSP Seru Neiko as the Commissioner had wanted to talk to her about the USP investigations she was conducting. She was the investigating officer for that case. She then went to DCID's office, and DCID told her that the Commissioner, Mr. Sitiveni Qiliho, had wanted her to call him about the investigations she was conducting at USP. She asked DCID if she could use his phone to call the Commissioner of Police (COMPOL). SSP Seru Neiko then called COMPOL using his mobile phone and put the call on speaker and put his phone on the table between them. COMPOL answered and said, "Commissioner speaking" and he then asked her about the case from USP. He asked why investigations were still ongoing at USP in light of the fact that investigations had been stopped by FICAC due to the fact that it was an internal breach. He then told her to stop the investigations and he told her that it was "from the PM's office." She then discussed the matter with SSP Neiko regarding the next course of action, SSP Neiko then instructed her to go and update her Investigation Diary and her Notebook. She then wrote down the conversation between her and the Commissioner. She confirmed that **Prosecution Exhibit 12** was a true copy of her Notebook entry following that conversation. She confirmed that she had spoken to MMF

Rajesh Kumar as he was her immediate supervisor. She testified that she had been shocked by the directive given by the Commissioner as they had received instructions from the DPP to continue on with investigations and to carry one with interviews. The investigations were not complete and they had to give feedback to the complainants at the end of every week. She testified that she did stop the investigations after that communication with the Commissioner.

61. Under cross-examination A/ASP Dass testified that she had received the file from SSP Rajesh Kumar to carry out investigations at USP on 15 February 2020. She confirmed that she was the chief investigating officer for that matter. If she needed assistance, she would seek additional manpower from her supervisor. No specific team was appointed to look into the matter. She is aware that Ilima Finiasi was the complainant for the matter. She testified that they had to follow processes and procedures for obtaining witness statements. When the Report was lodged, they did not go directly to the Executive Committee. Their concern was about substantiating the allegations and they followed the ordinary processes and procedures for investigations. Mr. Winston Thompson was a person implicated so she had to first undertake her investigations and inquiries. She testified that she would not go directly to him without first undertaking her initial inquiry. Cases for CID HQ are initiated at Totogo Police Station and Report No. 303/07/19 was Mr. Finiasi's Report number. From Totogo Police Station, the file was handed over to CID. She is not sure what happened to the complaint between 8 July 2019 to 15 February 2020 but she confirmed that she received the file on 12 July 2020 and she started on her investigations. She first learnt that the file had been first referred to FICAC and then closed during her conversation with the Commissioner of Police. She was aware that BDO had prepared a comprehensive report into the allegations by Professor Ahluwalia. She had had a copy of that report. She testified that they had only focused on the Abuse of Office allegations. She testified that they were not privy to what USP was doing internally. She had commenced investigations up until 15 July 2020, and then she stopped her investigations, and she was then later directed to continue with her investigations. She confirmed that there had been no minute from DCID on 15 July 2020 directing that investigations must stop, the docket closed and be filed away. She confirmed interviewing people in October 2020 after she was directed to continue with investigations by SSP Loraini Seru. She confirmed that investigations were closed in 2022 after SSP Rajesh Kumar wrote to DCID on 4 January 2022 and after DCID wrote "File

away and update record” on 6 January 2022. On 8 January 2022 the process to file the Police Docket away completed. She testified that whatever she had heard the Commissioner tell her, she noted down in her Notebook. She testified that she recalled being shocked by that conversation. She testified that it had been the first time in 25 years, she had spoken directly to COMPOL about an investigations. It was protocol that those discussions come through DCID. She did not file a report with anyone about the COMPOL’s instructions. She confirmed that only DCID had authority to close a file. She confirmed that the Police Docket was not filed away on 15 July 2020. She confirmed that investigations had stopped but the Police Docket was not filed away following her conversation with the Commissioner. She believed that COMPOL did not want her pursuing the investigations and she only recommenced investigations in October 2020 after SSP Loraini Seru had directed that the investigations continue. She confirmed that investigations into the USP matter re-started in January 2023 and are currently on-going. She stated that she did not have any other conversations with COMPOL about the matter after 15 July 2020.

62. **Prosecution Witness 22: ASP Rajesh Kumar** took the stand next. He testified that he joined the Fiji Police Force in 1989 and is currently an Assistant Superintendent of Police. He has been the Manager Major Fraud since 2018. In this capacity, he gives instructions regarding major fraud and economic crimes and he guides investigators on how to conduct investigations. He recalled a case referred to the Police from the University of the South Pacific and investigated by A/ASP Reshmi Dass. He gave instructions to A/ASP Reshmi Dass about the initial actions that needed to be taken regarding the case. He confirmed writing to the Deputy Director Economic Crime on 10 July 2020: **see Prosecution Exhibit 3**. He indicated that he had received the information contained in that Minute from A/ASP Reshmi Dass. He was confirmed writing Minute No. 10 and dated 4 January 2022. He confirmed that this was the brief given to him by A/ASP Reshmi Dass. He did not enquire into the verbal instruction given to her.
63. Under cross-examination, he confirmed that he had instructed Reshmi Dass to conduct investigations into allegations made in respect of activities at USP in February 2020. He testified that the complainant was Dularis Traill. He testified that the initial report had been made by Dularis Traill. He said that he did not know who Ilima Finiasi was. He confirmed

that Ilima Finiasi had given a statement and that that statement was contained in the Bundle of Agreed Documents shown to him. When cross-examined regarding his Minute Number 10: *see Prosecution Exhibit 10*, he testified that the verbal directions given by COMPOL referred to therein were the verbal directions given by COMPOL to then Corporal Reshmi Dass. He testified that the CIIP he referred to in that minute was Biu Matavou. He was not CIIP at the time but he was the CIIP he was referring to at the time. He testified that the COMPOL he was referring to in that minute was Mr. Sitiveni Qiliho. He testified that he had not called Mr. Qiliho to verify whether he had given those instructions. He testified that it would have been a breach of their internal disciplinary processes for him to have done so. He confirmed that the verbal instructions he was referring to were those instructions given to the Investigating Officer in mid-2020. He testified that they had tried to continue investigations but after the conversation with CIIP Matavou, he closed the file. He confirmed that it was DCID who closed the file and that it was on DCID's authority that the file was closed.

64. **Prosecution Witness 23: Mesake Waqa** testified next. He joined the Fiji Police Force in 1980. He is now Director – Strategic Planning and Policy for the Fiji Police Force. He served as a crimeman from 1993 – 2022. He has completed all the required training within the Fiji Police Force. He has also undertaken and completed Australian Federal Police training courses over the course of his career and he undertook and completed a General Management for Senior Executives course at the Administrative Staff College in India. He undertook and completed a Masters in Criminology from Macquarie University, Sydney, Australia from 2019 to 2020. Prior to his departure to Sydney, he handed over the reigns as DCID to A/DCID Seru Neiko in 2018. After he completed his studies in 2020, he returned to Fiji and he received a directive from A/COMPOL Tudravu to take over his duties as DCID. During the handover process, A/DCID Neiko briefed him regarding the USP case and indicated that COMPOL had directed the close of the investigations. He discussed the matter with A/COMPOL Tudravu and A/COMPOL Tudravu had asked him why they needed the investigations to be completed. He replied and told A/COMPOL Tudravu that they were almost at the end of their investigations; the ODPP had given their advice and suspects needed to be interviewed and they needed to complete those tasks and return the file to the DPP for final advice as to whether persons ought to be charged or not. After their discussions, at the later stages, he also discussed the case with ACP Biu

Matavou, his immediate supervisor. ACP Biu Matavou told him that instructions had been given by the Prime Minister during the National Security Council for this case to be filed away. In January 2022, the file was produced in his office. It had been forwarded to him by then A/Deputy Director Economic Crime saying that directives had been given by COMPOL and ACP for the file to be closed. He recognized Minute Number 10: **Prosecution Exhibit 3**. He confirmed that he had written the directive for the file to be closed immediately below. He had examined and scrutinized the file prior to issuing his directive. He noted that it was an investigation into staff at USP and by reading through the statements together with the advice by the ODPP, he noted that there was *prima facie* evidence that required suspects to be questioned. Based on the minute and the verbal instructions given to him by IP Seru Neiko, he decided to file away for three reasons :

- (i) it seemed to him that there was interference by Government whereby the COMPOL had been directed to close the investigations;
- (ii) to protect the safety of the investigations because if it went to some other office or officer, it could be misplaced or lost; and
- (iii) if there were a change in Government, the file could be easily accessed and retrieved and investigations continued as should have been the case.

65. Under cross-examination, he testified that in July 2020 and in September 2020, he had been in the country but he had not taken over as DCID. He took over from Seru Neiko in October 2020. During the handover, Seru Neiko briefed him about certain cases including the USP case. He confirmed that there had been no minute from COMPOL directing the close of the dockets. He confirmed that important directives are usually minuted. He spoke to CIIP Biu Matavou in October 2020. CIIP Biu Matavou told him that instructions had been given by the National Security Council for investigations to be closed. CIIP Matavou had not told him who had given that directive. He was just told that it came from the National Security Council. He confirmed that he had not called for the docket. He discussed it with the supervisor when he took over in October 2020. He noted that investigations had stopped. From October onward, they still wanted suspects to be interviewed. Acting COMPOL Tudravu heard and so his conversation with A/COMPOL happened. From October 2020 to January 4, 2022 the file was with the investigating officer. By 4 January 2020, COMPOL was back in office. He received a minute from D/DEC – Minute 10. He forwarded the file for closing. He did not call COMPOL to confirm whether he had directed

the close of the file. Seru Neiko had confirmed it, and ACP Matavou had mentioned it and it was a disciplinary offence to question directives. He confirmed that he did make a decision concerning the file on 6 January 2022. Even though it was his decision, the instructions had come from COMPOL via SSP Seru Neiko. He indicated that directives within the Fiji Police Force could be written, verbal, issued via Viber, or text, and whatever its form, it was still a directive from a senior officer. He testified that though no written minute had been given, the directive had still come from a senior officer and it should be that senior officer who should face the consequences of that order. He had received confirmation from SSP Neiko, CIIP and also A/COMPOL of COMPOL's directive. He did not go to COMPOL because he did not see the need to do so. He trusted his officers. He did not go to USP. Ms. Traill had come to see him, however, and he explained to her that a decision had been made based on a directive from COMPOL. He was aware that FICAC had investigated the matter and had decided not to prosecute. He did not cross-check with FICAC as to why they had stopped their investigations. He confirmed that the case was not closed until 6 January 2022 by his order.

66. **Prosecution Witness 24: D/IP Suliassi Dulaki** took the stand next. He was Mr. Sitiveni Tukaituraga Qiliho's interviewing officer. He confirmed the Video Caution Interview Transcripts of his interview with Mr. Qiliho and he tendered those transcripts into evidence as **Prosecution Exhibit 30**. During the course of the interview, Mr. Qiliho confirmed that prior to his suspension, he used an official mobile phone 9906989 from November 2015 to the date of his suspension. He confirmed that he had been appointed Commissioner of Police by His Excellency, President Konrote on 4 March 2016. He confirmed signing his contract for the role of Commissioner of Police on 29 March 2016. He confirmed that Prime Minister Mr. Josaia Voreqe Bainimarama had signed the contract on behalf of the Government. He confirmed his appointment as Commissioner of Police on 16 September 2021 and he confirmed signing his Contract of Service to that position on 23 September 2021. Other than that, on the 8th February 2023 Mr. Qiliho exercised his constitutional right to remain silent.

67. His interview recommenced on 9 March 2023. He had indicated to the Police prior to his interview on 9th March 2023 that he wished to provide answers to the questions asked of him on 8th February 2023. I set out portions of that Interview below:

Ah that was when I called the Director CID at that time and I spoke to the lady who was doing the investigation ah just to stop and summarize the investigation ah so that: one, to brief the Prime Minister, and also ah so that we could see how we proceeded further because FICAC was doing a similar investigation and it was two investigating bodies doing the same investigation so that he could talk to FICAC about it.

D/IP Suliassi: So, did you, did you clarify with FICAC the nature of investigation that they were conducting at the time?

Sitiveni Qiliho: No, I was waiting for that summary and I also spoke to the Chief Investigator and Intelligence at that time. This was during the period I was preparing to leave for overseas for studies. So that summary didn't come to me when I departed but I expected that discussion with the investigator and Director CID that that could through the process to the Chief Investigator and Intelligence and to me but since I'd left that if it could come to the Acting Commissioner of Police.

D/IP Suliassi: So when you return from your studies in the United Kingdom, did you at any time enquire again with the Chief Investigator Intelligence with regards to the case?

Sitiveni Qiliho: No, I, I didn't enquire and was never, was never brought to my attention. I was never updated.

D/IP Suliassi: So are you aware that there were instructions as per that statement that we have recorded there were, there were instructions given by yourself for the investigation to be closed, were you aware of that?

Sitiveni Qiliho: No, I never give any instruction for the investigation to be closed but the investigation in Police terminology is closed when it's filed away. I said for it to be stopped and a summary to be done so that we could look at how we proceed it further with discussions so the investigations to me is still open.

...

D/IP Suliassi: Sir in relation to what you've stated that you speak with the lady in charge of the investigation at the time?

Sitiveni Qiliho: Yes

D/IP Suliassi: And can you confirm to us on whose phone or whose phone number did you call to speak with the Investigating Officer there?

Sitiveni Qiliho: I, I, I cannot, I think I spoke to, through the Director CID at that time, I'm not sure, that's what I think.

D/IP Sulasi: Who was the Director CID at that time sir?
Sitiveni Qiliho: It was Seru Neiko.
D/IP Sulasi: And according to Mr. Seru Neiko and the Investigation Officer who is, who was who was Inspector Reshmi Dass that your instruction to them was to ah to stop the investigation. Is that what was, is that correct?
Sitiveni Qiliho: Yes to stop the investigation and to do a summary and by that, I expected that to be staffed up through and I told them to come through Chief Investigator Intelligence for his input before it came to me, not to file away or close the...just to stop it to do that summary.
D/IP Sulasi: But during the course of our investigation ah in 2022, the ah former Director CID, SSP Mesake Waqa he filed this investigation away upon a instruction received from the Chief Investigation Intelligence at that time Mr. Surend Sami whose, who was presented with the case, and he also stated to the Investigators that upon your instruction, for that case to be filed away what can you say about that?
Sitiveni Qiliho: When I left for London Surend Sami was not...
D/IP Sulasi: This was in 2022.

Sitiveni Qiliho: From 2022, if there is, it would have come in written form and I would have to give that instruction in writing.
D/IP Sulasi: Not in a verbal form?
Sitiveni Qiliho: No, that's important, that's an important decision to be made and it has to be given in writing with the proper staff.
D/IP Sulasi: Because according to the investigators those are the instruction received from the CIIP at that time when in late 2022 and again early no late 2021 and at early 2022, the case was filed away upon your instruction?
Sitiveni Qiliho: No, I never gave any instruction to file away.
: ...
D/IP Sulasi: Okay sir, we will be moving further with video and I will be also asking questions from the content of the ah, your minutes (1:47-32:27). Are you aware sir that a feedback came back from the Office of DPP for the further continuation of further enquiries in relation to that investigation of the USP at that time?
Sitiveni Qiliho: No

D/IP Suliasi: Were you aware that the people concerned or suspected to have committed the offence in relation to this case from USP or ask or being put into this advice letter to be interviewed?
Sitiveni Qiliho: No, I'm not aware.
D/IP Suliasi: Were you not briefed by any senior Police Officer in terms of the investigation is concerned?
Sitiveni Qiliho: No, maybe the DPP was conversing directly with the Director CID, not with me and also for that one year I was away maybe he was conversing with Acting Commissioner.
D/IP Suliasi: During that time, when, when the ah I wish to put it to you that during that time when the advice came back from DPP, it was still in 2020 in June, June 23, 2020 and in the advice as I've read to you earlier during the first interview that was when the time that we were still in the office before going overseas for the training. Is that correct, sir?
Sitiveni Qiliho: Yes, but I, I, that letter was never shown to me, maybe it was a letter to Director CID.
D/IP Suliasi: Was there any brief by Director CID or the Assistant Commissioner calling you?
Sitiveni Qiliho: No.
....
D/IP Suliasi: In terms of the channel of communication in the Fiji Police Force from the position of the Commissioner of Police down to the investigators would you....can you just briefly explain on the chain of communication in relation to that sir?
Sitiveni Qiliho: Yes, the, all the major investigations, the investigations are handled at CID Headquarters. And if there's any briefing that comes to me it will come through the Chief Investigator and Intelligence who handles most of these things in his daily routine work. In most cases, I call in and say can I have an update so that I'm updated on what's going on, that's the process I know.
D/IP Suliasi: And during, for this investigations you stated earlier in your answers that you spoke with the Investigation Officer during, through the Director CID Mr. Seru Neiko. Do you maintain that?
Sitiveni Qiliho: Yes, I wanted to know what was really happening because I haven't gotten detail brief so I asked him if she can explain to me what was going on because I haven't gotten any detailed brief through the Director CID or Chief Investigator.

D/IP Sulasi: Before going through the Director CID did you enquire first with the Chief Investigating Intelligence?
Sitiveni Qiliho: No, I knew Director CID would have a more hands on because he handles the investigators, that's why I called him.
D/IP Sulasi: Okay sir and you stated that for the case to be stopped and summarized and the investigation to be summarized. Wouldn't it be proper for the case, for the case to be summarized if the suspected are interviewed. In terms of the investigation process is concerned?
Sitiveni Qiliho: I wanted it stopped at that particular time with all those that had been interviewed at the particular time so that I could know too what was going on. And that to come through the Chief Investigator Intelligence and it came through that process and they recommend that those people be interviewed first I would naturally agree with it. But I was waiting for that process to come through me, it didn't come prior to my departure.
D/IP Sulasi: But in relation to what the Investigating Officer and what SSP Seru Neiko have stated that what you ah, it contradicts with what you are answering to the, this video recording interview. What can you say about that?
Sitiveni Qiliho: I wouldn't be able to, to say anything for their reasoning, for that. But I know what I said, that I asked them to stop and summarize, not to file away the file that means that, the investigation is still open. And if that summary comes up that is when we will give further directions based on the recommendations of the two key appointment holders, which is the Director CID and the Chief Investigator and Intelligence. And no way would I go against those two's decisions. They are the professionals in dealing with those and I didn't get that, that summary.
D/IP Sulasi: When you, when you came back from studies in the UK, did you ever enquire again with the Chief Investigations and Intelligence, or the Director CID on the progress of this investigation?
Sitiveni Qiliho: No, I didn't enquire with them and there was a seasoned Acting Police Commissioner who was there who I know would have handled it. It wasn't brought to my attention.
D/IP Sulasi: But this case was not filed away during the times of your absence. It was filed when you were here again as the Commissioner of Police in 2022. What can you say about that?
Sitiveni Qiliho: I never gave any directives to file that. If, if that was a recommendation it had to come to me in writing like the dockets that come through. It should have come through that process.

D/IP Suliasi: And sir, what, what, what was your interest into this matter, for this investigation in relation to the USP case against Winston Thompson and others. What is your interest into these investigations?

Sitiveni Qiliho: Like all cases, I, all major cases, this was a case that was widely reported nationally. Otherwise, I'm not related or friends with any of those people. I only know Mr. Winston Thompson as a very senior diplomat, not personally, I would know.

D/IP Suliasi: When you come to know that the same case being investigated by police is also with FICAC, did you ever enquire with the Commissioner FICAC in relation to the status of, to the status of the investigation?

Sitiveni Qiliho: That's why I asked for the summary so that I have a summary before we could meet with the Commissioner of FICAC.

D/IP Suliasi: But when you came back did you make an attempt to ask for the summary again.

Sitiveni Qiliho: It wasn't raised with me, and there were other issues that were ongoing, that I didn't get back to that. I would have, I assumed then that the Acting Commissioner has handled that, like the recording he raised that issue at the National Security Council, so he was well aware of, of that case but I didn't know it was discussed at that meeting until the recording as being going.

D/IP Suliasi: Okay sir, in relation, okay you've stated that you did discuss with the senior government officials too in relation to this case, with Mr. Seruiratu?

Sitiveni Qiliho: Yes, I can recall we had a brief discussion on this when will reports that were, that were coming in.

D/IP Suliasi: From a position of the Commissioner of Police at what stage of the investigation should you interfere with the investigation process?

Sitiveni Qiliho: I don't interfere with investigation processes. I ask for updates, and also because the professionals are there, the Director CID and the CII, they make the recommendations to me. At no stage have I gone in to interfere with any investigations. In this case, I only asked the investigation be stopped and summarized so that I could be updated and the discussions on or the recommendations of what to do, if they had recommended not to go to FICAC, or, or to continue, I would have gone with it. They, they, they know and I always go with their recommendations.

D/IP Suliasi: Sir, would you know the type of offence that is being reported in relation to this USP case?

Sitiveni Qiliho: It was to do with finances.

D/IP Sulasi: And any particular, what is the offence that, that, that, warrant that report to be reported to the Police?
Sitiveni Qiliho: I hadn't been briefed in detail, that's why I was asking for that summary so I could know.
D/IP Sulasi: In relation to your conversation with SSP Seru Neiko and Madam Reshmi Dass?
Sitiveni Qiliho: Yes.
D/IP Sulasi: Did you ever enquire with them about the case during that telephone conversation?
Sitiveni Qiliho: I told them, I told them to make that summary, to stop, make that summary so that I could know, to, to put it down in writing. From that then, I will be able to really know what was going on.
D/IP Sulasi: ...
Sitiveni Qiliho: I, I wouldn't know, the, the, all the cases that have been filed away have come through, like the dockets with recommendations from Director CID, through the Chief Investigations and Intelligence, then that comes to me. Some he does it on his own, the small similar cases most of the cases comes to them. In this case, I can't recall that ever come to me.
...
D/IP Sulasi: During the process of investigation, do you have any powers to call for a stop to any, in any investigation?
Sitiveni Qiliho: In this case, I asked for that stop so that I could get a summary to be updated on a case that had become of national interest. I don't normally do it. But because I wasn't updated, I, I had to take this action.
D/IP Sulasi: That means that this case was of national interest and you need to know some of the facts from that case?
Sitiveni Qiliho: Yes, I needed to know if I was questioned, like I had to brief the Minister, or I had to be, I had to know what was going on.
D/IP Sulasi: Do you know what was the interest of the Minister in relation to this case? What was his interest in this case?
Sitiveni Qiliho: No, but I was, I was preparing myself if I needed to, to give a briefing that I knew what was going on.
D/IP Sulasi: Can you please reconfirm whose direction or directive was for you to ask for the investigation progress of the investigation and also a brief?

Sitiveni Qiliho: It wasn't a directive. I was asked for a brief by the Hon. Prime Minister at the time. He asked for a brief.

...

D/IP Suliassi: And because of the, I will refer, I will read to you some of the things that was stated by the former, the then Director CID SSP Seru Neiko, and he stated that *on the 15th of July 2020 I received a call from the Commissioner of Police Brigadier General Sitiveni Qiliho, CP was calling from his official number 9906989 to my official number 9905707.* Sir, can you please confirm your official number?

Sitiveni Qiliho: Yes, that's the right official number.

D/IP Suliassi: Do you recall calling Director Seru Neiko at this time Director CID Seru Neiko?

Sitiveni Qiliho: Yes.

D/IP Suliassi: *During our conversation he asked as to why we were still conducting investigation into the USP matter when it is an internal administrative matter to be dealt with in USP? Do you recall telling him that?*

Sitiveni Qiliho: No, I cannot recall telling him that, but during my discussions with, with the Chief Investigations & Intelligence, I told him that there were internal processes, that were still ongoing with USP that we could use if we were to continue the investigation, and I may have discussed it with Seru Neiko but I cannot recall.

D/IP Suliassi: Can you confirm who was the Chief Investigation Intelligence at that time?

Sitiveni Qiliho: I think it was still Biu Matavou at that time.

D/IP Suliassi: And when you, when you told ACP Biu that this matter was internal administrative matters with USP and they need to deal with it, didn't you call for any meeting with USP?

Sitiveni Qiliho: No, I didn't tell him that that has to be dealt with then, that was one of the options that they were still going through their internal processes. Their internal audits that we could use in the, in the investigations. I didn't tell them to stop because that was ongoing. No, I never gave such instruction.

D/IP Suliassi: But during the time, did you went on to see, to clarify from USP in relation to that?

Sitiveni Qiliho: No, it was like I said. It was ten days or less before my departure and I didn't get an opportunity to do that. The first thing I wanted to do was discuss with FICAC, because they were doing the same investigation. And from there, the recommendations that are to come from Director CID and the CII would determine which way we progressed.

D/IP Suliassi: Where...

Sitiveni Qiliho: If, if they recommended that then yes we were, we were going to do that.
D/IP Suliassi: So when did you leave for the UK?
Sitiveni Qiliho: I left around the 30 th .
D/IP Suliassi: 30 th of?
Sitiveni Qiliho: Of July, I think.
D/IP Suliassi: 30 th of July. And this was on the 15 th of July?
Sitiveni Qiliho: Yes.
D/IP Suliassi: It was like 15 days before...
Sitiveni Qiliho: Yes
D/IP Suliassi: ...you left.
Sitiveni Qiliho: The phone call and a few, could have been, I'll have to check my passport. But I think it was around the 30 th . I was involved in a lot of administration and preparation for my...
D/IP Suliassi: And then to continue with what SSP Seru Neiko said, <i>CP then asked for the investigation officer to be called to my office so that he could speak to her. The investigating officer IP Reshmi Dass came into the office and the phone was placed on speaker mode so that we can both hear the instructions from the Commissioner of Police. Commissioner of Police then asked IP Dass about one Ravinesh Shankar who is a USP staff that was brought in, that was brought in by the Investigation team. In response, IP Dass stated that Shankar was brought in for his statement to be recorded. The Commissioner of Police then directed that since FICAC has closed its investigation on the same matter as it is about USP's internal procedures we are to stop our investigation as it is from the Honourable Prime Minister. That is what SSP Seru Neiko said in his statement in relation to your conversation on the 15th of July 2020. What can you say about that?</i>
Sitiveni Qiliho: No, I never said it was directive of the Prime Minister. All I would have said was that I, I required to brief the Honourable Prime Minister. So I needed all the information that I needed to be able to brief.
D/IP Suliassi: And he stated that he put that, he put the phone in speaker mode.
Sitiveni Qiliho: Hmmm.
D/IP Suliassi: This is what Reshmi Dass also stated in her statement. In which she stated <i>on the 15th of July at around 1040hrs I was in my office at Major Fraud Unit when I was called by Acting SSP Seru Neiko Acting Director CID to call Commissioner of Police Brigadier General Sitiveni Qiliho</i>

at CID's office Acting SSP Seru Neiko rang through his phone and placed it on the table speaker mode. As I said hello from the other side he Commissioner speaking and then he asked me about the USP case. He asked me if I brought, if I had brought someone from USP to record their statement last two weeks. I inform him that I brought one of the witness namely Ravinesh Shankar on 30/6/20 and that was the last time I met him. Commissioner of Police then stated one vehicle was seen moving around the house of the said witness every day. Over the phone he then instructed me to stop the investigation against Winston Thompson and others as FICAC has closed its, has closed the file since its USP internal process, it's from PM. After the conversation I again discuss the matter with then Acting SSP Seru Neiko who was fully aware of the conversation as the phone was on speaker mode. Sir that is what Inspector or Acting ASP Dass stated in relation to the phone call that happened on the 15th of July, 2020. What can you say about what she has stated?

Sitiveni Qiliho: I cannot say anything about the statement. Those are their statements, I can't speak on their behalf. All I can say is what I said that I needed to brief the PM. I got a call from the Prime Minister and I needed to brief him. And if they could summarize the case and that's why I wanted to talk to Reshmi so she could explain to me everything that was going on.

D/IP Suliassi: Vinaka vakalevu sir. You being the Commissioner of Police do you issue instruction verbally?

Sitiveni Qiliho: In regards to, to investigations, it is all written. Dockets come in written proper form with recommendations along with them. Those are not done verbally.

D/IP Suliassi: But in this case it was done verbally as stated by the investigators and the witnesses that we've got the statement. What can you say?

Sitiveni Qiliho: I never did that verbally. I would have demanded that it be put in writing. All the dockets for investigation because I understand the importance of it, that it's well documented and also when its filed it has to have some documentary note in it. And verbal is not, it has to be documented.

D/IP Suliassi: Therefore, during the filing of this case, I put it to you that you, that you had issued those instructions, what can you say about that for the filing of the case?

Sitiveni Qiliho: I never issued those verbal instructions.

D/IP Suliassi: I also put it to you that this was a case of national interest and suspect was for the previous government and it was your intention to have this case to be filed away. What can you say about that?

Sitiveni Qiliho: That was never my intention. If I, as I have said before I asked for a summary and from that summary with the recommendations of the Director CID and the Chief Investigations and Intelligence, that would have guided the way we proceeded further.
D/IP Suliassi: I also put it to you that you had abuse the process being a public official holding the position of Commissioner of Police by instructing the stop and the filing away of the USP investigation. What can you say about that?
Sitiveni Qiliho: I never directed the filing away of the file. It was never my intention. And if I was made aware that the DPP's instruction were there, I wouldn't have stopped it in any way.
D/IP Suliassi: And in doing so, you have prevented the execution of the legal process and as such did an arbitrary that is prejudicial to the rights of the university. What can you say?
Sitiveni Qiliho: The file was never filed away by me. And it's still open for investigation. Professor Pal is back and the investigations can continue. I never filed away the investigation file.

....”

68. **Prosecution Witness 25: SSP Serupepeli Neiko** took the stand last. He joined the Fiji Police Force as a Special Constable in 1993 and as a recruit in 1994. He served at Totogo Police Station from 1995 until 1999, when he joined CID. He was then transferred to the Narcotics Bureau in November 2020. He spent 20 years at CID. In 2019, he was based at CID Headquarters, 53 Suva Street, Toorak. At CID Headquarters, he was appointed Acting DCID since the substantive post-holder, SSP Mesake Waqa, was abroad studying. He took over the role in late 2018, around December. As A/DCID, it was his duty to review investigation files and give directives on investigations, in addition to looking at policies and procedures governing investigations, and aligning them to the Force's Mission and Objectives. He recalled dealing with a matter relating to the University of the South Pacific. It was a complaint of mismanagement of funds lodged by a USP Union Representative Mr. Finiasi against senior executive members of the University of the South Pacific. After a complaint was received with CID, he directed the team to investigate through the office of the D/DEC since it revolved around *abuse of office* and mismanagement of funds. He recalled seeking advice from the ODPP. He confirmed writing a minute: **Prosecution Exhibit 1** to the DPP. He confirmed sending the Police Docket to the DPP's office along with his minute. After that the ODPP returned the Docket with a letter and recommended further investigations that could be attended to. He tendered as **Prosecution Exhibit 31**, a letter written by Ms. Jayneeta Prasad of the Office of the Director of Public Prosecutions

to the Director: Criminal Investigations Department. It is dated 23 June 2020 and was received by the CID HQ Registry that same day. The letter reads:

**“Re: State v. WINSTON THOMPSON and ORS
CID HQ PEP 12/07/19
Further Investigations**

We refer to the above.

The matter was sent to our Office for advice.

Upon reading the file, we are of the view that the following need to be obtained by the Investigating Officer:

- 1] Obtain the personnel file of all suspects. This should contain their job description and terms of contract.
- 2] Obtain a statement from whoever gave the email exchange between Winston Thompson and Rajesh Chandra on PDL to Police.
- 3] Obtain the documents in relation to PDL for Rajesh Chandra. This includes calculation of per diem, ticket costs and the request for final payout approved by Winston Thompson.
- 4] Obtain statement from Ravinesh and the audio recording of SAC to confirm that appeals of Karan and Kiran were never heard.
- 5] Obtain statement from Ravinesh and the audio recording of SAC to confirm that appeals of Karan and Kiran were never heard.
- 6] Interview all suspects.
- 7] Obtain a colour copy of BDO report.
- 8] Provide a colour copy of Dulari’s statement and her audit report.”

69. Upon receipt of the letter, he issued a directive to D/DEC SP Lorraine Seru to direct necessary actions as per the contents of that correspondence and to maintain current approach to the investigations. DDEC then wrote a minute to MMF directing that the case be on the priority list over the next week and directing daily progress reports. He testified that on 15 July 2020, he received a phone call through his inobile phone from Brigadier General Sitiveni Qiliho, the Commissioner of Police. The conversation occurred in the *Taukei* language. The Commissioner of Police called from his official mobile number

9906989 to his official number 9905707. The Commissioner of Police said, "*I don't know why you're still investigating the USP case because it's an internal issue and I want to talk to the investigating officer.*"

70. After he spoke to Brigadier General Qiliho, the investigating officer Ms. Reshmi Dass was called into his office. IP Reshmi Dass had been in her office. When IP Reshmi Dass arrived, he then called the Commissioner of Police from his official mobile phone number. He then placed the call on speaker mode to allow both him and IP Reshmi Dass to hear the instructions from the Commissioner of Police. After he called the Commissioner of Police, the Commissioner of Police answered his mobile phone and he started conversing with the investigating officer. The Commissioner of Police started off by asking why a Shankar, who was a staff at the University of the South Pacific, had been brought in to CID HQ for questioning. The Commissioner of Police then instructed that they stop the investigations into the Report from USP as it was an internal matter. It was from the Honourable Prime Minister,⁴ they were told. The conversation happened at around 10.40am on the morning of 15 July 2020. SSP Neiko and IP Reshmi Dass were seated opposite each other at an oval table in SSP Neiko's office and were listening to the Commissioner as he issued his directives over the telephone. He testified that he could clearly hear the conversation over the speaker, and that it was clear to both of them.
71. The State then tendered its final exhibit, **Prosecution Exhibit 32**, being Vodafone Fiji call logs for mobile number 9906989. The call logs show that on 15 July 2020, at 10.39 am, mobile phone number 9906989 called mobile phone number 9905707. The call lasted 34 seconds. It also shows that mobile phone number 9905707 called mobile phone number 9906989 at 10.46am. The call lasted 111 seconds.
72. After the second conversation with the Commissioner of Police, SSP Neiko directed IP Dass to make the necessary entries into her Notebook and to make a note of it in her Investigation Diary. Soon after giving her that directive, the investigating officer left his office. He confirmed his own entries in his Notebook: *see Prosecution Exhibit 13*. He was then posted a few months later to his new positing as Director Narcotics Bureau in September 2020. He handed over the position of Director CID to the substantive post holder after his return from study leave. To his recollection, they did not pursue any

⁴ Inadmissible hearsay against the first Defendant.

investigations into the USP matter following those directives from the Commissioner of Police.

73. Under cross-examination, he testified that he had been unaware of FICAC's decision not to continue with investigations into allegations of financial mismanagement at USP when he had written his own memo seeking advice from the Office of the Director of Public Prosecutions. He indicated that verbal instructions from the Commissioner of Police was sufficient. He confirmed that while there was no written minute from the Commissioner of Police to stop investigations, he and Inspector Reshmi Dass had made a record of that conversation and the Commissioner's directives in their Notebooks. He confirmed that they did not make a note about the legality of those directives in either their Notebooks or in the Investigation Diary. He testified that he was not aware of any instance where ACP Biu Matavou had directed him to bring the file to his office and he was unaware of any instance where ACP Matavou had then telephoned him afterward to indicate that the National Security Council had directed that he stop investigations into the USP matter. He testified that if that had happened he would have made a note of that conversation and that directive in his Notebook. He confirmed that on 4 January 2022, Rajesh Kumar had sought filing, the formal way of seeking the close of the investigations and the filing away of the investigation docket. He confirmed that on 6 January 2022, DCID directed D/DEC to file away and update records and on 8 January 2022, D/DEC directed compliance accordingly. He confirmed that investigations were re-opened into the USP matter in January 2023. He denied hearing the Commissioner of Police telling IP Dass to stop investigations and prepare a report for submission to him during the second 111 second mobile phone call between them on 15 July 2020. He confirmed that the Commissioner of Police was in charge of the Fiji Police Force, its budget and its resources. He agreed that it made sense for a Commissioner of Police to be concerned about duplication of resources but a complaint had been lodged with the Fiji Police Force, and investigations were afoot and they had received recommendations from the Office of the Director of Public Prosecutions to continue with investigations. He confirmed that ACP CIIP Matavou's letter to the complainant dated 25 August 2020: *see Prosecution Exhibit 2* gave the impression that investigations were still afoot but SSP Neiko testified that that was not true, that after the call on 15 July 2020, there were no investigations into the matter. He left CID in September 2020 and he is unaware of what Reshmi Dass did in respect of the investigations after September 2020. He confirmed that they made no efforts to verify the Commissioner's

directives after the call on 15 July 2020. He stated that the Commissioner of Police was the highest ranking officer within the Fiji Police Force. It would have been an act of insubordination for him to have questioned the directive of the Commissioner of Police. He confirmed that Brigadier General Sitiveni Qiliho had left Fiji on overseas study leave in the United Kingdom in July 2020 and he confirmed that no report regarding the USP case had been presented to him between 15 July 2020 and 31 July 2020. He confirmed that he dealt with Brigadier General Sitiveni Qiliho frequently in his capacity as Director CID and he testified that as Commissioner of Police, Mr. Qiliho did have an open door policy for his officers, and that they showed him respect and he showed them respect.

74. That was the close of the prosecution case.

C. **THE APPLICATION FOR NO CASE TO ANSWER**

75. The Defendants, through counsel, seek an order declaring that they have no case to answer. The application is made pursuant to section 178 of the **Criminal Procedure Act 2009**.

76. Pursuant to section 178 of the **Criminal Procedure Act 2009**:

“If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.”

77. In **State v. Ganesh** [2009] FJHC 207; HAM030.2008 (17 September 2009), the High Court of Fiji per Goundar J. made clear that in deciding whether or not a case is made out against an accused person sufficiently to require him or her to make a defence, a Magistrate had to determine two things:

- (i) *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the charged offence; and/or*
- (ii) *Whether the prosecution evidence has been so discredited by cross-examination that no reasonable tribunal could convict.”*

78. In **Sahib v. State** [2005] FJHC 95; HAA0022J.2005S (27 April 2005), the High Court of Fiji per Shameem J. offered this direction:

“So the magistrate must ask himself or herself whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether on the prosecution, taken at its highest, a reasonable tribunal could convict.

In considering the prosecution case at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submissions of no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case.”

79. If I agree that the Defendants’ application has merit than I am duty bound to dismiss the case against each of them, and acquit each of them forthwith. If it appears to me, however, that a case is made out against one or both of the Defendants sufficiently to require one or both of them to make a defence, I am duty bound to again explain the substance of the charge to them, inform them of their rights, and hear from them or their witnesses *if* they chose to testify and/or call witnesses to testify on their behalf: *see* section 179 of the **Criminal Procedure Act 2009**.

80. Mr. Sharma argues that there is no evidence regarding key elements of each offence and for that reason, the cases against his clients should be immediately dismissed and orders of acquittal entered in their favour forthwith. Mr. Toganivalu argues that there is relevant and admissible evidence going to each element of the offence, and for that reason I should find a case to answer and require each Defendant to make a defence, if they wish to.

81. I am grateful to both of them for their interesting and helpful submissions on the law and its application to the evidence before me.

D. ANALYSIS & REASONS

82. It is important that I start by setting out the elements that constitute the crimes that each Defendant is alleged to have committed. It is the charge that establishes the boundaries of a criminal trial.

COUNT 1

83. I start by examining Count 1 of the State's Charge:

Count 1

Statement of Offence

Attempted to Pervert the Course of Justice contrary to section 190 (e) of the **Crimes Act 2009**

Particulars of Offence

Josaia Voreqe Bainimarama sometime between July, 2020 and September 2020 at Suva in the Central Division, attempted to pervert the course of justice by telling **Sitiveni Tuikaituraga Qiliho**, the Commissioner of Police of the Republic of Fiji, to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019.

84. In **R v Rogerson** [1992] HCA 25; (1992) 174 CLR 268; (1992) 60 A Crim R. 429 (17 June 1992), the High Court of Australia per Brennan and Toohey JJ held at [9]:

"...The gravamen of the offence of an attempt to pervert the course of justice is an interference with the due exercise of jurisdiction by courts and other competent judicial authorities. As the courts exercise their necessary and salutary jurisdiction to hear and determine charges of offences against the criminal law only when their jurisdiction is invoked, an act which has the tendency to deflect the police from invoking that jurisdiction when it is their duty to do so is an act which tends to pervert the course of justice."

85. The course of justice can be perverted in a variety of circumstances: **Waters v R** [2011] NZCA 267 (10 June 2011) at [13]. As Brennan and Toohy JJ. explained in **R v. Rogerson**, supra:

“Those ways comprehend, in our opinion, erosion of the integrity of the court or competent judicial authority, hindering of access to it, deflecting applications that would be made to it, denying it knowledge of the relevant law or of the true circumstances of the case, and impeding the free exercise of its jurisdiction and powers including the powers of executing its decisions.”

Emphasis added

86. In **R v. Rogerson**, supra, Mason C.J held at [2] of his reasons that:

“An attempt to pervert the course of justice consists in “the doing of some act which has a tendency and is intended to pervert the administration of public justice”, to repeat the words of Pollock B. in Reg. v. Vreones (3) (1891) 1 QB, at p 369.”

87. Mason C.J was careful to note at [4] and [5] of his judgment that

“4...police investigations do not themselves form part of the course of justice. The course of justice begins with the filing or issue of process invoking the jurisdiction of a court or judicial tribunal or the taking of a step that marks the commencement of criminal proceedings...

5. In this respect it is important to note that the expression “the course of justice” is synonymous with the expression “the administration of justice”. In no relevant sense do the police administer justice, notwithstanding that they investigate crime, institute prosecutions (where appropriate), and assist in bringing prosecutions. As Lord Blackburn pointed out in Coomber v. Justice of Berks (1883) 9 App Case 61, at p 67 “the administration of justice both civil and criminal, and the preservation of order and prevention of crime by means of what is now called police” are separate functions and not one single function.”

88. However, as Mason C.J went on to hold at [7] – [9] of his judgment:

“7. It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed: Reg. v. Murphy (1985) 158 CLR, at p 609; Vreones; Sharpe; Kane; Reg. v. Spezzano (1977) 76 DLR (3d) 160; Reg. v. Thomas. That is because action taken before curial or tribunal proceedings commence may have a tendency to frustrate or deflect a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may be possibly instituted, even though the possibility of instituting that prosecution or disciplinary proceeding has not been considered by the police or the relevant law enforcement agency: Reg. v. Spezzano (1977) 76 DLR (3d), at p 163....

89. I extrapolate the following principles from that decision:

- (i) An attempt to pervert the course of justice consists in “the doing of some act which has a tendency and is intended to pervert the administration of public justice.”
- (ii) An act which has a tendency to frustrate or deflect the police from prosecuting a criminal offence or instituting disciplinary proceedings before a judicial tribunal, or from adducing evidence of the true facts, is an act which tends to pervert the course of justice and, if done with intent to achieve that result, constitutes an attempt to pervert the course of justice. It does not matter that no curial proceedings are currently on foot. It is enough to prove that the accused contemplated that a prosecution before a judicial tribunal may possibly be instituted.
- (iii) It is not necessary for the State to prove that a prosecution for a particular or identifiable offence was in contemplation by either the accused or by investigating officers. It is enough if there is evidence that an investigation into the relevant transaction or transactions could lead to a prosecution for some offence. Then it will be a question of determining whether, in the light of that and any other material evidence, the act or acts done by the accused

had a tendency to pervert the course of justice and was or were intended to have that effect.

90. Applied to Count 1 of the State's Charge, I may only find a case to answer against Mr. Bainimarama if I am satisfied that there is some relevant and admissible evidence to prove that:

- (i) Mr. Josaia Voreqe Bainimarama
- (ii) did some act
- (iii) which had a tendency to deflect the police from invoking the jurisdiction of the court
- (iv) with intent to deflect the police from invoking the jurisdiction of the court
- (v) in circumstances where an investigation into a matter could lead to a prosecution for some offence,
- (vi) and in circumstances where Mr. Bainimarama was aware, or ought to have been aware, that an investigation into that matter could potentially lead to a prosecution for some offence: *see* section 23, section 21 and section 20 of the **Crimes Act 2009** as applied to the principles extrapolated above.

91. The evidence adduced by the State to date indicates that Mr. Josaia Voreqe Bainimarama, the first Defendant, was Prime Minister of this nation from 2014 to 2022. The evidence shows that on 10 November 2015, Mr. Sitiveni Tukaituraga Qiliho, then a Colonel with the Republic of Fiji Military Forces, was appointed to act as Commissioner of the Fiji Police by his Excellency the President of Fiji, Ratu Epeli Nailatikau on the advice of the Honourable Prime Minister as Chair of the Constitutional Offices Commission, following consultation by the Honourable Prime Minister with the Minister responsible for the Fiji Police Force.

92. I accept on the basis of the Admitted Facts that the Prime Minister referred to therein is the first defendant. The evidence shows that when the second defendant signed his 5 year contract term as Commissioner of the Fiji Police Force on 29 March 2016, it was the first Defendant who signed that contract in his capacity as the Prime Minister of Fiji and Chair of the Constitutional Offices Commission for and on behalf of the Government of the Republic of Fiji: *see Prosecution Exhibit 10.*

93. I am “entitled to use general information and general knowledge of the common affairs of life which men” and women “of ordinary intelligence possess”, but I am not entitled to act on my own personal knowledge or private knowledge”: **State v. Sucutuigaga** [2001] FijiLawRp 114; [2001] 2 FLR 421 (5 December 2001) per Shameem J. That is easy enough as I have no personal or private knowledge of any of the matters pertaining to the charges or any of the following information, except in a very general way.

94. It is clear to me from my reading of the decision of Shameem J. in **State v. Sucutuigaga**, supra that as Magistrate, I must carefully go over *all* the evidence adduced to determine if there is relevant and admissible evidence capable of implicating the accused in relation to each element of the offence and that where needed, I must not be hesitate to take judicial notice where matters of history, common knowledge and common experience is concerned.

95. I take judicial notice of the fact that the first Defendant, Mr. Josaia Voreqe Bainimarama is a “Fijian military leader who led a 2006 *coup*⁵ that resulted in his becoming acting President (2006 – 07) and later acting prime minister (2007 – 14) of Fiji. He was sworn in officially as prime minister in September 2014 following his victory in the country’s first elections since the *coup* and served until December 2022...From 1975 he pursued a career in the Fijian navy, rising to become commander (1988), captain (1994), and chief of staff (1998). On March 1, 1999, he was appointed commodore and commander of all Fiji’s military forces...In March 2014 Bainimarama stepped down as the head of Fiji’s military in preparation for his candidacy in the September elections. Bainimarama’s Fiji First party won just over 59% of the vote and an outright parliamentary majority in the September 17 elections. He took office formally as prime minister on September 22”: Tuimalealiifano, M, Chauhan, Y, McKenna A, Murray L & Tikkanen A. Frank Bainimarama, prime minister of Fiji. In The Editors of Encyclopedia Britannica, *Britannica History & Society*. Encyclopaedia Britannica, Inc. <https://www.britannica.com/biography/Frank-Bainimarama> .”

96. I attach no emotional or emotive weight to any of these facts. It is a matter of history. As the Australian Law Commission noted in its 1985 Report, it is important to “prevent a party from

⁵ See also **Qarase v. Bainimarama** [2009] FJCA 9; ABU0077.2008S (9 April 2009).

inducing a false result by disputing what is demonstrably indisputable amongst reasonable men”⁶ and “it is of great importance for the credibility of the trial system that courts should make consistent findings in areas of common knowledge and experience and in areas of science and history and the like which have been the subject of investigation in the community and are not reasonably open to dispute”: The Law Reform Commission. *Evidence Volume 1: Report No. 26 Final*. 1985. 40.969.

97. If Mr. Bainimarama was commander of the Republic of Fiji Military Forces from March 1, 1999 to March 2014, then logically he would have been both Mr. Qiliho’s Prime Minister *and* Commander for some years prior to the then Colonel Qiliho’s appointment to acting Commissioner of Police on 10 November 2015: *see Prosecution Exhibit 9*. I hope no one will try to persuade me that it is possible for a member of a disciplined force like the Republic of Fiji Military Force to spring up a full Colonel overnight. I regret to say that I have heard some legal argument over the course of this proceedings from both sides that has been noteworthy for how far they have strayed from the bounds of the law and common sense. Thankfully, the concerning incidents were limited to three moments which, all in all, was ultimately negligible against the backdrop of otherwise incredible efficiency, diligence and fairness exhibited by learned counsel for both sides.

98. Why do the positions and these relationships matter, one might fairly ask. They matter because they provide context for the conversation Mr. Bainimarama admits to having had during the course of his communication with A/Commissioner of Police Tudravu at the National Security Council Meeting held at the Prime Minister’s Boardroom on 17 September 2020: *see Prosecution Exhibit 29*. Here is the evidence of that admission in context:

Mr. Rusiate Tudravu	Sir, we...can we discuss later on this some of the investigation that are currently pending. Just wanted have clarification on the our stand that USP thing, it’s...we discuss it later or tou sa veitalanoa ga.
Mr. Bainimarama	Oh I suggested earlier to Tuks to stay away from that investigation.

⁶ EM Morgan, *Some Problems of Proof under the Anglo-American System of Litigation*, Columbia University Press, New York, 1956, 43; EM Morgan, ‘Judicial Notice’ (1943 – 4) 57 *Harvard L Rev* 269, 273.

Mr. Rusiata Tudravu	The issue here now is...because they are saying that the audit is already been done now then the complainant is asking what we are doing because they know that the DPP has already directed us ah to if we can just interview those ah...that is our stand and then I came to talk with DPP...well DPP told me that's operational matter you need to do it because you will be answerable to that. I have had advised them the guidance that it was given and that his stand to me so I just want a clarification on...because we are holding everything up and they are pushing. They want feedback on...we are holding all the investigations.
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In context, the investigation referred to is the USP investigations that were currently pending. When cross-examining Mr. Tudravu, Mr. Sharma, in his capacity as learned counsel for both Defendants, implicitly accepts during cross-examination that the first Defendant's reference to "Tuks" in his response to Mr. Tudravu was a reference to the second Defendant in his capacity as Commissioner of Police. Further, Mr. Tudravu testified that Tuks was a reference to Mr. Qiliho, a name derived from Mr. Qiliho's middle name "Tukaituraga", a name commonly used by senior military officers to refer to him at the RFMF. It is not disputed that on 17 September 2020, Mr. Bainimarama told Mr. Tudravu that he "suggested earlier to Tuks to stay away from that investigation". I am prepared to find at this point, and do, in fact find that this is relevant and admissible evidence capable of implicating the first Defendant in respect of the element of "doing an act".

99. I now turn my mind to determine whether there is relevant and admissible evidence to indicate that suggesting to Mr. Qiliho to stay away from the investigations had the tendency to deflect the police from prosecuting a criminal offence, and whether that was in fact Mr. Bainimarama's intent when he made that suggestion to Mr. Qiliho.

100. I am prepared to find, and do in fact find, that there is relevant and admissible evidence to prove that when Mr. Bainimarama in his capacity as Prime Minister and Chair of the National Security Council made a suggestion to members of the National Security Council, members

of the National Security Council took it as a directive and obeyed. That was certainly the evidence of Mr. Tudravu, a very experienced and very senior member of the Fiji Police Force, a man who though physically bigger than Mr. Bainimarama was lower to him in rank and standing. If only his moral courage had matched his physical size. When he heard what the then Prime Minister had suggested to the Commissioner, despite his knowledge that there were investigations afoot, investigations that were potentially meritorious, investigations that were nearing finality, investigations which could potentially invoke the jurisdiction of the court, he returned and directed the CIIP to stop investigations. That is enough, at this point, to indicate that a suggestion from Mr. Bainimarama to stay away from investigations had the tendency, during his time as Prime Minister of Fiji, to deflect senior police officers, and thereafter, the men and women under their command, from investigating matters that could ultimately invoke the jurisdiction of the court.

101. The final question to be determined is whether Mr. Bainimarama intended his suggestion to deflect the Fiji Police Force from potentially invoking a court's jurisdiction by bringing charges after investigations.

102. In Kumar v. Fiji Independent Commission against Corruption [2010] FJHC 90; HAC181.2008 (18 March 2010) at [20] Gounder J. made the point that:

"It has to be borne in mind that the intention of an accused is always a matter of fact to be proved like any other fact in a criminal trial. Generally, there is no direct evidence of a state of mind of an accused. The state of mind of an accused may be inferred from the entire circumstances of the case..."

103. As a judicial officer, I am obligated to unconditionally take judicial notice of the Laws of Fiji, whether it is brought to my attention, or submitted in evidence before me: see Attorney-General v. Parmanandam [1968] FijiLawRp 10; [1968] 14 FLR 6 (15 March 1968).

104. Pursuant to section 129 (2) of the **Constitution**, the "Fiji Police Force is under the command of the Commissioner of Police." Pursuant to section 129 (5) of the **Constitution**, the "Commissioner of Police is responsible for (a) the organization and administration of the Fiji Police Force; and (b) the deployment and control of its operations." Pursuant to section 129 (7) of the **Constitution**, the Commissioner of Police has the power of appointment,

removal and discipline over all ranks, members and other employees of the Fiji Police Force; and all written laws governing the Fiji Police Force shall be construed accordingly.

105. Pursuant to section 5 of the **Police Act 1965**, the Fiji Police Force “shall be employed throughout Fiji for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged.” Pursuant to section 7 of the **Police Act 1965**, the “Commissioner shall have the command, superintendence, and direction of the Force.” Pursuant to section 8 (1) of the **Police Act 1965**, the “administration of the Force throughout Fiji shall be vested in the Commissioner.” Pursuant to section 16 of the **Police Act 1965**, “no police officer shall engage in any employment or office whatsoever other than in accordance with his or her duties under the provisions of this Act” and pursuant to section 17 (2) of the **Police Act 1965**, “every police officer shall be deemed to be on duty at all times.” A police officer is any member of the Force: *see* section 2 of the **Police Act 1965**.

106. I am prepared to find at this point, and do, in fact, find according to the Laws of Fiji, Mr. Sitiveni Qiliho as Commissioner of Police had overall command of the Fiji Police Force; was responsible for the organization and administration of the Fiji Police Force and the deployment and control of its operations; had the power to appoint, remove and discipline all ranks, members and employees of the Fiji Police Force; was responsible for ensuring that the Fiji Police Force was employed throughout Fiji in the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and *detection* of crime, and the enforcement of all criminal laws and regulation; had command, superintendence and direction of the Fiji Police Force; was vested with the administration of the Force throughout Fiji; and was never off duty.

107. I am prepared to find, and do in fact find, that there is relevant and admissible evidence that Mr. Bainimarama in his capacity as Prime Minister and as Chair of the Constitutional Offices Commission was constitutionally responsible for recommending the appointment of the Commissioner of Police in consultation with the Minister responsible for the Fiji Police Force, and I find that it is open for a trier of law and fact to infer from that a knowledge of the roles, duties and responsibilities of the Commissioner of Police.

108. Per **Prosecution Exhibit 29**, the following conversation took place between Mr. Rusiate Tudravu and Mr. Bainimarama in their capacities as Acting Commissioner of Police and Chairperson of the National Security Council respectively.

Mr. Rusiate Tudravu	Sir, we...can we discuss later on this some of the investigation that are currently pending. Just wanted have clarification on the our stand that USP thing, it's...we discuss it later or tou sa veitalanoa ga.
Mr. Bainimarama	Oh I suggested earlier to Tuks to stay away from that investigation.
Mr. Rusiate Tudravu	The issue here now is...because they are saying that the audit is already been done now then the complainant is asking what we are doing because they know that the DPP has already directed us ah to if we can just interview those ah...that is our stand and then I came to talk with DPP...well DPP told me that's operational matter you need to do it because you will be answerable to that. I have had advised them the guidance that it was given and that his stand to me so I just want a clarification on...because we are holding everything up and they are pushing. They want feedback on...we are holding all the investigations.

109. A leader expects people to follow. A commander of men, particularly members of a disciplined force or a hierarchical institution, can and should expect people under their command to pay particular attention to every word that is said or done. It is human nature. If you are at the top of the food chain, those below you pay attention to what you say and do. Your suggestions carry weight.

110. I take judicial notice of the fact that Mr. Bainimarama was promoted to the rank of Rear Admiral upon his retirement as Commander of the Fiji Republic Military Forces in March 2014. This promotion recognized 39 years of distinguished service in the Fiji Republic Military Forces and his contribution to the nation: Ministry of Information.2014.

'Bainimarama promoted to Rear Admiral.' *The Fiji Times*. 15 March 2014.
<https://www.fijitimes.com/bainimarama-promoted-to-rear-admiral/> .

111. I take judicial notice of the fact that a Rear Admiral in the Republic of Fiji Navy is equivalent in standing and rank to a Major General in the Fiji Infantry Regiment and that both are superior in rank and standing to a Brigadier General in the Fiji Infantry Regiment. Brigadier General is not an established rank within the Fiji Police Force.
112. From the immediate way in which Mr. Bainimarama responded to Mr. Tudravu's tentative raising of the then current investigations into the USP "thing", and his request for clarification of the executive branch's stand on the USP investigations, it is open to a trier of fact and law to infer that Mr. Bainimarama was aware that the USP investigations were afoot, that he did not want the investigations to continue, and in *that* context, I hold that there is some relevant and admissible evidence to draw the permissible inference that when Mr. Bainimarama made his suggestion to Mr. Qiliho –as he admits he did, he did so with the intent to deflect him and by extension the investigative organization that he led from pursuing criminal investigations that might potentially lead to the filing of charges in court.
113. I know turn my mind to whether there is relevant and admissible evidence implicating the first Defendant in relation to the elements (v) and (vi) as stipulated in paragraph 90 above.
114. I note that there is relevant and admissible evidence that Fijian Government representatives sitting in the Executive Committee to the USP Council were notified on 6 March 2019 that the Audit and Compliance arm of the University of the South Pacific contemplated filing criminal complaints against current and former senior executives: *see Prosecution Exhibit 17*. There is relevant and admissible evidence that Fijian Government representatives sitting in the Executive Committee to the USP Council were notified on 17 April 2019, that the Director Audit and Compliance Unit, Ms. Dulares Traill had lodged 9 reports with the Fiji Independent Commission against Corruption. This is an independent, executive branch office charged with, amongst other things, investigating and prosecuting abuse of authority and financial crimes under the **Fiji Independent Commission against Corruption Act 2007** and the **Prevention of Bribery Act 2007** on behalf of the State. I note that there is undisputed evidence that a Police Report was filed at the Totogo Police Station on 8 July 2019 asking the Fiji Police Force to investigate the matters raised in *Island Business* news articles regarding

financial mismanagement at the University of the South Pacific; and bringing to the Fiji Police Force's attention, Professor Pal Ahluwalia's *Issues, Concerns and Breaches of Past Management and Financial Decisions* paper that had been handed up to the Executive Committee to Council on or around 6 March 2016: *see Prosecution Exhibit 17* and Statements of **Prosecution Witnesses 15 & 16**. I note from **Prosecution Exhibits 15 – 21** that Fijian Government representatives to the Executive Committee to the USP Council and to the USP Council had taken a stance against Professor Pal Ahluwalia, his report, and to some of the measures taken to address the concerns raised therein. I note from Mr. Tudravu's testimony that the Fijian Government had taken a public stand prior to the National Security Council meeting of 17 September 2020 in respect of the regional diplomatic row brewing within the Executive Committee to Council and within Council. I note per **Prosecution Exhibit 4** that Mr. Bainimarama in his capacity as Prime Minister had appointed to himself in his capacity as Prime Minister and Minister for *iTaukei Affairs*, Sugar Industry and Foreign Affairs, responsibility for the conduct of foreign affairs, the Ministry of Foreign Affairs, and all written laws relating to foreign affairs on 22 November 2018. I note that according to **Prosecution Exhibit 14**, on 12 July 2019, IP Reshmi Dass had been instructed by SP Loraini Seru (DDEC) to have a meeting with Doras Traill of USP in respect of a case reported by them regarding an allegation against the Pro Chancellor, VCP Rajesh Chandra and other staffs for abuse of office; and I note from **Prosecution Exhibit 14** that on 12 July 2019, IP Reshmi Dass had that meeting with Doras Traill. This is the first and second entries for Investigation Diary in P.E.P No. CID/HQ PEP 12/7/19. I note that there is relevant and admissible evidence that there were investigations afoot at the Fiji Police Force from at least 12 July 2019: **Prosecution Exhibit 14**, and that by at least 6 July 2020, the investigations were well on their way toward the interview of suspects and possible charges by the Office of the Director of Public Prosecutions: *see Prosecution Exhibits 1, 3, and 14*. It was clear to me, listening to the evidence of **Prosecution Witness 18: Kuliniasi Saumi** and **Prosecution Witness 21: Reshmi Dass** that both these very senior investigating officers, one from the Fiji Independent Commission against Corruption and the other from the Fiji Police Force, felt that their investigations were yielding good fruit, were on track toward possible interview of suspects and very likely charges.

115. I am prepared to find at this point, and I do, in fact, find that there is relevant and admissible evidence to indicate that investigations into any of these matters could lead to prosecutions for some offence: *see* section 56 of the **Criminal Procedure Act 2009**. I am

also prepared to find, and I do, in fact find that there is relevant and admissible evidence to indicate that Mr. Bainimarama in his capacity as Prime Minister and Minister in charge of Foreign Affairs was aware or ought to have been aware that a court's jurisdiction could be invoked if investigations were launched into the findings of the Audit & Compliance Unit of the University of the South Pacific, or into the matters raised in the Professor Ahluwalia report.

116. There being some relevant and admissible evidence going to each element of the offence of *Attempted to Pervert the Course of Justice*, I find that the first Defendant, Mr. Josaia Voreqe Bainimarama has a case to answer in respect of Count 1.

COUNT 2

117. I now turn my mind to Count 2 of the State's Charge:

Count 2

Statement of Offence

Abuse of Office: contrary to section 139 of the **Crimes Act 2009**

Particulars of Offence

Sitiveni Tukaituruga Qiliho on the 15th day of July, 2020, at Suva in the Central Division, being employed in the civil service as the Commissioner of Police of the Republic of Fiji, directed the Director of the Criminal Investigations Department Serupepele Neiko and Inspector Reshmi Dass to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, in the abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of the University of the South Pacific.

118. In **Fiji Independent Commission against Corruption v. Vasu** [2021] FJCA 53; AAU0004.2020 (23 February 2021) the Court of Appeal per Prematilaka J.A held that the offence of *Abuse of Office* contrary to section 139 of the **Crimes Act 2009** is an offence consisting of both physical and fault elements. The physical elements constitute one conduct and four circumstances. Three circumstances require a fault element; but one does not in my view. Pursuant to section 23 (2) of the **Crimes Act 2009**, recklessness would therefore be the default fault element for each of the three circumstance that require it, and per the proviso of section 21 (4) of the **Crimes Act 2009**, the State is at liberty to establish

intention or knowledge in lieu of recklessness for each of these circumstances. Pursuant to section 23 (1) of the **Crimes Act 2009**, intention is the default fault element that attaches to the conduct noted therein.

119. Section 139 of the **Crimes Act 2009** provides:

"A person commits an indictable offence which is triable summarily if, being employed in the civil service, the person does or directs to be done, in abuse of the authority of his office, any arbitrary act, prejudicial to the rights of another."

120. Being employed in the civil service is a circumstance but it is not one that requires a corresponding fault element. One is either employed in the civil service or one is not. It is convenient at this point to address an argument raised by Mr. Sharma in relation to this element. Mr. Sharma argues that pursuant to section 163 of the **Constitution**, Mr. Qiliho as Commissioner of Police, an office continued in existence pursuant to section 129 (2) of the **Constitution**, is not a person employed in the civil service. This argument is predicated on the assumption that section 20 of the **Public Service (Amendment) Act 2 of 2016** amended section 163 of the **Constitution**.

121. First, section 4 of the **Crimes Act 2009**, the Act that created the crime for which the second Defendant stands accused of committing, defines a "person employed in the civil service" to mean "any person holding any of the following offices or performing the duties of that office, (whether as a deputy or otherwise), namely: -

(g) all persons belonging to a disciplined service in Fiji."

122. Chapter 6 of the **Constitution** deals with **State Services**. Part A of Chapter 6 deals with the Public Service. Pursuant to section 124 of the **Constitution**:

"124. A person or authority exercising power to appoint a person to public office (other than an office for which Chapter 5 makes provision)⁷ must not appoint a person who is not a citizen except with the approval of the Prime Minister."

⁷ The Judiciary & Independent Judicial & Legal Institutions.

123. Part B of Chapter 6 deals with Disciplined Forces. The first disciplined force dealt with under that part is the Fiji Police Force: *see* s. 129 of the **Constitution**. The other two disciplined forces in Fiji are the Fiji Corrections Service: *see* s. 130 of the **Constitution**, and the **Republic of Fiji Military Forces**: *see* s. 131 of the **Constitution**.

124. Pursuant to these provisions, the Commissioner of Police as head of the Fiji Police Force is a person belonging to a disciplined service in Fiji. The Commissioner of Police is, by necessary implication, a person employed in the civil service.

125. Section 163 of the **Constitution** provides a definition for the term “public service” as follows:

“public service” means the service of the State in a civil capacity but does not include (a) service in the judicial branch, (b) service in the office of a member of a commission; or (c) service in an office created by, or continued in existence under this Constitution.”

126. Each of the services mentioned in the definition for “public service” at section 163 of the **Constitution** *is a service of the State* provided to the people of Fiji. All the definition for *“public service”* seeks to do is demarcate one type of service from another. So when referring to the term “public service” *within* the body of the **Constitution**, it is to be read as something separate and distinct from service to the State as a member of the judiciary, or service to the state as a member of a commission, or service to the state as a constitutional office holder. There is after all the doctrine of the separation of powers *and* the need for independence of key offices within the Executive branch itself.

127. Public office and public officer means something slightly different and is broader in its ambit per section 163 of the **Constitution** and judicial officer is more limited in its scope per section 163 of the **Constitution**. The holders of the office of Magistrate or Judge are both judicial officers *and* public officers *but* their service in the judicial branch is not deemed a public service. A constitutional office holder and the office of a member of a commission are public offices but service in the office of a member of a commission is not deemed to be judicial service nor public service. Within the constitutional context, the reason for this provision should be self-evident. On a very practical administrative level, the people and authorities involved need to know which body or authority has ultimate

power to appoint, suspend and terminate. As the opening line to section 163 of the **Constitution** provides: “*In this Constitution, unless the contrary intention appears –*”, clearly signaling the intent that the interpretations provided in that section be read in the light of the **Constitution** and the **Constitution** alone.

128. Mr. Sharma argued that section 20 of the **Public Service (Amendment) Act 2 of 2016** amended section 163 of the **Constitution**. The section provides:

*“20. – (1) The Principal Act is amended by deleting all references to the provisions of the Constitution adopted under the Fiji Constitution Amendment Act 1997, and unless the context otherwise requires, such references must be construed as references to the Constitution adopted under the Constitution of the Republic of Fiji (Promulgation) Act 2013.”*⁸

(2) The Principle Act, all State documents of any nature whatsoever and all written laws, including any Act, Proclamation, Promulgation, Decree and subsidiary legislation (including the titles of any written law) are consequently amended by deleting “public service” and substituting “civil service” wherever it appears, unless the context otherwise requires.”

129. If that argument is upheld as being correct in law then the section 163 provision would now read:

“civil service” means the service of the State in a civil capacity but does not include (a) service in the judicial branch, (b) service in the office of a member of a commission; or (c) service in an office created by, or continued in existence under this Constitution.”

130. This is a very clever argument because, if accepted, then provided I were to accept the application of section 163 of the **Constitution** to every law in Fiji – which I do not without express provision to that effect or a pronouncement to that effect by a higher court; then by virtue of the doctrine of constitutional supremacy the “amended” constitutional interpretation would supersede section 4 of the **Crimes Act 2009**, neatly immunizing Mr.

⁸ Simply put, insofar as its sensible and logical, any references to the 1997 Constitution or any of its provision within the **Public Service Act** must now be read and understood to be a reference to the 2013 Constitution and its provisions.

Qiliho as Commissioner of Police, all members of the Judicial branch, all members of a Constitutional commission, and all constitutional office holders from *Abuse of Office* charges.

131. Fortunately for me, at least, as I grapple with this interesting and novel argument, it is by *very reason* of the doctrine of constitutional supremacy that this argument fails. Parliament cannot amend the **Constitution of the Republic of Fiji** by statute. There is only one way to amend our nation's supreme law and that is by the strict application of sections 159 and 160 of the **Constitution**. I reject Mr. Sharma's argument on this point. Section 20 of the **Public Service (Amendment) Act 2 of 2010** has no bearing on section 169 of the **Constitution**, and even if it did, it would not have an adverse bearing on section 4 of the **Crimes Act 2009** and its application to section 139 of the same Act. There is no constitutional conflict to resolve and that being the case, I simply look to section 4 of the **Crimes Act 2009** for the appropriate definition to be applied to the words and phrases contained in section 139 of the **Crimes Act 2009**.

132. In the same way, section 169 of the **Constitution** is the appropriate key for words and phrases in the Constitution, section 4 of the **Crimes Act 2009** is the appropriate key for the words and phrases contained in that Act. I think that is all that needs to be said on the point.

133. Moving on, in order to find a case to answer against the second Defendant, there must be relevant and admissible evidence capable of establishing at a *prima facie* level at least that:

- (i) Sitiveni Tukaituraga Qiliho
- (ii) Whilst employed in the civil service
- (iii) Intentionally
- (iv) Directed an act
- (v) That was (a) arbitrary in nature, (b) an abuse of the authority of his office, and (c) prejudicial to the rights of another
- (vi) Intending, or knowing, or being reckless as to (a) the acts arbitrariness, (b) the fact that it was an abuse of the authority of his office, and (c) its prejudicial effect on the rights of another.

134. It is an uncontroverted fact that the second Defendant was employed as Commissioner of Police on 29th March 2016 for a period of 05 years, and thereafter from 21st September 2021 for a period of 05 years. It is an uncontroverted fact that he held and performed the duties of that office from 15 November 2015 until his suspension on 26 January 2023. It is an uncontroverted fact that he held the office of, and performed the duties of Commissioner of Police on 15 July 2020, the day this alleged offence is said to have happened. Pursuant to Part 6 of the **Constitution**, the Fiji Police Force is a disciplined service provided by the State, for all that it is not a public service. As a member of the Fiji Police Force he is, and was at the relevant time, a person belonging to a disciplined service, and by virtue of section 4 of the **Crimes Act 2009** is, and more importantly, was at the time “a person employed in the civil service.” There is relevant and admissible evidence implicating the accused in respect of this element.

135. It is an uncontroverted fact that he directed an act on the 15th of July 2020. **Prosecution Witness 21: Reshmi Dass** and **Prosecution Witness 25: Serupepli Neiko** testified that the second Defendant directed them to stop the investigations they were conducting in respect of allegations emanating from USP, the results of which, at that time was being compiled in Police Docket CID/HQ PEP 12/07/19 per the requirements of the Force Standing Orders. During his Interview with the Police, as is recorded in **Prosecution Exhibit 30**, the second Defendant admits that he directed the investigating officer **Reshmi Dass** to stop investigations into the USP matter. There is relevant and admissible evidence implicating the accused in respect of this element.

136. The following questions and answers are contained in **Prosecution Exhibit 30**:

D/IP Suliasi: During the process of investigation, do you have any powers to call for a stop to any, in any investigation?
Sitiveni Qiliho: In this case, I asked for that stop so that I could get a summary to be updated on a case that had become of national interest. I don't normally do it. But because I wasn't updated, I, I had to take this action.
D/IP Suliasi: That means that this case was of national interest and you need to know some of the facts from that case?

Sitiveni Qiliho: Yes, I needed to know if I was questioned, like I had to brief the Minister, or I had to be, I had to know what was going on.

D/IP Suliasi: Do you know what was the interest of the Minister in relation to this case? What was his interest in this case?

Sitiveni Qiliho: No, but I was, I was preparing myself if I needed to, to give a briefing that I knew what was going on.

137. I am prepared to find at this point, and do in fact find that this constitutes relevant and admissible evidence capable of establishing that the second Defendant meant⁹ to direct the stop of investigations into the allegations referred to in Police Docket CID/HQ PEP 12/07/19.

138. Moving on to the question of whether there is relevant and admissible capable of implicating the second Defendant in relation to the element of arbitrariness, I refer to the judgment of Fatiaki J. as his Lordship then was in State v. Vakaloloma [1993] FJHC 93; HAA0042j.93s (15 October 1993). His Lordship observed:

“I am fortified in my view by the remarks of the Fiji Court of Appeal in Tomasi Kubunavanua v. State, Cr.App.No.8(B) of 1992 in which a senior police officer took to his home, a video deck and television screen seized under a search warrant, and used them there for his personal entertainment for 5 months before returning them to the Police Station Exhibit room. The inspector was charged and convicted for an offence of Abuse of Office. In dismissing the officer’s appeal the Court of Appeal observed of the use of the “arbitrary” in the particulars of the offence charged at p. 3 of its judgment:

“We think the word ‘arbitrary’ indicated nothing more than the exercise of one’s own free will...”

Needless to say the “arbitrary” nature of the offending act(s) is a question of fact and inference and is undoubtedly coloured by its close association with the alleged ‘abuse of authority’ by the accused. If I may say so, it is difficult to envisage an act which is undoubtedly an ‘abuse of authority’ and yet is not ‘arbitrary’ in the sense in which Jesuratnam J. correctly directed the assessors in State v. Beniamino Naiveli (op.cit) when he said in the course of his summing-up at p. 8:

⁹ see s. 19 (1) of the Crimes Act 2009

"An arbitrary act is an autocratic act, a despotic act, an unreasonable act, an act which is not guided by principles, rules and regulations but an act guided by the whims and fancies of the doer. That is what the prosecution says the acts of the accused amounted to. But the defence says that it is not an arbitrary act but was a lawful act which he was entitled to do."..."

139. Pursuant to section 129 (2) of the **Constitution**, the "Fiji Police Force is under the command of the Commissioner of Police." Pursuant to section 129 (5) of the **Constitution**, the "Commissioner of Police is responsible for (a) the organization and administration of the Fiji Police Force; and (b) the deployment and control of its operations." Pursuant to section 129 (7) of the **Constitution**, the Commissioner of Police has the power of appointment, removal and discipline over all ranks, members and other employees of the Fiji Police Force; and all written laws governing the Fiji Police Force shall be construed accordingly.
140. Pursuant to section 5 of the **Police Act 1965**, the Fiji Police Force "shall be employed throughout Fiji for the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged." Pursuant to section 7 of the **Police Act 1965**, the "Commissioner shall have the command, superintendence, and direction of the Force." Pursuant to section 8 (1) of the **Police Act 1965**, the "administration of the Force throughout Fiji shall be vested in the Commissioner." Pursuant to section 16 of the **Police Act 1965**, "no police officer shall engage in any employment or office whatsoever other than in accordance with his or her duties under the provisions of this Act" and pursuant to section 17 (2) of the **Police Act 1965**, "every police officer shall be deemed to be on duty at all times." A police officer is any member of the Force: *see* section 2 of the **Police Act 1965**.
141. I am prepared to find at this point, and do, in fact, find according to the Laws of Fiji, Mr. Sitiveni Qiliho as Commissioner of Police had overall command of the Fiji Police Force; was responsible for the organization and administration of the Fiji Police Force and the deployment and control of its operations; had the power to appoint, remove and discipline all ranks, members and employees of the Fiji Police Force; was responsible for ensuring that the Fiji Police Force was employed throughout Fiji in the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention and *detection* of crime, and the enforcement of all criminal laws and regulation; had command,

superintendence and direction of the Fiji Police Force; was vested with the administration of the Force throughout Fiji; and was never off duty.

142. I note that according to **Prosecution Exhibit 14**, on 12 July 2019, IP Reshmi Dass had been instructed by SP Loraini Seru (DDEC) to have a meeting with Doras Traill of USP in respect of a case reported by them regarding an allegation against the Pro Chancellor, VCP Rajesh Chandra and other staffs for abuse of office; and I note from **Prosecution Exhibit 14** that on 12 July 2019, IP Reshmi Dass had that meeting with Doras Traill. This is the first and second entries for Investigation Diary in P.E.P No. CID/HQ PEP 12/7/19. I note that there is relevant and admissible evidence that there were investigations afoot at the Fiji Police Force from at least 12 July 2019: **Prosecution Exhibit 14**, and that by at least 6 July 2020, the investigations were well on their way toward the interview of suspects and possible charges by the Office of the Director of Public Prosecutions: *see Prosecution Exhibits 1, 3, and 14*. It was clear to me, listening to the evidence of **Prosecution Witness 18: Kuliniasi Saumi** and **Prosecution Witness 21: Reshmi Dass** that both these very senior investigating officers, one from the Fiji Independent Commission against Corruption and the other from the Fiji Police Force, felt that their investigations were yielding good fruit, were on track toward possible interview of suspects and very likely charges.

143. Moreover, I highlight the fact that by statute it is the Fiji Police Force's core function to be employed throughout Fiji in the maintenance of law and order, the preservation of the peace, the protection of life and property, the prevention *and detection of crime*, and *the enforcement of all laws and regulations which it is directly charged*. The **Crimes Act 2009** is one such law that the Fiji Police Force is charged with enforcing. And in furtherance of their core objectives, "*every police officer shall be deemed to be on duty at all times*." It is a little difficult, at this juncture, to understand then how directing a stop to a legitimate and meritorious investigations so that the person on top can get a brief aligns with that statutory mission and objective.

144. **Prosecution Witness 21: Reshmi Dass** testified that she was shocked when she received the directive of 15 July 2023 because it was the first time in her 25 year career that she had ever received such a directive from a Commissioner of Police. Usually, directives relating to investigations would come through the Director Criminal Investigations Division. I am prepared to find, and do find, that there exists relevant and admissible evidence capable of

implicating the second Defendant in an arbitrary act that was done in abuse of the authority of his office.

145. I now turn my mind to whether there is relevant and admissible evidence to indicate that the second Defendant intended to be arbitrary and intended to act in abuse of the authority of his office; or that he knew his directive was arbitrary and knew that his directive was an act in abuse of the authority of his office; or was reckless as to the fact that his directive was arbitrary and was reckless to the fact that his directive was an act in abuse of the authority of his office. I refer to paragraph 69 of this ruling, and to the contents of **Prosecution Exhibit 30**. From the questions contained in **Prosecution Exhibit 30**, it is clear that the second Defendant as Commissioner of Police knew what the ambits of his authority was. Logically then, the inference can legitimately be drawn that if he knew what was permissible and the right thing to do, then he also knew what was not permissible and the wrong thing to do. That is enough at this stage to establish a case to answer in respect of these elements.

146. Finally, I turn my mind to whether there exists relevant and admissible evidence to indicate that directing the stop of investigations into the allegations referred to in CID/HQ PEP 12/07/19 was an act prejudicial to the rights of another, and whether the second Defendant in his capacity as Commissioner of Police intended to prejudice said rights, *or* comprehended that it would or could prejudice the rights of another, *or* was reckless as to whether it would prejudice the rights of another.

147. Pursuant to section 16(1)(a) of the **Constitution**:

“16 (1) Subject to the provisions of this Constitution and such other limitations as may be prescribed by law –

(a) every person has the right to executive or administrative action that lawful, rational, proportionate, procedurally fair, and reasonably prompt...”

148. Pursuant to section 26 (1) of the **Constitution**:

“26 (1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.”

149. It is clear from the Minutes tendered into evidence at trial by the State that the University of the South Pacific cared deeply about its internal governance; that at Executive Committee

level and at Council level it wanted matters that had criminal implications investigated by law enforcement; and that the University wanted to explore avenues to potentially recover monies that were stolen – and here I note that the **Proceeds of Crimes Act 1997** is one such potential legal vehicle.

150. Mr. Sharma argues that no rights were prejudiced because despite the directive to stop investigations, investigations did not stop. He relies on the contents of **Prosecution Exhibit 2**, Minutes 7 – 9 of **Prosecution Exhibit 3**, and Diary Entries 19 – 23 of **Prosecution Exhibit 14** to ground this argument. The contention is that according to these notes, the investigation process never stopped. However, against this is **Prosecution Witness 21: Reshmi Dass's** direct testimony that she stopped investigating because of those directives and **Prosecution Witness 25: Serupepeli Neiko's** direct testimony that despite the indications given via the contents of **Prosecution Exhibit 1**, investigations had stopped in respect of CID/HQ PEP 12/07/19. There too is the indication at Force Standing Order 1, 2 and Force Standing Order 17 as contained in **Prosecution Exhibit 11**; the existence of Diary Entry 20 – 22 as contained in **Prosecution Exhibit 14** and finally, paragraph (2)(vii) of Minute 7 within **Prosecution Exhibit 3**. I am not prepared at this stage to hold that the Prosecution evidence on this point has been so discredited that no reasonable tribunal of fact and law could convict.

151. To the contrary, there is relevant and admissible evidence to indicate that investigations did stop, that they stopped from 15 July 2020 to 15 October 2020, and that they stopped for no other reason than a senior officer did not know enough about the facts of a particular course of investigations to be able to sensibly prepare for a *potential* briefing to a politician: *see* answers contained in **Prosecution Exhibit 30**. The maxim "*justice delayed is justice denied*" comes to mind. I am prepared to find, and do in fact find that there is relevant and admissible evidence to show prejudice to the rights of the University of the South Pacific.

152. Finally, I turn my mind to whether or not the second Defendant intended to cause prejudice to the University of the South Pacific thereby, or knew that prejudice would be or could be caused thereby, or was reckless as to any prejudice caused thereby. It is open for a trier of fact and law to infer from the contents of the second Defendant's own admissions that he was unconcerned about the length of time it would take to arrive at a decision to re-commence investigations after he had issued his directive to stop said investigations. These admissions are relevant and admissible and is sufficient at this juncture to indicate, if nothing else,

recklessness as to whether prejudice to the University of the South Pacific would occur thereby.

153. There being relevant and admissible evidence going to each element of the offence of *Abuse of Office*, I find that the second Defendant Sitiveni Tukaituraga Qiliho has a case to answer in respect of Count 2.

154. I now invite each Defendant to please rise.

E. SUBSTANCE OF THE ALLEGATIONS AGAINST EACH DEFENDANT

155. Mr. Josaia Voreqe Bainimarama, the State alleges that you attempted to pervert the course of justice by suggesting to Mr. Sitiveni Tukaituraga, a person that you had been instrumental in appointing to the position of Commissioner of Police, and a man you knew to be Commissioner of Police, to stay away from the USP investigations. The allegation is that your objective was to ensure that these investigations never made their way to a court of law; that by virtue of your position of leadership you were aware or ought to have been aware of the power your words held, that a suggestion from you that you did not prefer a certain course could have the tendency to cause those in State service under you to divert from a particular course of action, and that you were aware or ought to have been aware by virtue of your position that investigations were underway, that they had merit and that if left to continue unabated, they could result in some charge being filed in court.


156. Mr. Sitiveni Tukaituraga Qiliho, the State alleges that you abused the authority of your office as Commissioner of Police by intentionally directing two subordinate officers to do an act which you knew was arbitrary and in abuse of the authority of your office, namely to stop investigations into the allegations arising from activities at the University of the South Pacific, which act was prejudicial to the rights of the University of the South Pacific, intending, or at least being aware that prejudice could result thereby, or perhaps being reckless as to whether prejudice would occur as a result.

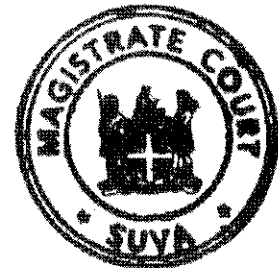
F. RIGHTS AVAILABLE TO EACH DEFENDANT

157. Mr. Josaia Voreqe Bainimarama and Mr. Sitiveni Tukaituraga Qiliho, you each have the right to remain silent. This is a constitutional right. I promise you that I will not think you are guilty because you have chosen to remain silent. I undertake to carefully review the evidence to determine if the State has proven *beyond reasonable doubt* each element of the offence you are charged with.

158. Mr. Josaia Voreqe Bainimarama and Mr. Sitiveni Tukaituraga Qiliho, you also each have the right to testify in open Court. I indicate that if you choose to exercise this option, you can and very likely will be cross-examined by State Counsel.

159. Finally, Mr. Josaia Voreqe Bainimarama and Mr. Sitiveni Tukaituraga Qiliho, you each have the right to call witnesses to testify on your behalf regardless of whether you choose to remain silent or testify.


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Seini K. Puamau
RESIDENT MAGISTRATE



Dated at Suva this 07th day of September, 2023.