

# **IN THE MAGISTRATES' COURT OF FIJI**

## **AT SUVA**

Criminal Case No: 662/2025

**STATE**

**V**

**SHAZRAN ABDUL LATEEF**

**For the Prosecution : Mr.Samsoni & Ms.Bibi(ODPP)**

**For the accused:Mr.J.Cakau( VOSAROGO LAWYERS)**

**Date of Judgment: 03 February 2026**

## **JUDGMENT**

### **Introduction**

1. The accused is charged with two counts of Unlawful possession of Illicit Drugs contrary to section 5(a) of the Illicit Drugs Control Act (IDCA).<sup>1</sup>
2. The particulars of the offences are:

**SHAZRAN ABDUL LATEEF, on the 9th day of May, 2019, at Suva in the Central Division, without lawful authority, possessed 9.5grams of Methamphetamine, an illicit drug.**

**SHAZRAN ABDUL LATEEF, on the 9th day of May, 2019, at Suva in the Central Division, without lawful authority, possessed 3.5grams of Cannabis Sativa, an illicit drug.**

3. The accused pleaded not guilty; hence, the matter proceeded to hearing.
4. During the hearing, the Prosecution called two witnesses and tendered the drugs as exhibits.
5. At the close of the Prosecution's case, this Court found that a case had been established against the accused and accordingly informed him of his rights under the Criminal Procedure Act(CPA).<sup>2</sup>
6. The accused elected to remain silent and did not call any witnesses.
7. Subsequently, both parties opted to file written closing submissions and were granted time to do so.

### **Summary of Evidence**

#### **PW1 – Asenaca Balekatuba**

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<sup>1</sup> No 09 of 2004.

<sup>2</sup> S 179, No 43 of 2009.

8. PW1 stated that on 09/05/2019, while at her home, she received a telephone call from the accused. He requested to meet her in relation to one of her friends, Sainimili. PW1 subsequently picked up the accused, and together they proceeded to Wasawasa Hotel.
9. The accused was carrying a briefcase and paid for a room. Upon entering, he opened the briefcase, which contained a plastic container, and from it he retrieved a ziplock bag containing methamphetamine. PW1 testified that she had previously observed the accused using drugs and was therefore aware that the substance in the ziplock bag was methamphetamine.
10. While PW1 was in the bathroom, she heard a knock at the door. The accused left the room and returned with a pipe, which he used to heat the drugs in PW1's presence. Shortly thereafter, there was another knock at the door, and PW1 discovered police officers outside. The officers entered, searched the room, and seized the drugs and the container from the counter.
11. The accused requested PW1 to admit ownership of the drugs, and owing to their friendship, she agreed. Both were escorted to the police station. PW1 later identified the container and the ziplock bag, which were marked as MFI-1 and MFI-2 respectively.
12. In cross-examination, PW1 testified that she had known the accused for two to three years. On the way to meet him, she stopped to purchase toiletries. The accused inquired whether Sainimili was providing information to the police about him. He also gave PW1 money to buy soap and other items. PW1 denied that one Patrick had brought the container with the drugs to her while she was in the room, and further denied that the drugs belonged to her. Her statement was marked as DE1 by the defence.
13. . In re-examination, PW1 clarified that after she picked up the accused, he went to purchase toiletries. She further stated that when she first saw the container, it bore no markings, and both the container and the drugs did not belong to her.

#### **PW2- Apaisai Bola**

14. PW2, the Investigating Officer in this matter, tendered the container and the drugs in evidence, which were accordingly marked as PE1 and PE2 respectively.

#### **Admitted facts**

15. The parties filed following admitted facts and documents pursuant to section 135 of the CPA on 10/12/2025.
  1. **The Chain of Custody of the illicit drugs (namely 9.5 grams of *methamphetamine* and 3.5 grams of *cannabis sativa*) found in Room 112 at the Wasawasa Hotel in Suva on 09/05/2019, occupied by Shazran Abdul Lateef and Asenaca Ledua Baleikatuba from the time it was seized at the hotel by Detective Constable 4096 Vakaruru to the time it was analyzed by the Principal Scientific Officer Ms. Miliana Werebauinona on 10/05/2019 is not disputed.**
  2. **The admissibility and contents of the Statements of the following Police Officers and Principal Scientific Officer who were part of the Chain of Custody for the search and seizure of the said illicit drugs (namely 9.5 grams of *Methamphetamine* and 3.5**

grams of *cannabis sativa*) are not disputed and will be tendered by consent (*attached to this Admitted Facts*):

- (i) DC 4096 Vakaruru;
- (ii) W/CPL 3403 Sovaia;
- (iii) PC 5139 Apisai Bola;
- (iv) DC 3601 Ritesh;
- (v) S/IP Sakiusa Biaukula; and
- (vi) Principal Scientific Officer Miliana Werebauinona.

3. The admissibility of the said illicit drugs (namely 9.5 grams of *Methamphetamine* and 3.5 grams of *cannabis sativa*) is not disputed and will be tendered by consent.
4. The admissibility and contents of the following document is not disputed and will be tendered by consent.
  - (i) The Drugs Analysis Report by the principal Scientific Officer Ms. Miliana Werebauinona dated 10/05/2019 with Job Number 219548.

### **The Law**

16. In **Woolmington v DPP**<sup>3</sup> it was held that :

“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” (per Viscount Sankey L.C. at pp. 481-482).

17. The accused is charged with two counts of Unlawful possession of Illicit Drugs contrary to section 5(a) of the IDCA which provides:

“Any person who without lawful authority-

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<sup>3</sup> [1935] AC 462 .

**(a) acquires, supplies, possesses, produces, manufactures, cultivates, uses or administers an illicit drug**

**commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both.”**

18. According to the particulars in the charge sheet, the elements for which the prosecution must prove beyond reasonable doubt are:

**1<sup>st</sup> count**

- a. The accused person ;
- b. On 09/05/2019 at Suva in the Central Division;
- c. Without lawful authority ;
- d. Possessed 9.5grams of Methamphetamine, an illicit drug .

**2<sup>nd</sup> count**

- e. The accused person ;
- f. On 09/05/2019 at Suva in the Central Division;
- g. Without lawful authority ;
- h. Possessed 3.5grams of Cannabis Sativa, an illicit drug .

**Analysis**

- 19. The accused elected to remain silent, and this Court will not draw any adverse inference from this silence of the accused. The burden rests upon the Prosecution to prove both counts beyond reasonable doubt.<sup>4</sup>
- 20. . Before considering the merits of the Prosecution’s case, it is necessary to address a preliminary objection raised by the accused in his closing submission as well as the close of the Prosecution case.
- 21. The accused contended that he had previously been charged in relation to this matter under Case No. CF 712/2019, and as that charge was dismissed by the Court pursuant to section 171(1) (b) of the CPA , he ought not to have been re-charged in the present proceedings.

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<sup>4</sup> S 57, 58 ,Crimes Act , No 44 of 2009.

22. This contention formed one of the principal grounds advanced by the accused in his application for a stay of proceedings before the High Court in HAM 60/2025. The High Court held:

**“Considering counsels arguments, based on *Timo v State* (supra), *Vaqewq v State* (supra) and *Kulavere v LTA* (supra), I find that the section 171(1)(b) dismissal of the illicit drug charges by the learned magistrate on 5 April 2025 operates as a discharge rather than an acquittal, and ‘does not operate as a bar to subsequent proceedings against the Applicant on the basis of the same facts’, similar to section 49 and 169(2)(b)(ii) and 3 discharge, thus enabling the prosecution/Respondent to re-charge the Applicant.**

**The Prosecution/Respondent was well within its power to re-charge the Applicant, and this Court is not satisfied on the balance of probabilities that the prosecution abused the court’s process by the ultra vires act of re-charging the Applicant, and violated the Applicant’s right to receive a fair trial under section 15(1) of the Constitution 2013”**

23. Accordingly, I do not find any abuse of process by the Prosecution, nor any miscarriage of justice, as alleged by the accused in relation to his being re-charged in this matter.
24. Having disposed of the preliminary objection, I now turn to consider the evidence presented in this case.
25. On the basis of the admitted facts, the defence does not dispute that the drugs (PE2) were found in the room occupied by the accused and PW1 on 09/05/2019, nor does it dispute the chain of custody until the drugs were tested, or the analyst’s report.
26. The defence advanced by the accused is that he was not in possession of the drugs on the date in question.
27. Lord Hope in the House of Lords in ***Lambert***<sup>5</sup>, stated that ‘there are two elements to possession. There is the physical element, and there is the mental element’
28. His Lordship Justice Gounder in ***Koroivuki v State***<sup>6</sup> held that;

**" The Illicit Drugs Control Act 2004 does not define the word " possession". In absence of a statutory definition, the court can be guided by the English common law definition of the word " possession". Possession is proven if the accused intentionally had the drugs in his physical custody or control to the exclusion of others, except anyone who was acting in concert with him in the alleged offence ( Lambert 2002) 2 AC 545). Possession is also proven if the accused intentionally had the substance in**

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<sup>5</sup> [2002] 2 AC545.

<sup>6</sup> ( 2013) FJCA 15;AAU0018.2010 ( 5 March 2013).

**some place to which he either alone or jointly with some other person acting in concert with him has access and might go to get physically or control it.**

**( Lambert, supra)".**

29. During cross-examination, the defence suggested that PW1 was the person in possession of the drugs on the date in question.
30. In his closing submissions, the accused further contended that PW1 could not be regarded as a credible witness due to inconsistencies in her evidence. However, I do not find any material contradictions in her testimony. The inconsistencies identified relate only to peripheral matters and do not affect her overall credibility.
31. I have also examined her statement, marked as DE1 by the defence, and find that it is consistent with the testimony she gave before this Court.
32. PW1, while giving evidence, admitted that she was aware the accused was using drugs on the date in question. She further admitted to the police that she accepted responsibility for the drugs owing to her friendship with the accused.
33. Learned counsel for the State has agreed with this Court that PW1's testimony indicates she may be regarded as an accomplice in this case.
34. In **Davies v DPP**<sup>7</sup> in the House of Lords, Lord Simonds defined the meaning of the term "accomplice."

**“There is in the authorities no formal definition of the term ‘accomplice’; and your Lordships are forced to deduce a meaning for the word from cases in which X,Y and Z have been held to be, or held liable to be treated as accomplices. On the case it would appear that the following persons, if called as witnesses for the prosecution, have been treated as falling within the category:-**

**(1) On any view, persons who are participes criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing procuring or aiding and abetting (in the case of misdemeanours). This is surely the natural and primary meaning of the term ‘accomplice’. But in two cases, persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the purpose of the rule: viz:**

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<sup>7</sup> (1954) 38 C. APP. R.

**(2) Receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny (Rex v Jennings (1912) 7 Cr App R 242; Rex v Dixon (1925) 19 Cr App R. 36)**

**(3) When X has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted, of having been committed crimes of this identical type on another occasion, as proving system and intent and negating accidents; in such cases the court has held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration. (Rex v Farid 91945) 30 Cr. App. R. 168)**

**In both of these cases (2) and (3) a person not a party or not necessarily a party to the substantive crime charged was treated as an accomplice for the purpose of the requirement of warning. (I say ‘not necessarily’ to cover the case of receivers. A receiver may on the facts of a particular case have procured the theft, or aided and abetted it, or may have helped to shield the thief from justice. But he can be a receiver without doing any of these things.) The primary meaning of the term ‘accomplice,’ then, has been extended to embrace these two anomalous cases. In each case there are special circumstances to justify or at least excuse the extension. A receiver is not only committing a crime intimately allied in character with that of theft: he could not commit the crime of receiving at all without the crime of theft having preceded it. The two crimes are in a relationship of ‘one-sided dependence.’ In the case of ‘system,’ the requirement of warning within the special field of similar crimes committed is a logical application within that collateral field of the general principle, though it involves a warning as to the evidence of persons not accomplices to the substantive crime charged’.**

35. Now I would consider what kind of warning I need to give about this witness.

36. In **Davis v DPP** Lord Simonds further said:

**“ judge should direct them that if they consider on the evidence, that the witness was an accomplice, it is dangerous for them to act on his evidence unless corroborated: though it is competent for them to do so if, after that warning, they still think fit to do so”.**

37. In assessing the testimony of PW1, I have duly cautioned myself as required in law about an accomplish. Having done so, I am satisfied that PW1 was telling truth before this Court.
38. On the basis of PW1's testimony and other available evidence, I am satisfied beyond reasonable doubt that the accused was in possession of the illicit drugs, namely 9.5 grams of methamphetamine and 3.5 grams of cannabis sativa, which were found in Room 112 at the Wasawasa Hotel in Suva on 09/05/2019.
39. Accordingly, I find the accused guilty on both counts and hereby convict him.
40. 28 days to appeal.

