

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 16 OF 2006
TRIAL NO. 2

BETWEEN:

THE STATE

Prosecutor

AND:

SITIVENI LIGAMAMADA RABUKA

Defendant

Counsel: Mr. P. Maiden, SC)
Ms. Tamanikaiwaimaro) – for the Applicant

Mr. M. Tedeschi, QC)
Mr. R. Gibson) – for the State
Mr. A. Ravindra-Singh)

Date of Hearing: 27th November to 11th December, 2006
Date of Judgment: 11th December, 2006

JUDGMENT

[1] In respect of Count One the assessors Mr. Rabuka by a majority of 3:2 have found you not guilty. I agree with them and I am going to give some brief reasons now although I am not obliged to.

[2] In respect of this Count I find the words allegedly said by you do not in and of themselves directly incite actions tending towards a mutiny that is:

“collective defiance or disregard for authority with the purpose of subverting authority.

- [3] The words have to be read in context. The context is that you were an adviser to His Excellency Ratu Mara at this time of the coup crisis, you were also the Chairman of the Great Council of Chiefs, you were a Major General in the Army, a person with reason to call the State's prime witness Colonel Seruvakula and I find you did call him on a number of occasions over the relevant period.
- [4] Colonel Seruvakula was certain the call happened on the 4th of July or thereabouts at a time when the QEB Accord failed. The witness Caucau placed the failure of the QEB Accord anytime between the 22nd of June and the 9th of July that was when the Muanikau Accord was signed. I find you did make calls, in June and July that is clear from exhibit 9. These calls were at a time when Commander Bainimarama was involved in negotiations with George Speight.
- [5] I accept that during the time of the QEB Accord discussions the traitor Speight found Commodore Bainimarama's negotiations unreasonable.
- [6] I accept that you made no secret of the fact that you viewed Commodore Bainimarama's role as both negotiator and Head of State unacceptable. I accept you thought that Commodore Bainimarama should not be negotiating with Speight but should remain aloof and reserve his position as final arbiter and Head of State.
- [7] Apart from the three soldiers' reports of a call being made to Colonel Seruvakula there really is no other supportive evidence that might assist with the determination of your intent; there is no relevant evidence that is not balanced out by the defence case.
- [8] While there may have been some call to Colonel Seruvakula by you to suggest replacement of Commodore Bainimarama, nevertheless there remains the reasonable possibility that such a call was to encourage Colonel Seruvakula to replace Commodore Bainimarama legitimately and as the negotiator. This has not been excluded by the State and accordingly the State have not proved beyond reasonable doubt that even if such a call was made you had the necessary criminal intent to incite Colonel Seruvakula to a mutinous act.

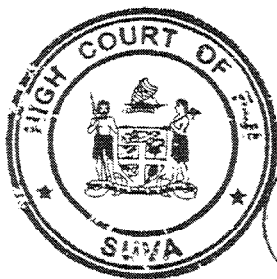
- [9] Accordingly I find you are not guilty of Count One.
- [10] In respect of the Second Count four of the assessors were of the opinion that you were guilty. One assessor said you were not guilty. I agree with the one assessor and I am obliged to give my reasons and I am doing so briefly.
- [11] Firstly I find the issue of the uniforms in the back of the car to be a neutral one. First five people said they saw a uniform in that car, two people your driver and your guard said there was no uniform in that car. The issue is neutral from the point of view of your status. Why would you need a uniform to go up to QEB and takeover. You are who you are Sir well known and easily recognizable.
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- [12] Concerning the waitresses and the Sun Insurance Clerk and what they overheard, well there is no corroborative evidence of the calls between 1.00 and 1.15. The Sun Insurance Clerk overheard a call at about 2.45 to 3.00pm but really what did the overheard information relate to. The answer to that is no one will ever know as the conversations were not completely overheard and so lack context.
- [13] These snippets of overheard conversation I find cannot assist in the determination of your intent later that day. I take the rest of the talk over that luncheon as banter and not much more.
- [14] I accept that a rebel soldier and Mr. Lomaloma invited you to go up to QEB and to negotiate.
- [15] There is a delay in your going up to QEB and that is telling against you but that might have been caused by your desire to exercise caution in seeking instructions or indeed simply to wait for a lull in the fighting.
- [16] I find that you called Colonel Kacisolomone earlier on and offered to negotiate. You called Colonel Seruvakula earlier on and offered to negotiate. You talked to Colonel Hennings inside the barracks outside the armory about negotiating. You did so impatiently but again about negotiating. Colonel Kacisolomone was aware at the

Temporary Army Headquarters at the Navy Base that you were up at QEB and that you were negotiating.

[17] The important issue in this case is what was your intent at the time of the call. Well the call is timed at 17.40. That is twenty minutes before h-hour, twenty minutes before the counter attack was to begin. I find that twenty minutes before the counter attack was a time for action. The CRW soldiers were out numbered, out gunned and in poor defensive positions. Your view was that they were on the point of a slaughter and what did you do? Well, you called Colonel Seruvakula and I find that in that four minute conversation you were pleading the rebel soldiers' cause.

~~[18] Where you there to negotiate? Have the State excluded that reasonable possibility? I~~
 remind myself that the State must prove that you are guilty beyond reasonable doubt and that proof beyond reasonable doubt is a high standard of proof which the State would have met only if at the end of the case I am sure that you are guilty. Its not enough for the State to persuade me that you are probably guilty or even that you are very likely guilty. I accept that it is virtually impossible to prove anything to an absolute certainty when dealing with the reconstruction of past events and I accept the State doesn't have to do so. However, I hold an honest and reasonable uncertainty in my mind about your guilt. I have given careful and impartial consideration to all of the evidence and at the end of the day I am left not sure that the State have proved your criminal intent beyond reasonable doubt. Please stand.

[19] Mr. Rabuka I find you not guilty of Count One. Mr. Rabuka I find you not guilty of Count Two. You, Sir are free to go and return to your family.



Gerard Winter
 Gerard Winter
 JUDGE

At Suva
 Monday 11th December, 2006

Solicitors:

R. Patel & Company, Suva – for the Applicant

Office of the Director of Public Prosecutions, Suva – for the State