

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 293 OF 2011S**

**STATE**

**VS**

**SANAILA NAIVANA**

**Counsels : Mr. T. Qalinauci and Ms. M. Khan for State**  
**Mr. A. Vakaloloma for Accused**

**Hearing : 19 May, 2014**

**Ruling : 19 May, 2014**

**Written Reasons: 29 May, 2014**

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**WRITTEN REASONS FOR DECLARING ACCUSED'S POLICE CAUTION INTERVIEW  
STATEMENTS AS ADMISSIBLE EVIDENCE**

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1. The accused was charged with "aggravated burglary", contrary to section 313 (1)(a) of the Crimes Decree 2009, and "theft", contrary to section 291 (1)(a) of the Crimes Decree 2009. It was alleged, he with others, trespassed into Water Authority of Fiji storeroom at Reservoir Road, and stole 619 new water meters valued at \$106,369.64.
2. During the police investigation, the accused was caution interviewed by police, at the Crime Office at Samabula Police Station, on 10 September 2011. During the interview, the accused allegedly confessed to the crimes. He challenged the admissibility of the above caution interview statements on 19 May 2014, in a "trial within a trial". The police called 2 witnesses, that is, the caution

interview officer and the witnessing officer. The accused gave sworn evidence himself, and called no witness.

3. The law in this area is well settled. On 13<sup>th</sup> July 1984, the Fiji Court of Appeal in Ganga Ram & Shiu Charan v Reginam, Criminal Appeal No. 46 of 1983, said the following, "...it will be remembered that there are two matters each of which requires consideration in this area. First, it must be established affirmatively by the crown beyond reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the "flattery of hope or the tyranny of fear" Ibrahim v R (1941) AC 599. DPP v Ping Lin (1976) AC 574. Secondly even if such voluntariness is established there is also need to consider whether the more general ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v Sang (1980) AC 402, 436 @ C – E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account ...."
4. I have carefully considered the evidence of both prosecution's witnesses, including that of the accused. I have compared and analyzed them. After considering the authorities mentioned above, and after looking at all the facts, I have come to the conclusion that the accused gave his caution interview statements to the police voluntarily and out of his own free will. I ruled his statements as admissible evidence, and its acceptance or otherwise, at the trial proper, will be a matter for the assessors. The above are my reasons for ruling as such on 19 May 2014.



**Salesi Temo**  
**JUDGE**

Solicitor for the State : Office of the Director of Public Prosecution, Suva.  
Solicitor for the Accused : Vakaloloma & Associates, Suva.