

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 129 OF 2015

THE STATE

V

RATU EPELI NIUDAMU & 15 OTHERS

Counsel: Mr. Lee Burney for State

Mr. K. Tunidau for 1st Accused

Mr. A. Ravindra Singh for 2nd to 16th Accused

Date of Ruling: 15th August, 2017

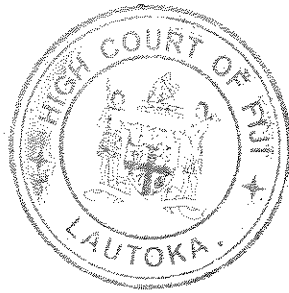
RULING

1. Despite my Ruling dated 27th February, 2017, on the admissibility of three documents, the Counsel for Defence vigorously argue that those documents being photocopies, must go through what is called the 'Lobendahn test'. Counsel for Accused also filed comprehensive written submissions on this argument.
2. In *Regina v Lobendahn* [1972] 18 FLR 1 (18 January 1972), at the commencement of the trial of an accused person on charges of fraudulent

false accounting, counsel for the Crown indicated that he would be tendering in evidence a number of photostat copies of documents, 'the originals of which had been irretrievably lost'. A considerable number of original documents the investigating officer took possession of during police investigation had gone missing in the police custody by the time of trial and therefore, on an application by the Crown, the Court proceeded to hear evidence on the preliminary issue of admissibility of photostat copies.

3. The factual scenario and the basis upon which the so called photo copies are intended to be tendered in this case are different. The State Counsel does not state that he would be tendering in evidence photostat copies of documents, 'the originals of which had been irretrievably lost'. His position is that the three documents the Prosecution is intending to tender at the trial are the best evidence available to them because those are the documents that had been seized during police investigations.
4. It is clear from *voir dire* proceedings conducted to test the admissibility of caution statements, that the Prosecution had maintained the same position when an objection was raised to the tender of those document (for the purpose of identification) by the Counsel for 1st Accused. The interviewing officers who had conducted the caution interviews had shown those seized documents to the Accused at their respective interviews and the Accused in turn had not denied the existence, signatures or the contents of those documents.
5. What the Prosecution is burdened to prove in this case is not the contents of non-existent documents, but the contents of the documents they say are the best evidence available to them. Therefore, the question of holding a Lobendahn hearing to test the admissibility of those documents does not arise. What weight should be given to those documents is a matter for assessors.

6. Application made by the Defence that a Lobendahn hearing be conducted is refused.



Aruna Aluthge

JUDGE

At Lautoka

15th August, 2017

Solicitors: Office of the Director of Public Prosecution for the State
Kevueli Tunidau Lawyers for the 1st Accused
Aman Ravindra Singh Lawyers for 2nd – 16th Accused