

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 129 OF 2015

STATE

v

1. **RATU EPELI NIUDAMU**
2. **SEREIMA ADIDAVE ROKODI**
3. **SAILASA WAIROAROA MALANI**
4. **NANISE KASAMI NAGUSUCA**
5. **WASEA DUAILIMA**
6. **SAMUELA LIGABALAVU**
7. **MIKAELE GONERARA**
8. **EMOSI TOGA**
9. **WAIKAKE RALACA**
10. **JOSEFA NATAU**
11. **ISIKELI WASEGA KABAKORO**
12. **SULUWETI LOTU WAQALALA**
13. **LAIASIA MOCEVAKACA**
14. **ULAIASI RABUA TUIVOMO**
15. **APOLOSI QALILAWA**

Counsel: Mr. Lee Burney and Mr S. Babitu for State
Mr. K. Tunidau for 1st Accused
Mr. A. Ravindra Singh for 2nd to 15th Accused

Date of Summing up: 15th September, 2017

Date of Judgment: 22nd September, 2017

JUDGMENT

1. The Accused are charged on the following Information

FIRST COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

RATU EPELI NIUDAMU, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely signed a document headed "Uluda Declaration" purporting to be a unilateral declaration of independence by the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

SECOND COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

RATU EPELI NIUDAMU, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention by signing a document purporting to be a Petition to the ICJ with an intention to raise discontent or disaffection amongst the inhabitants of Fiji.

THIRD COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SEREIMA ADIDAVE ROKODI, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely signed a document headed "Uluda Declaration" purporting to be a unilateral declaration of independence by the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

FOURTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SEREIMA ADIDAVE ROKODI, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention by signing a document purporting to be a Petition to the ICJ with an intention to raise discontent or disaffection amongst the inhabitants of Fiji.

FIFTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SAILASA WAIROAROA MALANI, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely signed a document headed "Uluda Declaration" purporting to be a unilateral declaration of independence by the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

SIXTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SAILASA WAIROAROA MALANI, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention by signing a document purporting to be a Petition to the ICJ with an intention to raise discontent or disaffection amongst the inhabitants of Fiji.

SEVENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

NANISE KASAMI NAGUSUCA, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely signed a document headed "Uluda Declaration" purporting to be a unilateral declaration of independence by the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

EIGHTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

NANISE KASAMI NAGUSUCA, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention by signing a document purporting to be a Petition to the ICJ with an intention to raise discontent or disaffection amongst the inhabitants of Fiji.

NINETH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

NANISE KASAMI NAGUSUCA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

TENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

NANISE KASAMI NAGUSUCA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

ELEVENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA DUAILIMA, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely signed a document headed "Uluda Declaration" purporting to be a unilateral declaration of independence by the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

TWELFTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA DUAILIMA, on the 28th day of October 2014 at Rakiraki, in the Western Division, did an act with a seditious intention by signing a document purporting to be a Petition to the ICJ with an intention to raise discontent or disaffection amongst the inhabitants of Fiji.

THIRTEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA DUAILIMA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

FOURTEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA DUAILIMA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

FIFTEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SAMUELA LIGABALAVU, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

SIXTEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SAMUELA LIGABALAVU, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

SEVENTEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

MIKAELE GONERARA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

EIGHTEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

MIKAELE GONERARA on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

NINETEENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

EMOSI TOGA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

TWENTIETH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

EMOSI TOGA on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

TWENTY FIRST COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISAKE RALACA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

TWENTY SECOND COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISAKE RALACA on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian

State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

TWENTY THIRD COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOSEFA NATAU, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

TWENTY FOURTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

JOSEFA NATAU on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

TWENTY FIFTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ISIKELI WAISEGA KABAKORO, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred

or contempt or to excite disaffection against the Government of Fiji as by law established.

TWENTY SIXTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ISIKELI WAISEGA KABAKORO on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

TWENTY SEVENTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SULUWETI LOTU WAQALALA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

TWENTY EIGHTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

SULUWETI LOTU WAQALALA on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

TWENTY NINETH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

LAIASIA MOCEVAKACA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

THIRTIETH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

LAIASIA MOCEVAKACA on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

THIRTY FIRST COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

ULIASI RABUA TUIVOMO, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

THIRTY SECOND COUNT

Statement of Offence

SEDITION: Contrary to Section 65 (2) (a) of the Crimes Act 2009.

Particulars of Offence

ULAIASI RABUA TUIVOMO, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

THIRTY THIRD COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

APOLOSI QALILAWA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "Ra Sovereign Christian State" with the seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

THIRTY FOURTH COUNT

Statement of Offence

SEDITION: Contrary to Section 67 (1) (a) of the Crimes Act 2009.

Particulars of Offence

APOLOSI QALILAWA, on the 03rd day of November 2014 at Rakiraki, in the Western Division, did sign a document headed "Ra Sovereign Christian State" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

2. The trial was conducted before a panel of five assessors whose composition reflected the main ethnicities of the Republic of Fiji.

3. The Assessors, by a majority opinion of three to two, have found the Accused not guilty on each count they are charged with.
4. I direct myself in accordance with my own Summing Up and review the evidence led in the trial. I pronounce my judgment as follows.
5. Prosecution called nine police and two civilian witnesses in this trial which dragged on for nearly a month. Prosecution based its case substantially on admissions made by each accused at their respective caution interviews. At the end of the Prosecution case, only the 1st accused offered evidence while 2nd to 15th Accused exercised their right to silence.
6. The charges against the Accused are framed on the basis that each Accused did certain acts with seditious intentions defined under Sections 66(1) (i) and (iv) of the Crimes Act. According to Section 66(1)(i), acts are "seditious" if they are done with the intention of bringing the Government into hatred or contempt or done with an intention to excite disaffection against the Government of Fiji. According to Section 66(1) (iv) acts are seditious if they are intended to raise discontent or disaffection amongst the inhabitants of Fiji.
7. At the outset, it is apposite to understand the rationale behind entering Sedition as an offence in the Crimes Act. In any democracy, the continued existence of the Government established by law is an essential condition of the tranquility and stability of the State. "Government established by law" is the visible symbol of the state and it would be in jeopardy, where its authority is subverted. Hence, any act within the meaning of Section 66 (1) (i) which has the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the meaning of Crimes Act because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder. In the same way, if any act has the effect to raise discontent or disaffection amongst the inhabitants of the country, it would be within Section 66 (1) (iv) of the Crimes Act because such acts tends to destabilise the very fabric of the orderly society.
8. In 17th and 18th century England, criminal libel, in its four manifestations, seditious, blasphemous, obscene and defamatory were criminal offences that went hand in hand. All of them were originally what would now be described as offences of strict liability. To constitute the offence of seditious libel it was enough for the prosecution to prove that the accused had done a verbal or physical act which the jury found to be seditious whether the accused knew it to be so or not. [It is on this basis that the Counsel for Prosecution, citing the

majority decision of the *R v Lemon* (or, *Whitehouse v Lemon*) [1979] 1 All ER 898, HL, made submissions and argued, at the pre-trial inquiry, that Sedition in Fiji is an offence of strict liability. This argument was dismissed by this Court in its Ruling dated 27 February 2017 (*State v Niudamu* [2017] FJHC 145; HAM30.2017 (27 February 2017)). Having accepted Lord Diplock's view in the minority decision, this Court held that *mens rea* is part of the offence of Sedition in Fiji).

9. The speech of Lord Diplock in *Lemon* (supra) vividly describes how, in England, the severity of the law of blasphemous libel and kindred offences had been somewhat mitigated by judicial and legislative interventions including the removal of the presumption that a man intends the natural consequences of his acts.
10. The passing of the Criminal Evidence Act 1898 in England enabled the accused to testify as a witness in his own defence to prove his intention. Prior to this, his actual intention could only be ascertained as a matter of inference from what he was proved to have done and the circumstances in which he did it; and juries were instructed to apply what was referred to as the 'presumption' that a man intends the natural consequence of his own acts. In the case of blasphemous libel if the jury found that words published by the accused, looked at objectively, had the tendency to product the effect that it was the policy of the law to prevent, e.g. to shock and arouse resentment among believing Christians, then the application of the presumption was sufficient to convert this objective tendency into the actual intention of the accused. [R v *Lemon* (supra) per Lord Diplock]
11. British Parliament modified this presumption by enacting s 8 of the Criminal Justice Act 1967 which provides:

'A court or jury, in determining whether a person has committed an offence,-
(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.'
12. However in Fiji, by virtue of Section 66 (2) of the Crimes Act, the presumption (or the deeming provision) that a man intends the natural consequences of his own acts is applicable to the offence of Sedition in determining the intention of the accused, that is to say, it is an inference that the Courts/Assessors are bound to draw unless the accused overcame the burden of proving any of the exceptions in Section 66 (a) to (d). This presumption has been modified to

enable the court to draw inferences from Accused's conduct at the time and under the circumstances in which he so conducted himself. Section 66 (2) of the Crimes Act states:

"In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself".

13. Therefore, the Sedition law in Fiji, having recognized modern criminal law concepts (for e.g. 'the law visits not the honest errors, but the malice of mankind), attempts to strike a balance between two competing interests, namely, need to prevent unlawful attacks on the tranquility of the State on one hand and the need to guarantee the freedom of expression and other legitimate political rights in a democracy on the other.
14. The offence belongs to a group of criminal offences designed to safeguard the internal tranquility of the State. In an increasingly plural society such as that of contemporary Fiji it is necessary not only to respect the differing religious beliefs, feelings and practices of all but also to protect them from vilification, ridicule and contempt.
15. There is authority to show that even strong or intemperate words or actions may not demonstrate a seditious intention if done with the purpose of expressing legitimate disagreement with the Government of the day in terms of paragraphs (a)-(d) of Section 66 of the Crimes Act. [*State v Mua* [1992] FJCA 23; AAU0016u.91s (27 November 1992)]
16. However, none of the Accused in this case claims that their acts are intended to achieve any of the purposes in terms of paragraphs (a)-(d). Although the Counsel for 2nd -15th Accused argued from the Bar table that his clients had the right to engage in political activities and exercise freedom of expression, he failed to bring his case under any of the exceptions, (a) to (d), which would have justified his claim.
17. The Counsel for 2nd to 15th Accused further argued that there is no iota of evidence of conspiracy, violence or establishing of physical structures of a modern government like armed forces, post offices etc. It should be accepted that the offence of Sedition does not consist in exciting mutiny, violence, rebellion, or any sort of actual disturbance, great or small. It is immaterial whether the act did produce one of the unlawful effects or consequences set out in Section 66(1) of the Crimes Act. Whether any disturbance, discontent

or disaffection was caused by the seditious act is absolutely immaterial. If the accused intended by the act to excite feelings of disaffection, hatred or contempt towards the Government, or raise discontent or disaffection amongst the inhabitants of Fiji that is sufficient to make him or her guilty under this section.

Analysis

18. Prosecution alleges that the acts of signing the documents titled Uluda Declaration and taking an oath to serve as a Cabinet Minister in the Ra Christian State have seditious tendencies in that they bring the Government of Fiji into hatred or contempt or excite disaffection against it. Prosecution also alleges that the acts of signing the document titled Ra Petition to the ICJ and Ra Sovereign Christian State have been done with the seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

The case against the 1st Accused

Seditious Act

19. 1st Accused is charged with Sedition on the basis that he had signed the Uluda Declaration and the Ra Petition to the ICJ.
20. Prosecution says that 1st Accused willingly signed these documents with full knowledge of the contents and consequences of signing.
21. 1st Accused, does not deny his signature on both documents. However, he maintains that he was shown only two pages and his signature was obtained by deception, and therefore, his act of signing was not intentional. Having agreed that the contents of Uluda declaration are seditious in nature, he denies any knowledge of the contents of those documents.
22. 1st Accused was a Senator in 1996 having been nominated from the Great Council of Chiefs. He is the Chief of Nalawa from 1995. He himself admitted that he would not sign blank documents or any document which he does not understand. If that is the case, it is unbelievable that a person of his caliber and experience would sign almost blank papers.
23. He advanced two excuses for his careless and irresponsible act. Firstly, he said that he had signed those papers believing his cousin Bolobolo's words that they were intended to safeguard fishing grounds. By the time 1st Accused gave his interview to police in June 2015, Bolobolo had passed away and, therefore, there was no way that police could confirm his claim.

24. According to 1st Accused's own words, Bolobolo is not a trustworthy person as he had lied to him on several occasions. Furthermore, having overheard Mereoni's 'explanation' while awaiting transport at Uluda House, 1st accused appears to have shown some skepticism about Mereoni's project when he emphasized the need to follow the 'proper channel' on development work in Ra. It is not difficult to infer that the emphasis on 'proper channel' was necessitated because Mereoni's and Bolobolo, during presentation, had something to do with an improper channel. Therefore, 1st Accused appears to have had some doubts about trustworthiness of these people so as not to sign almost blank papers irresponsibly. His first excuse is neither justifiable and nor believable.
25. Second excuse is his haste to go to Suva to lodge his passport for visa at French Embassy. Quite surprisingly, on the 28th October 2014, he was in a rush at the last moment for a trip scheduled for 31st October, 2014, despite being informed about it a week ago. It is unlikely that a person of his caliber would have waited until the last moment to get visa stamped if he was informed about the trip a week ago.
26. According to 1st Accused's own words, Mereoni had spent about 15 minutes at his place which is more than enough to get things clarified either from Mereoni or Bolobolo before signing the documents. Therefore, the story advanced by 1st Accused to justify his irresponsible signing is unbelievable.
27. Furthermore, 1st Accused's version in court is completely different from what he had told at the interview. When his attention was drawn by the interviewer to the top part of one of the pages he had signed where the phrase 'RA SOVERIGN CHRISTIAN STATE' is conspicuously printed in bold letters, he said *'I came to see it now but I overlooked it on that day'*. Whereas in Court, he advanced a completely different version. He said that there was nothing written at top or bottom of this page except his name and Bolobolo's name and his signature. He further said that, after obtaining his signature, the page had been modified. If that is the case, he should have told the interviewer and expressed his surprise, shock and alarm towards the fraudulent modification of the document which he had signed.
28. It is obvious that the moment he accepts the fact that he signed this page he can't deny having seen the prominently printed phrase 'RA SOVERIGN CHRISTIAN STATE' and other references to ICJ, 'objects of our Self – Determination', 'the recognition of our independent Government' at the top of the page and the phrase 'Chief, present at Consultations' immediately below where he had signed and also the portion of Mereoni's certificate that

the document was fully and faithfully interpreted and explained both in English and Fijian language to all four Chiefs.

29. Furthermore, the entire Uluda Declaration had been shown to him, and at question 119, the interviewer asked..

Q: Do you agree with us that this page 8 is part of the nine (9) page document titled the "Uluda Declaration?"

A: I agree, but I did not read through the whole document before I signed as I was about to leave for Suva when it was brought to me.

30. This answer is inconsistent with his position in court that he was presented with only two pages for signature.
31. If Mereoni was an expert on indigenous resources as Bolobolo had told him, 1st Accused should have been aware for what purpose his signature was required for two documents and how his signature was going to help his stated objective. He failed to explain why Mereoni obtained his signatures to two documents.
32. Although 1st Accused said that he could not understand the contents of the document, he had eloquently explained the meaning of each paragraph that was read to him at the interview. The evidence that he could not understand the meaning of even simple terms like 'private property' and 'first nation people' is unbelievable.
33. The Counsel for 1st Accused argued during cross examination and his closing speech that 1st Accused signed those documents not at Uluda but at his chiefly house and attacked the credibility of Mereoni's assertion in those documents. 1st Accused does not deny the signature in two pages of those documents. Therefore, the place he signed is not important as long as he admits signing those two pages.
34. I am satisfied that 1st Accused did not tell the truth to this Court. I reject the evidence of the 1st Accused. It is clear that the 1st Accused having understood the gravity and the consequences of his act had knowingly signed and approved the contents of those documents and he had later changed his position after police investigations began in the Ra Province.
35. Although 1st Accused is under no obligation to prove that his acts were not intentional, he failed to create any doubt in the prosecution version that he signed those documents with the full knowledge of the contents and

consequences thereof. Therefore, I find that Prosecution proved the physical element of the offence of Sedition beyond reasonable doubt.

Seditious Intention

36. Before embarking on the exercise of resolving the issue whether 1st Accused had a seditious intention at the time of signing, it is important to understand the nature and purpose of these two documents. 2nd, 3rd, 4th and 5th Accused are also charged with Sedition on the basis that they had signed these two documents. Both the Uluda Declaration and Ra Petition to the ICJ were attached together and latter makes reference to former. 2nd to 5th Accused have admitted signing these two documents. Therefore, it is convenient to deal with these two documents in relation to all the relevant charges.
37. On the face of it, the Uluda Declaration is a Unilateral Declaration of Independence (UDI) by the entity "Ra Sovereign Christian State" within the territorial boundaries of the Republic of Fiji. It rejects and denounces the Constitution of the Republic of Fiji, the supreme law of the land and its founding principles enshrined in Articles 4 and 5, namely, secularism and ethnic equality (mainstreaming of all citizens of Fiji as Fijians), and a number of other Decrees and laws. The purported effect of this document is to undermine the authority of the legally established government of Fiji in the Province of Ra.
38. The Ra Petition to the ICJ is a document intended to be sent to the International Court of Justice, the Queen of England and the Secretary General of the United Nations.
39. It contains statements condemning the notion of 'mainstreaming' and this constitutional underpinning is described as a '*sign of unprecedented racial turbulence in days to come*'. It contains statements such as ..'*A Constitution that enshrines mainstreaming which mandates the extermination of native Fijians...*This document condemns the current government as a *military backed dictatorship under which native Fijians have seen their indigenous status usurped under the barrel of the gun and their rights and freedoms muzzeled in totality*. It also states that.. '*The past eight years of military dictatorship has foistered (sic) mainstreaming upon indigenous Fijians... The Government has statutised the extermination of all forms of indigenous efforts....*
40. The purpose of signing both these documents can clearly be gathered from their contents. They are in a declaratory form and obviously not intended to be kept in a safe but to be read by others and its message to be disseminated.

41. In his caution interview, 1st Accused admitted that statements in Paragraphs 2, 9, 10, 11, 12 13, 14, 15, 16, 17, 22, of the Uluda Declaration would promote feelings of hatred or excite disaffection against the current government of Fiji established by law. Viewed objectively, the contents of the Ra Petition to the ICJ are seditious in that they have a tendency to promote discontent and disaffection amongst the inhabitants of Fiji.
42. 1st Accused knowingly signed these documents in his capacity as the Chief of Nalawa. The Chiefs are in a commanding position *vis-a-vis* the people within their jurisdiction and have a say in important governance issues. When a chief signs a declaration it becomes an influential document within his community.
43. The act of signing a Unilateral Declaration of Independence to establish a separate State within the Republic of Fiji, viewed objectively, have a tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established. The act of signing a document in the nature of Ra Petition to the ICJ which had a tendency to promote discontent and disaffection amongst the inhabitants of Fiji, viewed objectively, is seditious.
44. The law says that every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself. In the circumstances under which he signed, 1st Accused is deemed to have intended the consequences which would naturally follow from his act.
45. To explain his side of the story as to why he signed, 1st Accused said that his only intention was to safeguard natural resources and quliqoli. That may be his motive to sign these documents. His motive is irrelevant to the issue at hand.
46. In *R v Aldred* (1909) 22 Cox CC 1 at 3, (cited in Lemon (supra) by Lord) in the course of his summing-up on a charge of publishing a seditious libel, Coleridge J told the jury that the accused could not plead the innocence of his motive as a defence to the charge, telling them that-

'The test is not either the truth of the language or the innocence of the motive with which he published it, but the test is this: was the language used calculated, or was it not, to promote public disorder or physical force or violence in a matter of State?'

And (1909) 22 Cox CC 1 at 4 if the language was calculated to promote public disorder-

'then, whatever his motives, whatever his intentions, there would be evidence on which a jury might, on which I should think a jury ought, and on which a jury would decide that he was guilty of a seditious publication.'

47. 1st Accused's evidence as to his motive never damaged the prosecution's version that he had seditious intention. I find that the 1st Accused had signed the Uluda Declaration and the Ra Petition to the ICJ with a seditious intention. Prosecution proved counts 1 and 2 beyond a reasonable doubt.

Charges against 4th to 15th Accused

48. 4th to 15th Accused admit voluntarily signing the document titled Ra Christian State. Except for 15th Accused, each 4th to 14th Accused admit taking an oath to serve as a Minister of the Cabinet of Ra Christian State. Therefore, there is no dispute about them having done the physical part or *actus reus* of the offence of Sedition.
49. The document titled Ra Christian State describes its signatories as democratically elected (by consensus) leaders and declares the province of Ra to be an independent and Sovereign State known as the 'Ra Sovereign Christian State'. It manifests the intention to 'put immediate end to all self-serving governments of all persuasions in Fiji as from the date of this Declaration'. It 'rejects outright the mainstreaming Constitution of the current Government, assented to on 6th September, 2013' and laws promulgated under it as having the effect of removing protection against genocide. It rejects the multicultural rule since independence as an imposition of values repugnant to Christian way of life. It rejects the policies of the Attorney-General as having the effect of extermination of the native Fijian race from the landscape of Fiji.
50. This document stems from and makes reference to Uluda Declaration (UDI) where it is stated at paragraph 8.. *"We, people of the Ra Sovereign Christian State in exercise of our right to self-determination, believe that our subsisting common law applies unilaterally to all residents on the Ra lands and seas, and non Ra people are prohibited from performing ceremonial duties such as the worship of false gods on our lands"*.
51. When read this document in its entirety, any informed reasonable person in Fiji would view it as having a tendency to raise discontent or disaffection amongst the inhabitants of Fiji. This is the document 4th to 15th Accused paid allegiance to when each of them signed and took an oath (except 15th Accused) under it.

52. When a regard is had to the time and the circumstances under which it was signed, each accused shall be deemed to intend the consequences which would naturally follow from his conduct.
53. Article 2 (6) of the Constitution of the Republic of Fiji prohibits any attempt to establish a Government other than in compliance with the Constitution and makes anything done to further that attempt invalid having no force or effect.
54. Taking an oath in whatever form to serve as a Cabinet Minister in an unconstitutional or illegitimate government will no doubt undermine the authority of the legally elected Government of Fiji and its Ministers. Therefore, taking an oath to serve as a Cabinet Minister in a rival entity will be viewed by an informed reasonable person as an act having the tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.
55. The Counsel for 2nd to 15th Accused argues that *modus operandi* used to administer the oath was not uniform and not known to the Constitution of the Republic of Fiji. It is obvious that the stated objective of this whole project is to replace the current Constitution with the Ten Commandments of the Bible and to form a parallel government in the Province of Ra. Therefore, the Accused cannot be expected to pay allegiance to and take an oath under the Constitution of the Republic of Fiji. What is important is not the form they used but their intention at the time of taking the oath.
56. The incidents of signing this document and oath taking are a culmination of series of presentations conducted by Mereoni in the Province of Ra. The Court had the opportunity to watch one of Mereoni's presentations video recorded by the 3rd Accused. Her presentation disseminated the same views and the strategy as are contained in the documents accused had later signed. There is evidence that before oath taking and signing, Mereoni gave such a presentation to convince and to get the approval of the Accused who were in attendance at the meeting as per the attendance sheet. Therefore, Accused must have had a clear idea about what they were doing. Their actual intention can be gathered from their conduct and what they have stated in their caution statements.
57. Having admitted committing the alleged physical element of the offence, several Accused, in their respective caution interviews, advanced various excuses and explanations for doing those acts. Therefore, those statements should be considered as out of court 'mixed' statements having both inculpatory and exculpatory assertions.

58. Generally, voluntary admissions of an accused in a mixed statement are attached a higher evidentiary value although they are out of court statements not given under oath and not tested in cross examination.
59. A voluntary out of court confession or admission against interest made by a defendant is an exception to the hearsay rule and is admissible against him. That was so under the common law.
60. In Regina v. Hayter (On Appeal from the Court of Appeal (Criminal Division)) [2005] UKHL 6, it was observed:

“A party making an admission may adopt a hearsay statement as his or her own for the purpose of admitting the facts therein. The rationale underlying the exclusion of hearsay evidence is primarily the inherent untrustworthiness of an extra judicial statement which has been tendered without affording an opportunity to the party against whom it is adduced to cross examine the declarant. This rationale loses its force when the party relies on the hearsay statement in making an admission for he or she is presumably satisfied as to the reliability of the statement. The admission, once established, should be treated no differently than if it had been made in the witness box where a belief or acceptance of a hearsay statement is taken as some evidence of the truth of its contents. The weight to be given to that evidence is for the trier of fact. On the other hand, a statement is not admissible as proof of the truth of its contents if the party simply reports a hearsay statement without either adopting it or indicating a belief in its truth. [Also See: R. v. Streu, [1989] 1 S.C.R. 1521 (Supreme Court of Canada)]

61. The approach taken by Courts in England and Wales is reflected in Duncan (1981) 73 Cr. App. R 359 at p. 356. And R v. Sharp (1988) 86 Cr. App.R.
62. Where a mixed statement is under consideration by court in a case where the accused has not given evidence, it must consider the whole statement, both incriminating parts and the excuses or explanations, while bear in mind the fact that incriminating parts are likely to be true, whereas the excuses do not have the same weight, in determining where the truth lies. See Duncan (1981) 73 Cr. App. R 359 at p. 356. R v. Sharp (1988) 86 Cr. App.R.
63. Having considered these judgments, I considered caution statement of each accused in its entirety to satisfy myself that the accused concerned has actually made a true admission and whether they had a seditious intention when they did the relevant act.

64. In their respective caution statements, several accused have given various excuses and explanations as to why they signed. None of them supported their assertions in Court under oath.
65. 2nd Accused says '*at the time of signing this document, I never read*'. However, answering question 65, she admits that the statements in Uluda Declaration is seditious and she really admired the way Mereoni had put up the words, and she was really convinced and made that decision to agree to the establishment of the new Government. According to her caution statement, she had signed the two documents on the 22nd October, 2014 and not on 28th October as alleged in the information. However, the wrong date does not make her right as long as she admits signing the two documents.
66. 3rd Accused claims he thought that everything was going to be done lawfully. That may be his thinking but his conduct proves otherwise. He, video recorded the presentation and believed everything can be done legally. However, his understanding was that the independence was impossible. Nevertheless, he signed those documents and believed that the Government will come back to the negotiating table. He may have had a good motive. But his motive does not dismiss his seditious intention when he signed the two documents. According to his caution statement, he had signed it on 29th October, 2014 and not on 28th October as alleged in the information. However, the wrong date does not make him right as long as he admits signing the two documents.
67. 4th Accused says '*Nothing against the current government.*' "*the objective was to petition the British Crown, nothing to do with the current government.*" "*It was to take the case to the ICJ International Court of Justice and the British Crown.*"..*"All done due to Mereoni's explanations...*" "*opposition was to the taking away of the GCC.*" Her motive behind her action may be good. But her conduct does not make her right. 4th accused told the Police that Mereoni gave her the Uluda Declaration which she read and signed as a witness to show that they had all agreed to the establishment of the Ra Christian State. 4th Accused further agrees that she read the Ra Petition to the ICJ and that it was fully explained before signing. She accepted that she was sworn in as a Minister for Culture, Heritage and Health and had signed the Ra Christian State document.
68. 5th Accused acted as a driver for Mereoni. He told police that he supported the establishment of the new Government in the Province of Ra although he knew his action was against the law and it will bring hatred amongst the people of Fiji. Nevertheless, he signed both documents after they were fully explained to him and took oath as a Minister.

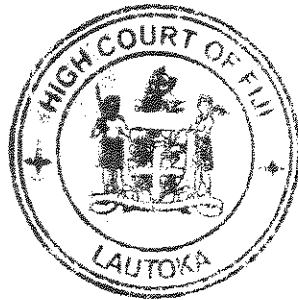
69. 6th Accused claimed he didn't think he was committing an offence. That was his thinking but his conduct proves otherwise. He accepts in his interview that he was sworn in as the Minister for Education. He signed the Ra Sovereign Christian State document having understood the idea to form an indigenous Government. He also said.. *"Only Mereoni Kirwin knows the reasons behind the three documents signed..."It was all about indigenous rights and land."*....He should be aware what he was doing. He can't claim immunity for criminal act done on a wrong legal advice.
70. 7th Accused claims that he had a right to act under the UN Declaration on Indigenous Rights and said that his lawyer Mereoni would explain everything. He told the Police that he was the president of the Activists Peoples Party and that the Ra Sovereign Christian State was already in his plan and that Mereoni had come in to support him. He admits he had sworn in as the Minister for Agriculture, Fisheries, Forests & Environment. He admits signing the document. His explanation does not dismiss his seditious intention.
71. 8th Accused too asserts his rights under the UN Declaration. He took the position of the current government is not legally elected and he admits he was sworn in as the Minister for Infrastructure and Transport. His assertion does not dismiss the seditious intention proved by his conduct.
72. 9th Accused explains and says that he believed Mereoni's words that everything was legal. He has the right to believe his lawyer. But his conduct proves his seditious intention. He admits taking the oath to serve as the Minister for Youth and Sports.
73. 10th Accused says that his intention was to be part of a Government spiritual nature. His motive may be good but his conduct is Seditious when he took an oath to serve as the Foreign Minister and signed the Ra Christian State document.
74. 11th Accused expects his lawyer Mereoni to explain his reasons. He admits being sworn in as the Minister for Tourism and signing the document. His conduct proves his seditious intention.
75. 12th Accused explained her strong belief in God's time. She has the right to believe in God's time but her conduct is seditious.
76. 13th Accused, said his main purpose for supporting Ra Sovereign Christian State was because the constitution was the 10 Commandments and

observance of the True Sunday. His motive may be good but his intention proved by his conduct is seditious.

77. 14th Accused asserts indigenous rights under the United Nations law. He was the person going around with Mereoni. He didn't vote in the September 14th election because he is against the Constitution. He appears in his interview to be quite knowledgeable about indigenous affairs and he believes that United Nations law is paramount in Fiji not the Constitution. He admits taking the oath to serve as the Minister for Public Relations and signing the document. His intention proved by his conduct is seditious.
78. 15th Accused, said he signed the document as the minister because he needed to get into the group to reveal to the others his message not to go against the Government. His hidden agenda may be good. But his intention proved by the Prosecution is seditious. Although his Counsel made submission on the basis that all accused he represents had admitted taking the oath, 15th Accused did not unequivocally admit that he took an oath as a Cabinet Minister. According to him, he has in his capacity as a Pastor facilitated the swearing in of others, although his name appears as a minister. I give the benefit of that doubt to the 15th Accused.
79. Having considered caution statement of each accused in its entirety, I am satisfied that they had in fact made those statements and told the truth to police. I am also satisfied that they had made unequivocal and voluntary admissions to police. I accept admissions made by each accused to police. The explanations and excuses made by 2nd to 15th accused to police are not appealing to me. Most of them have explained their motive to do the particular acts. They did not create any doubt in the prosecution case.
80. The Counsel for 2nd to 15th Accused in his closing speech pointed out that the Section cited in count 32 of the Information is erroneous. Count 32 clearly state that the offence charged is SEDITION. The Particulars of the offence describe the offence as any other Sedition counts in the Information. No question was raised during trial as to this error. The statement and the particulars of the offence are sufficient to make up a good defence in respect of a sedition charge although the section is wrong. I am not satisfied that the wrong section had mislead the 14th Accused and his Counsel and they have been prejudiced or embarrassed by this error in setting up 14th Accused's defence.
81. The Counsel for 2nd to 15th Accused argues that Mereoni is a Legal Counsel and everything she had done has been done according to law and therefore, acts done by 2nd to 15th Accused under her legal instructions are legal and they

have not committed any criminal offence. A number of his clients had taken up the same position in their respective interviews. There is a well-recognized legal principle in criminal law that the ignorance of the law is no excuse when a person is charged with an offence. This does not mean that people are presumed to know the law. Such a presumption would be absurd. Rather, it means that if a person is alleged to have committed an offence, it is both necessary and sufficient for the prosecution to prove the elements of the offence, and it is irrelevant to the question of guilt that the accused person was not aware of those elements that constituted an offence. I am satisfied that the Prosecution has proved each element of the offence of Sedition except for the charge in 33rd count.

82. I find 2st to 14th Accused guilty on each count they are charged with. I find the 15th Accused guilty only on 34th count and find him not guilty on 33rd count.
83. I reject the majority opinion of the assessors.
84. I convict 1st to 14th Accused on all counts each of them is charged with. I convict the 15th accused on 34th count and acquit him on 33rd Count.
85. That is the Judgment of this Court.




Arun Aluthge
JUDGE

At Lautoka
22nd September, 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 – 15th Accused