

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 140 of 2015

STATE

V

1. **RATU INOKE TASERE**
2. **JIMI KOROIBETE**
3. **SERU KUNALAGI**
4. **ADI CUVU GAVIDI ATAMA**
5. **ULIASI RABUA TUIVOMO**
6. **PENIASI NAQAU**
7. **SEMI TANIKILI**
8. **RATU OSEA BOLAWAQATABU**
9. **RATU TEVITA K MAKUTU**
10. **MOSESE NAVACI**
11. **ERONI RIKORIKO**
12. **ALIFERETI NAKUINIVOU**
13. **ALIFERETI GONEWAI**
14. **JORAMA RATULEVU**

Counsel : Mr. L. J. Burney and Mr. S. Babitu for the State.
: Mr. A. R. Singh for the 1st to 3rd, 5th, 7th to
14th Accused.
Ms. S. Kunatuba for the 4th Accused.
Mr. F. Vosarogo for the 6th Accused.

Date of Hearing : 24 November, 2017
Date of Sentence : 29 November, 2017

SENTENCE

1. All the accused persons were charged on the following amended information preferred by the Director of Public Prosecutions:

COUNT ONE

Statement of Offence

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

Particulars of Offence

RATU INOKE TASERE, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWO

Statement of Offence

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

Particulars of Offence

RATU INOKE TASERE, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT THREE

Statement of Offence

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

Particulars of Offence

JIMI KOROIBETE, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT FOUR

Statement of Offence

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

Particulars of Offence

JIMI KOROIBETE, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-

NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT FIVE

Statement of Offence

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

Particulars of Offence

SERU KUNALAGI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT SIX

Statement of Offence

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

Particulars of Offence

SERU KUNALAGI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT SEVEN

Statement of Offence

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

Particulars of Offence

ADI CUVU GAVIDI ATAMA, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT EIGHT

Statement of Offence

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

Particulars of Offence

ADI CUVU GAVIDI ATAMA, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT NINE

Statement of Offence

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

Particulars of Offence

ULIASI RABUA TUIVOMO, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TEN

Statement of Offence

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

Particulars of Offence

ULIASI RABUA TUIVOMO, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT ELEVEN

Statement of Offence

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

Particulars of Offence

PENIASI NAQAU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWELVE

Statement of Offence

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

Particulars of Offence

PENIASI NAQAU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT THIRTEEN

Statement of Offence

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

Particulars of Offence

SEMI TANIKILI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA- NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT FOURTEEN

Statement of Offence

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

Particulars of Offence

SEMI TANIKILI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT FIFTEEN

Statement of Offence

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

Particulars of Offence

RATU OSEA BOLAWAQATABU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional

Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT SIXTEEN

Statement of Offence

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

Particulars of Offence

RATU OSEA BOLAWAQATABU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT SEVENTEEN

Statement of Offence

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

Particulars of Offence

RATU TEVITA KHAIKHAINABOKOLAWALE MAKUTU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT EIGHTEEN

Statement of Offence

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

Particulars of Offence

RATU TEVITA KHAIKHAINABOKOLAWALE MAKUTU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT NINETEEN

Statement of Offence

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

Particulars of Offence

MOSESE NAVACI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWENTY

Statement of Offence

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

Particulars of Offence

MOSESE NAVACI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT TWENTY ONE

Statement of Offence

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

Particulars of Offence

ERONI RIKORIKO, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWENTY TWO

Statement of Offence

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

Particulars of Offence

ERONI RIKORIKO, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT TWENTY THREE

Statement of Offence

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

Particulars of Offence

ALIFERETI NAKUINIVOU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWENTY FOUR

Statement of Offence

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

Particulars of Offence

ALIFERETI NAKUINIVOU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT TWENTY FIVE

Statement of Offence

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

Particulars of Offence

ALIFERETI GONEWAI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWENTY SIX

Statement of Offence

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

Particulars of Offence

ALIFERETI GONEWAI, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA

SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

COUNT TWENTY SEVEN

Statement of Offence

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

Particulars of Offence

JORAMA RATULEVU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE-Provisional Institutions of Self-Government” with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

COUNT TWENTY EIGHT

Statement of Offence

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

Particulars of Offence

JORAMA RATULEVU, on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity “NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

2. In a Judgment delivered on 9 November, 2017 this court found the 1st to the 7th and 9th to the 14th accused persons guilty and convicted them on each count of Sedition they were charged with. The 8th accused was found guilty and convicted only on the 16th count.
3. All counsel have filed helpful written submissions and also made oral submissions during the hearing for which the court is grateful.
4. The 1st to 7th and 9th to 14th accused persons were found guilty and convicted for having signed the document headed “Nadroga-Navosa Sovereign Christian State Provisional Institutions of Self-Government on

4th November, 2014 at Cuvu Village, Sigatoka with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.

5. Furthermore, the above named accused persons including the 8th accused person were also found guilty and convicted for taking an oath to serve as a Cabinet Minister/Secretary to Cabinet for the entity “Nadroga-Navosa Sovereign Christian State” with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.
6. In sentencing the accused persons, this court has borne in mind the principle of proportionality enshrined in section 11(1) of the Constitution of the Republic of Fiji and sections 4(1), 4(2) and 15(3) of the Sentencing and Penalties Act and the relevant case authorities.
7. Under section 67 of the Crimes Act the offence of Sedition attracts a maximum sentence of 7 years imprisonment unlike section 66 of the Penal Code Cap. 17 (now repealed) where the maximum punishment was 2 years imprisonment. This means the offence of Sedition now falls under the serious category of offences.
8. When one looks at the wordings of the offence of Sedition under the Crimes Act, it is a crime against the people or the inhabitants of the Country and is aimed at preventing harm or the risk of a harm on the tranquility of the State or the Government of the day brought into existence by the mandate of the people.
9. Any person who commits such an offence should accept no mercy from the court. The Fiji Police Force should be commended for carrying out a prompt investigation failing of which the tranquility of the Government would have been at the risk of being undermined or threatened.

10. Bearing in mind the above, the sentence of Sedition should reflect the principles of deterrence, denunciation and retribution. In this regard this court is guided by the comments of Madigan J. in *State v Lesuma Batialiva Raicebe and others, Criminal Case No. HAC 208 of 2011 (17 November, 2011)*. His Lordship at paragraph 9 made this pertinent comment when it comes to sentencing an accused convicted of the offence of Sedition in the following words:

“...regard must be had to the sentencing principles of deterrence and retribution, as well as probably more importantly denunciation. That is to say that the sentence must make a statement that the offence in question is not to be tolerated by a mainly obedient, complaisant population.”

11. There is no set tariff for the offence of Sedition, recently in the case of *State v Ratu Epeli Niudamu and others, criminal case no. HAC 129 of 2015* Aluthge J. had given an indication as to sentence but did not set a tariff.

12. The punishment for the offence of Sedition has been increased from 2 years to 7 years, I accept that an appropriate tariff for the offence of Sedition should be a term of imprisonment between 2 years and 5 years. A suspended sentence is to be only considered in exceptional cases. Serious cases should be given a sentence in the upper range whilst less serious cases should be given a sentence at a lower end of the scale.

13. In *Lesuma Raicebe (supra)*, Madigan J. had sentenced three accused persons convicted of the offence of Sedition along with Arson charges where the accused had tendered pleas of guilty. His Lordship took a starting point of 4 years and 6 months for Sedition offences. Although

the factual scenario of that case is different from the present case in that the accused were also charged with arson in that case. However, that does not in my view take away the fact that the offence of Sedition is a very serious offending.

14. I note that all the accused persons except for the 8th accused have been convicted of two counts of Sedition founded on the same facts and are of similar character. Therefore, taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence for the two counts.
15. Having considered the seriousness of the offences committed objectively, I select a lower range starting point of 3 years imprisonment as part of the aggregate sentence for each of the accused persons including the 8th accused who has been convicted for one count of Sedition only.
16. In arriving at 3 years imprisonment as starting point, I am persuaded by the observations made by Aluthge J. in *Niudamu's* case (*supra*) at paragraph 10 of his sentencing remarks:

“There was no evidence that these acts of the Accused had actually incited violence or any sort of actual disturbance, discontent or disaffection. However, such tendencies should be firmly brought under control and nipped in the bud to ensure peace and tranquility of the State.”

17. As fairly conceded by the State there are no aggravating factors in this case.
18. From information gathered from court file, I accept that all the accused persons have been in remand from 17 August, 2015 to 6 November, 2015

which is 2 months and 19 days. I now sentence each accused person separately.

19. Mr. Singh, counsel for 1st to 3rd, 5th and 7th to 14th accused persons submits the following mitigation for the accused persons:

- “(1) No violence used by any of the Accused person;*
- (2) No threats used at any point by any Accused person;*
- (3) No intimidation, duress or undue pressure applied by any of the Accused against any person or persons;*
- (4) No planning or plotting against the Fiji Government;*
- (5) All Accused person are of previous good character;*
- (6) All Accused persons only acted as per legal advice received provided to them;*
- (7) All Accused persons only signed and acted after being assured that everything was legal;*
- (8) All Accused persons have led exemplary lives in society;*
- (9) All Accused persons have been good citizens within their communities at all times;*
- (10) All Accused persons had cooperated with police at all times;*
- (11) All Accused persons were honest about what had taken place during the event;*
- (12) Most of the Accused are elderly and of advanced age;*
- (13) The elderly Accused persons have medical conditions;*
- (14) The elderly Accused persons need medical attention and cannot live in harsh prison conditions;*
- (15) The elderly Accused persons are on medication and have special dietary requirements, special sleeping and bedding needs, strict eating times, strict sleeping times, strict toilet needs and all this*

cannot be adequately facilitated in a regimented prison environment.”

Accused One [Ratu Inoke Tasere]

20. This accused is 50 years of age, married with 5 children who are dependent on the accused. The accused was employed as a Banker in two of the Country's leading Banking Institutions. The accused also relies on two (2) character references in support of his mitigation.
21. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence of imprisonment is 2 years 6 months, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served in accordance with section 24 of the Sentencing and Penalties Act.
22. The final aggregate sentence for the first accused is 2 years, 3 months and 11 days imprisonment.

Accused Two [Jimi Koroibete]

23. The accused is 65 years of age, married with 5 children who are dependent on the accused. The accused suffers from chronic gastritis, chronic backache and high blood pressure as per his medical report dated 13th November, 2017.
24. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence of imprisonment is 2 years 6 months, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.

25. The final aggregate sentence for the second accused is 2 years, 3 months and 11 days imprisonment.

Accused Three [Seru Kunalagi]

26. The accused is 69 years of age, married and a retired Primary School Teacher. The accused suffers from bowel problems as per his medical report dated 13 November, 2017. The accused has also provided 3 character references in support of his mitigation.
27. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years 6 months imprisonment, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
28. The final aggregate sentence for the third accused is 2 years, 3 months and 11 days.

Accused Five [Ulaiasi Rabua Tuivomo]

29. The accused is 72 years of age, married with 5 children and one grandson who are dependent on him. He works as a Pastor and Marriage Officer. The accused states that he suffers from chronic gout and arthritis. Unlike the other accused persons no medical report has been provided by the accused.
30. The accused is not a first offender having being convicted and sentenced for 2 counts of Sedition in criminal case no. HAC 129 of 2015. This accused was sentenced to 2 years imprisonment out of which 4 months was suspended for 2 years. In essence this accused is to serve only 20 months imprisonment.

31. Since the accused is not a first offender he does not receive any credit for good character. For his other mitigating factors I allow a reduction of 2 months from the starting point. The interim sentence is 2 years 10 months imprisonment since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
32. The final aggregate sentence of imprisonment for the fifth accused is 2 years, 7 months and 11 days imprisonment.
33. In accordance with section 22 of the Sentencing and Penalties Act, I order that the accused serve 16 months of this sentence consecutively to his existing imprisonment term with the balance of this sentence to be served concurrently with the existing term of imprisonment in HAC 129 of 2015. A wholly concurrent sentence will be too lenient and not meet the objectives and purposes of sentencing. Considering the gravity of the offending the consecutive sentence of 16 months is justified in the circumstances of this case.

Accused Seven [Semi Tanikili]

34. The accused is 48 years of age, married with 4 children, he is a Youth Coordinator for the Nadroga Navosa Province. The accused has provided a medical report dated 13 November, 2017 the last item mentioned in the medical report under April 2015 is headache and chest pain.
35. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence of imprisonment is 2 years 6 months, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served by the accused.

36. The final aggregate sentence for the seventh accused is 2 years, 3 months and 11 days.

Accused Eight [Ratu Osea Bolawaqatabu]

37. This accused was convicted of the 16th count only. In his mitigation the accused states that he is 60 years of age, married with 4 children and is a retired civil servant. His wife and children are dependent on him.

38. The accused relies on the three character references in support and also as per his medical report dated 13th November, 2017 he had an operation on his upper back on 20 January, 2016 which has now healed.

39. Having considered all the mitigation favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years 6 months imprisonment, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.

40. The final sentence for the eighth accused is 2 years, 3 months and 11 days imprisonment.

41. On 11th December, 2014 the accused wrote a letter to the Late Ratu Osea Gavidu tendering his resignation as Minister for Land Use and Conservation. I do not accept that this was a show of genuine remorse by the accused but a way to exonerate himself from his wrong doing. From 5th November, 2014 the Police had started their investigations hence the accused had no choice but to disassociate himself from the group. I do not give any weight to this letter of resignation.

Accused Nine [Ratu Tevita Makutu]

42. This accused is 58 years of age, married with children. His wife and children are dependent on him. The accused suffers from Diabetes Mellitus II and hypertension as per his medical report dated 13 November, 2017. The accused has also provided a character reference in support.
43. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years 6 months imprisonment, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
44. The final aggregate sentence for the ninth accused is 2 years, 3 months and 11 days imprisonment.

Accused Ten [Mosese Navaci]

45. This accused is 61 years of age, married with 5 children who are dependent on the accused. The accused has also provided two character references in support.
46. Having considered all the mitigating factors in favour of the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been in remand for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
47. The final aggregate sentence for the tenth accused is 2 years, 3 months and 11 days imprisonment.

Accused Eleven [Eroni Rikoriko]

48. This accused is 58 years of age, married with children and grandchildren who are all dependent on him. He works as a Security Officer. The accused has provided two character references in support.
49. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been remanded for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
50. The final aggregate sentence for the eleventh accused is 2 years, 3 months and 11 days imprisonment.

Accused Twelve [Alifereti Nakuinivou]

51. This accused is 64 years of age, married with 2 children and one grandson who are dependent on him. As per the Medical Report of the accused dated 13th November, 2017 the accused suffers from chronic arthritis right knee, high blood pressure and unstable angina.
52. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been remanded for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
53. The final aggregate sentence for the twelfth accused is 2 years, 3 months and 11 days imprisonment.

Accused Thirteen [Alifereti Gonewai]

54. The accused is 74 years of age and married. According to his medical report dated 13 November, 2017 the accused has been assessed as having bilateral cataracts.
55. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been remanded for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
56. The final aggregate sentence for the thirteenth accused is 2 years, 3 months and 11 days imprisonment.

Accused Fourteen [Jorama Ratulevu]

57. This accused is 38 years of age, married with two children who are dependent on him. The accused has provided a character reference which states that he is a student of the University of the South Pacific pursuing a Diploma in Management with two units left to complete this program. Furthermore, the character reference states that the accused works as a Security Officer.
58. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been remanded for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
59. The final aggregate sentence for the fourteenth accused is 2 years, 3 months and 11 days imprisonment.

Accused Four [Adi Cuvu Gavidi Atama]

60. Ms. Kunatuba, counsel for the fourth accused submits the following mitigation:
- (a) The accused is 45 years of age, married with 5 children (the children are from 19 years to 11 years of age respectively);
 - (b) The accused apologizes to the Court and to the State and is remorseful of what has happened, she is now seeking leniency in sentencing;
 - (c) A person of good character without any previous conviction;
 - (d) The accused is needed to be with her children who need her the most at this time of their life;
 - (e) The accused also relies on the character reference given by the former Principal of Adi Cakobau School.
61. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been remanded for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
62. The final aggregate sentence for the fourth accused is 2 years, 3 months and 11 days imprisonment.

Accused Six [Peniasi Naqau]

63. Mr. Vosarogo, counsel for the sixth accused submits the following mitigation:
- (a) The accused is 74 years of age, married with grown up children;
 - (b) A simple and unsophisticated villager who took up fishing as a career from as early as 12 years of age;

- (c) The wife of the accused is fully dependent on the accused for support;
- (d) The accused is remorseful for his actions he had cooperated with the police;
- (e) The accused suffers from hypertension for which he is already on medication, diabetes (newly diagnosed) and Osteoarthritis of his knee;
- (f) During his lifetime the accused has served various organizations such as Nawai Police Post, Momi Primary School, Youth Representation of the Nadroga-Navosa Province and so on.

64. Having considered all the mitigating factors favourable to the accused, I allow a reduction of 6 months from the starting point. The interim sentence is 2 years and 6 months imprisonment, since the accused has been remanded for 2 months and 19 days a further reduction is allowed as a term of imprisonment already served.
65. The final aggregate sentence for the sixth accused is 2 years, 3 months and 11 days imprisonment.
66. This court notes that the accused persons are people of some standing in their respective communities, some are educated and have work experience as well whilst some are senior citizens of this Country. The above attributes in my view does not give any comfort to the accused persons from what they had done.
67. As responsible citizens of this Country they knew or ought to have known better from their community and worldly experience about the consequences of their actions.

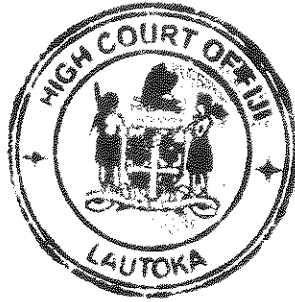
68. All the accused persons are seeking a suspended sentence. The final sentence of all the accused persons do not exceed 3 years imprisonment this means under section 26 of the Sentencing and Penalties Act this court has a discretion to suspend the term of imprisonment. The discretion to suspend the term of imprisonment must be exercised judiciously after identifying special reasons for doing so.
69. In order to suspend the sentence of the accused persons this court has to consider whether the punishment is justified taking into account the offences committed by the accused persons. In this regard the guidance offered by Goundar J. in *Balaggan vs. State, Criminal Appeal No. HAA 031 of 2011 (24 April, 2012)* at paragraph 20 is helpful:
“Neither under the common law, nor under the Sentencing and Penalties [Act], there is an automatic entitlement to a suspended sentence. Whether an offender’s sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purpose of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is whether the punishment fits the crime committed by the offender?”
70. This court accepts that all the accused persons (except the 5th accused) are first offenders and persons of good character of varying ages from 38 years to 74 years respectively. On the other hand, the accused persons have committed serious offences and their culpability is obvious. Although the accused persons are stating, that they had been duped by one Mereoni Kirwin and late Ratu Osea Gavidi they must take full responsibility of their actions.


71. After carefully weighing the factors in favour of the accused persons and the serious nature and circumstances of the offences committed, I am compelled to state that there is a need for special and general deterrence in respect of the offences committed by the accused persons. I am satisfied that a term of imprisonment is an appropriate punishment to be served hence I refuse to suspend any of the sentences of imprisonment.
72. The punishment of a term of imprisonment is warranted in this situation considering the serious nature of the offences committed by all the accused persons. The fourth and the sixth accused have indicated their remorse towards what they have done, the fourth accused has gone to the extent of apologizing to the State for her actions. The remorse extended has come about after conviction, both the accused gave evidence under oath and no scintilla of remorse was seen from the two accused persons. It appears to me that the accused persons are not genuinely remorseful but keen to avoid an imprisonment term. In any event the remorse expressed is “too late in the day” and I reject the same.
73. Under section 18 (2) of the Sentencing and Penalties Act, this court has a discretion not to impose a non-parole period. Considering the past history of all the accused persons it is appropriate in their rehabilitation not to impose a non-parole period which is just in the circumstances of this case.
74. It is also noted that some of the accused persons are advancing medical reasons for a non- custodial sentence to be imposed. It is recommended that the Commissioner of Corrections Services and his Officers provide all the necessary assistance as may be needed from time to time by the accused persons who have a medical condition. It is also in the interest of the accused persons to brief their facility Officer of their medical requirements including the need for follow up medical treatments.

75. In summary the accused persons are sentenced as follows:

- (a) Accused One - 2 years, 3 months and 11 days imprisonment.
- (b) Accused Two - 2 years, 3 months and 11 days imprisonment.
- (c) Accused Three - 2 years, 3 months and 11 days imprisonment.
- (d) Accused Four - 2 years, 3 months and 11 days imprisonment.
- (e) Accused Five - 2 years, 7 months and 11 days imprisonment. Out of this sentence the accused is to serve 16 months consecutively to his existing term of imprisonment in HAC 129 of 2015. The balance of the sentence is to be served concurrently.
- (f) Accused Six - 2 years, 3 months and 11 days imprisonment.
- (g) Accused Seven - 2 years, 3 months and 11 days imprisonment.
- (h) Accused Eight - 2 years, 3 months and 11 days imprisonment.
- (i) Accused Nine - 2 years, 3 months and 11 days imprisonment.
- (j) Accused Ten - 2 years, 3 months and 11 days imprisonment.
- (k) Accused Eleven - 2 years, 3 months and 11 days imprisonment.
- (l) Accused Twelve - 2 years, 3 months and 11 days imprisonment.
- (m) Accused Thirteen - 2 years, 3 months and 11 days imprisonment.
- (n) Accused Fourteen - 2 years, 3 months and 11 days imprisonment.

76. 30 days to appeal to the Court of Appeal




Sunil Sharma
Judge

At Lautoka
29 November 2017

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs. Aman Ravindra Singh Lawyers, Lautoka for the 1st to 3rd, 5th, 7th to 14th Accused.

Messrs. Law Solutions, Suva for the 4th Accused.

Messrs. Mamlakah Lawyers, Suva for the 6th Accused.