IN THE HIGH COURT OF FIJI
AT SUVA
ANTI-CORRUPTION DIVISION

CRIMINAL CASE NO. HACD 007 of 2022S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

vs.

SALOTE VUIBURETA RADRODRO

Counsels: Mr. Work J, Mr. Hickes D and Mr. Nand A - for Prosecution
Mr. Valenitabua S & Mr. Karunaratne J. - for Defendant

Date of Ruling: 08 August 2022

RULING

1. At the conclusion of the prosecuting case, the learned counsel for the Accused made an application pursuant to **Section 231(1)** of the **Criminal Procedure Code 2009** that there is no case to answer for the Accused as there was no sufficient evidence presented by the prosecution that the Accused committed the two offences she is charged with in the information. Further, the counsel for the Accused questioned the suitability of the language used in the information to charge the Accused, since according to the Defense the Secretary General to the Parliament was not holding public office.

2. The prosecution called twenty four (24) witnesses, including the Acting Secretary General to the Parliament to establish the case against the Accused. Further, several elements of the offences in the information was admitted by the Defense during the PTC.

3. The learned counsel for the prosecution objected the submissions of the counsel for the Accused and affirmatively submitted that evidence on each contested element of the two counts the Accused was charged with was lead in Court.

4. **Section 231(1)** of the **Criminal Procedure Act 2009** states:

> *"When the evidence of the witnesses for the prosecution has been concluded and after hearing if necessary any arguments which the prosecution or the defense may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person committed the offence".*

5. The test to determine whether there is evidence that the accused person committed the offence charged pursuant to **Section 231(1)** of the **Criminal Procedure Act of 2009** is now settled law in our jurisdiction. The correct approach was pronounced by our Courts in the cases of **State v George Shiu Raj and Shashi Shailendra Pal (2006) AAU008/05, State v Brijan Singh (2007) AAU0005, State v Rasaqio (2010) FJHC 284; HAC 155.2007 (5 August 2010).** In these cases it was pronounced that the need is to examine whether there is relevant and admissible evidence on each contested element of the charged offences and not to determine whether the evidence is fundamentally imprecise or inconceivable.

6. **Justice Madigan** in **State v Rasaqio (2010) FJHC 2 (5 August 2010)** has expanded the applicable test of no case to answer under **Section 231 (1)** of the **Criminal Procedure Act 2009**,as follows:

> *"That test under section 231(1) is settled and is more stringent than the test under section 178 of the same Decree. The English test for no case to answer is stated in the case of **Galbraith (1981) 2 All ER 1060** has no application to a case in this Court. The Galbraith guidelines were expressly rejected by the Court of Appeal in **Sisa Kalisoqo v R – Ct of Appeal No. 52 of 1984** because in England the matter is not governed by any Statute. In **Kalisoqo** the Court of Appeal took the view that if there is some direct or circumstantial evidence on the charged offence, then a judge cannot say there is no evidence on the proper construction of **Section 231(1)**. This view was later confirmed by the case of **Mosese Tuisawau Cr App. 14/90).***

7. In the matter at hand, this Court is convinced that the Prosecution has lead direct and circumstantial evidence for this Court to consider in relation to every contested element of the information filed in this Court.

8. In addressing the contention of the lawyer for the Accused that the Acting Secretary General to the Parliament was a Public Officer and not a Public Servant, and therefore,

Prosecution has failed to establish that the Accused gave false information to a Public Servant as stipulated in the information, this Court intends to consider legal dictionaries for clarification.

9. In this regard, Black's Law Dictionary defines "Officer", as below:

> *"Someone who holds an office of trust, authority or command"*

10. Black's Law Dictionary defines "Servant", as below:

> *"Someone who is employed by another to do work under the control and direction of the employer"*

11. When considering the above mentioned two definitions, on a common sense approach, it is perceptible that the role of the Secretary General to the Parliament satisfies both the definitions from the evidence adduced in this Court.

12. Therefore, this Court is confident that this argument of the Defense is a misconceived non sequitur at the very inception.

13. On the above analyzed material, this Court is content that the application of the Defense on "No case to Answer" under Section 231(1) of the Criminal Procedure Act of 2009 is without merit.

ANTI CORRUPTION DIVISION
SUVA
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Hon. Justice Dr. Thushara Kumarage

At Suva
08 August 2022