

evidence under cross-examination and **12 documents (DEX1 – DEX4 (a-i))** were marked, but no other witnesses were called. On pronouncing the verdict in this matter on 06/09/2022, the Accused was convicted on both counts by this Court and this matter was fixed for sentencing.

3. The Accused filed a Motion in Arrest of Judgment and an Affidavit in Support of Motion sworn by her on 13/09/22 pursuant to section 239 (1), (2) and (3) of the **Criminal Procedure Act 2009** alleging that the Anti-Corruption Division of the High Court has no power to try the information she was charged with and convict the Accused.
4. The reliefs prayed for in the Motion by the Defense were, as follows:
 - (a) The accused person as a member of Parliament is immune from legal proceedings pursuant to the **Parliamentary Powers and Privileges Act 1985**; and
 - (b) Both offences in the information are summary offences triable in the Magistrates Court Anti-Corruption Division pursuant to section **4(1) (c)** of the **Criminal Procedure Act 2009**.
5. In comprehending with the objective of this application filed by the Defense, this Court perceives that an application on the grounds of this nature should have been raised by the Defense at the very inception before the commencement of the trial as preliminary objections against the information filed by the Prosecution against the Accused.
6. In assessing the trajectory of events in the trial against the Accused, it was perceptible to this Court that this motion in Arrest of judgement has been filed by the Defense as the last resort to estop the proceedings in this matter any further, pursuant to the conviction of the Accused by this Court. At the very onset, this Court would like to highlight that what is prayed for by this application has already been decided by this Court in other FICAC trials conducted in this Court or by applicable provisions enunciated in the **Constitution of Fiji** and in **the Criminal Procedure Act of 2009**.

Findings of this Court

- a) Immunity of the Accused from legal proceedings in view of Parliamentary Privileges
7. In consideration of the **Parliamentary Powers and Privileges Act of 1965 (PPPA)**, Defense Counsel is of the opinion that it is trite law that High Court lacks jurisdiction to hear and determine Parliamentary decisions concerning internal processes of the Parliament.

8. In addressing this submission, at the very onset, this Court concedes with the Defense Counsel of his stance in relation to the non-justiciability of internal processes of the Parliament. However, by this information filed in this Court by the FICAC, this Court is not expected to scrutinize or question the internal processes of the Parliament.
9. As this Court sees, the expectation from this Court by the information filed is to determine whether a crime has been committed under the **Crimes Act of 2009** by a Parliamentarian in providing false information to the Secretary General of Parliament, and whether thereby, **Salote Vuibureta Radrodro** squandered ordinary taxpayers' money of this country. In any event, if a Crime has been committed by a Parliamentarian or a farmer, as per the basic principles of Rule of Law, the same law should apply. There is no special law to determine the criminality of conduct of Parliamentarians in any jurisdiction.
10. To lend a force to the above determination, I refer to the full bench decision of the **Supreme Court of England and Wales** in the case of **R v Chaytor and Others (Appellants)**¹, where few Parliamentarians of Westminster were committed for trial at the Crown Court, in the first instance, on charges arising from alleged dishonest Parliamentary expenses and allowance claims, where on conviction they went in appeal claiming that the internal processes of Parliament are protected from general law by Parliamentary Privileges. In this regard, in agreeing with the other **Lords** to dismiss the appeal against the conviction, **Lord Roger of Earls Ferry** stated as below:

“Equally—to come to the present case—if a Member of Parliament dishonestly, with a view to gain for himself, submitted a claim form which to his knowledge was false in a material particular, the law of England would apply. The member would commit an offence under s17(1) of the 1968 Theft Act, even if he completed the form to claim in the House of Commons and submitted it in person to the Fees Office”

11. To rely on this adjudication of the **Supreme Court of England and Wales**, I take guidance from **Section 5** of the **Crimes Act 2009**, which states, as below:

“5. (1) The Act shall be interpreted in accordance with the principles of legal interpretation ordinarily applied by the courts of Fiji.

(2) Expressions used in this Act shall be presumed to be used with the meaning attaching to them in the criminal law as applied in jurisdictions based upon the laws of England, and shall be continued in accordance with such meanings-

(a) so far as is consistent with their context and

¹ [2011] All ER 805

(b) *except as is expressly provided in this Act.*

(3) *Nothing in Section 2 or any other provision of this Act prevents a court from relying on the authority of any judgment of a court in Fiji, or any comparable foreign jurisdiction, in the aid of any matter of interpretation arising of any offences prescribed by this Act.*”

12. As stated above, pursuant to the authority given to this Court to rely on the, “*meaning attaching to them in the criminal law as applied in jurisdiction based upon the laws of England*”, this Court in following the above mentioned determination of the **Supreme Court of England and Wales** in relation to adjudication of crimes committed by Parliamentarians, concludes that Parliamentarians are not immune from legal proceedings under general criminal law in relation to crimes committed by them in Parliament.

b) Charges in the Information filed in this matter should have been tried at the Magistrate’s Court, since they are Summary Offences

13. In addressing this contention of the Defense, the Prosecution highlights **Section 100(3)** of the **Constitution of the Republic of Fiji**, which confers jurisdiction upon the **High Court** as follows:

“(3) *The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution or any written law.*”

14. Further, **Section 35** of the **Criminal Procedure Act 2009** stipulates Powers of the High Court, as below:

“35. (1) *The High Court may inquire and try any offence subject to its jurisdiction where it hold strings.*

(2) *All criminal cases to be heard by the High Court shall be-*

a) *instituted by a Magistrate Court in accordance with this Act;*

b) *transferred to the High Court in accordance with this Act if the offence is-*

i) *an indictable offence or*

ii) *an indictable offence triable summarily and the accused has indicated to the Magistrate Court*

that he or she wants to be tried in the High Court.”

15. Therefore, as per the above stipulated provisions of the **Constitution** and the **Criminal Procedure Act of 2009**, the **High Court** has the jurisdiction to hear any summary matter, as contemplated in the information filed in this case.
16. Therefore, this contention of the Defense is devoid of any merit. As a consequence, I dismiss this motion in Arrest of Judgement prayed from this Court in this matter.
17. Further, in the background of this Court dismissing a similar application previously raised on the basis of immunity of Parliamentarians from legal proceedings under general criminal law due to Parliamentary Privileges in the case of **HACD – 005 – 2022S**, where identical charges were filed by FICAC against a Parliamentarian and when provisions in relation to the jurisdiction of the **High Court** to hear summary matters is clearly stipulated in the **Constitution of Fiji** and the **Criminal Procedure Act of 2009**, this Court perceives that this application has been filed by the Defense without any plausible and cogent legal arguments at the last stage of trial to prorogue the final step in the substantive matter pending in this Court. As a consequence, acting under **Section 150 (4) (b)** of the **Criminal Procedure Act of 2009**, this Court imposes a cost of \$2,500.00 against the Applicant (Accused) in this matter.
18. Since this is an interim order, you could appeal to the Court of Appeal of Fiji as per the applicable legal provisions.



Hon. Justice Dr. Thushara Kumarage

At Suva

This 21st day of September 2022

- cc:*
1. *Office of Valenitabua Lawyers*
 2. *Office of Fiji Independent Commission Against Corruption*