

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HACD 01 OF 2022L

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC)

v

INOSI TAUOLI

Counsel: Ms A. Vaganalau for Prosecution (FICAC)
Ms A. Tubuitamana for Defence

Dates of Hearing : 3 -14 March 2025

Date of Judgment: 20 March 2025

JUDGMENT

1. Mr Inosi Tauvoli (the Accused) is charged with three counts of Abuse of Office (not for gain) contrary to Section 139 of the Crimes Act. The Information filed by the Fiji Independent Commission against Corruption (FICAC) is as follows:

COUNT 1

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of the Offence

INOSI TAUVOLI, between 19 October 2018 and 18 January 2019, at Nadi in the Western Division, whilst being employed in the Civil Service as the Senior Estate Officer – Operations of iTaukei Land Trust Board, in the abuse of his office, did arbitrary acts, namely, processed and approved the Application to Lease for land files belonging to tenant Huang Yuean, without following the relevant policies and procedures that applied to the processing and approval of such applications, which are acts prejudicial to the rights of the iTaukei Land Trust Board (TLTB).

COUNT 2

Statement of Offence

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of Offence

INOSI TAUVOLI, between 19 October 2018 and 20 December 2018, at Nadi in the Western Division, whilst being employed in the Civil Service as the Senior Estate Officer – Operations of iTaukei Land Trust Board, in the abuse of his office, did arbitrary acts, namely, processed and approved the Application to Lease for land file number 6/10/42460 without following the relevant policies and procedures that applied to the processing and approval of such applications, which are acts prejudicial to the rights of the iTaukei Land Trust Board (TLTB).

COUNT 3

Statement of Offence

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of Offence

INOSI TAUVOLI, between 19 October 2018 and 18 January 2019, at Nadi in the Western Division, whilst being employed in the Civil Service as the Senior Estate Officer – Operations of iTaukei Land Trust Board, in the abuse of his office, did arbitrary acts, namely, processed and approved the Application to Lease for land file number 6/10/42486 without following the relevant policies and procedures that applied to the processing and approval of such applications, which are acts prejudicial to the rights of the iTaukei Land Trust Board (TLTB).

2. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented evidence from seven witnesses. At the close of the Prosecution's case, the Defence made an application for a no-case to answer. The Court heard submissions of both parties and made a ruling whereby the Court found that there was a case for the Accused to answer on each count and put the Accused to his defence. The Accused elected to give evidence under oath.
3. At the conclusion of the Defence case, the Counsel filed the written closing submissions on 14 March 2025. Having considered the evidence presented at the hearing and the submissions made by the parties, I now proceed to pronounce the judgment as follows.

Burden of Proof and Standard of Proof

4. The Accused is presumed innocent until proven guilty. The burden of proof rests with the Prosecution throughout the trial and never shifts to the Defence. The Accused has no obligation to prove his innocence. The Prosecution must establish each charge beyond a reasonable doubt. At the end of the trial, the Court must be sure that the Accused committed these offences. If there is reasonable doubt regarding the Accused's guilt, he must be found not guilty and acquitted.

Agreed Facts and Documents

5. The parties agreed on the following facts and documents under Section 135 of the Criminal Procedure Act: These documents and facts need not be proved by the Prosecution.

- I. THAT the Accused in this case is INOSI TAUVOLI, 36 years of age, Property Valuer residing in Lautoka (hereinafter referred to as “Accused”).
- II. THAT during all times material to this case, the Accused was employed as a Senior Estate Officer with the iTaukei Land Trust Board (TLTB).
- III. THAT the Accused resigned from TLTB in 2019, and his resignation was effective from 14 February 2019.
- IV. THAT prior to his resignation in 2019, the Accused had also submitted a resignation notification to Mr Soloveni Masi on 11 October 2018.
- V. THAT the Accused was a person employed in the civil service as per Section 4 of the Crimes Act 2009 during all times material to this case.
- VI. THAT the procedures involved in processing a lease application during the material times were guided by the Estates Operations Manual (EOM) of the iTaukei Land Trust Board.
- VII. THAT the “Case Type 1 – Lease Application” of the EOM was applicable to estate operation between October 2018 and February 2019.

MEETING MINUTES FROM 07 JULY 2018

- VIII. THAT the Accused participated in meetings with Land Owning Units (LOU) on behalf of iTaukei Lands Trust Board (TLTB).
- IX. THAT the Accused was aware of the LOU referred to as Tokatoka – Nadrau.
- X. THAT the Accused had contacted Adi Tema Varo who belonged to the Tokatoka – Nadrau in June 2018 to organize a meeting at the Saunaka village in Nadi.
- XI. THAT the Accused attended a meeting with members of the Tokatoka – Nadrau on 07 July 2018.
- XII. THAT the members of the Tokatoka – Nadrau that attended the meeting were Adi Tema Varo, Adi Salote Nalukuya, Adi Nanise Nalukuya and Makelesi Rayasi.
- XIII. THAT the Accused prepared the minutes of this meeting with Tokatoka – Nadrau on 07 July 2018.
- XIV. THAT these minutes that were prepared by the Accused was attached to the land file applications for the land file numbers 6/10/42552, 6/10/42553, 6/10/42460 and 6/10/42486.
- XV. THAT the Accused had signed the minutes for this meeting with Tokatoka – Nadrau on 07 July 2018.

Agreed Documents

- a. Certified True Copy of the Estates Operations Manual 2017 for the iTaukei Land Trust Board (TLTB).
 - b. Letter from Inosi Tauvoli dated 11 October 2018 [Re: Resignation Notification – SEO Operation SW] to Mr. Soloveni Masi, The Regional Manager, iTaukei Land Trust Board, Private Mail Bag, Nadi Airport.
 - c. TLTB letter dated 06 March 2019 to Mr. Inosi Tauvoli, Senior Estate Officer SW Region, from Mere Wong, Acting Manager Human Capital, Re: REVISED LETTER PERTAINING TO ACCEPTANCE OF RESIGNATION, (with relevant email transcript attached)
 - d. TLTB letter dated 12 December 2017 to Mr Inosi Tauvoli, Senior Estate Officer (CE) from Mr Peceli Baleikorocau, Manager Human Resources, Re: TRANSFER TO THE SOUTH-WESTERN REGION.
 - e. Contract of Employment made on 15th June 2017 between TLTB and Inosi Tauvoli for the position of Senior Estate Officer.
 - f. Inosi Tauvoli’s remuneration package for the post of Senior Estate Officer with effect from 19 June 2017.
 - g. Contract of Employment made on 10th February 2016 between TLTB and Inosi Tauvoli for the position of Estate Officer.
 - h. Employment Payment History for Inosi Tauvoli, EDP no. – 1307, from 13/01/2017 to 27/03/2019.
 - i. TLTB Land File 6/10/42554 with all contents and documents contained therein.
6. Section 139 of the Crimes Act defines the offence of Abuse of Office. In this case, the Prosecution must prove that the Accused, whilst employed in the Civil Service, does or directs to be done in the abuse of the authority of his or her office any arbitrary act which is prejudicial to the rights of another. The FICAC, in the amended information filed at the last moment, dropped the word ‘for gain’ from the charge, thus reducing the seriousness of the offence.
7. Let me summarise the evidence led in the trial.

Case for Prosecution

PW1 Soloveni Masi (Masi)

8. Masi is currently the Assistant Reserves Commissioner of the iTaukei Land Trust Board (TLTB). Between 2018 and 2019, he was the Regional Manager at the Nadi Office, supervising all lease administration work and provincial-associated duties.
9. He gave a brief outline of how a lease application is processed. After a lease application is received at the TLTB counter, a ground inspection is conducted to identify the land, followed by a consultation meeting with the landowners (LOU). After an inspection, an offer is prepared and issued to the applicant. If the offer is accepted, the Agreement for Lease is entered into and sent for title registration.
10. During the 2018-2019 period, Inosi Tuvoli (Inosi) was under him as a Senior Estate Officer tasked with supervising all operational work when lease applications were lodged. Inosi would sometimes carry out inspections and sign the forms before they were issued to prepare the Offer Letter. The Regional Manager is authorised to sign the Offer Letter and the Agreement for Lease on behalf of the TLTB. However, when he is not in the office and if there is an urgency, he would delegate his authority to Inosi over the phone or by email to sign the Offer Letter on his behalf.
11. Between 2018 and 2019, he signed some lease documents pertaining to applications received from Chinese people. The documents should come for his approval through the Senior Estate Officer with the Summary of the Business Plan, the identification documents of the applicant and bank statements to show that the applicant has the financial capacity to carry out the business plan.
12. Perusing File No 6/1042552, Masi confirmed that the application of Yei Ha Yuen (PEX91) was accompanied by a bank statement and an ID of a different person named Zhong Xian Zhong. That is not the normal process. Inosi was supposed to check all the documents before they were submitted for his signature. He just signs the lease documents.

13. The clerk at the front desk should have received the application (PEX9G) and not Inosi. The Lease Application Checklist (PEX9I) has been approved by Inosi without a recommendation by an Estate Officer.
14. Before a Lease Application is processed, a consultation is usually conducted by an officer with the Mataqali, the landowners (LOU), before processing the lease. Inosi has had a consultation and recorded the minutes. He is supposed to record everything discussed in the minutes and enclose it in the file. The landowners would sign the attendance sheet and not the minutes. According to the minutes (PEX9K), Inosi has consulted the land owners, Adi Tema Varo, Makelesi Rayasi, Adi Salote Nalukuya, Adi Nanise. Only the first three owners have signed the attendance sheet (PEX9L).
15. The Inspection Precis and Recommendation Report (IPR) (PEX9M) is typically prepared by the person conducting the land inspection. It includes details of the application, the locality diagram of the land, an analysis of Tokatoka Nadrau, the calculated fees and the costs to be paid by the applicant. Estate Assistant Tevita Tabua, Estate Officer Solomoni Colati, and Senior Estate Officer Inosi Tauvoli have signed the IPR. According to PEX9M, the lease application has been received on 20 November 2018, and the inspection was conducted on 1 November 2018, even before the application was received by TLTB.
16. The Offer Letter (Subject to Contract Agreement for Lease) (PEX9N) addressed to Yei Ha Yuen dated 12 December 2018 has been signed by Inosi. He could not confirm if he had permitted Inosi to sign on his behalf.
17. He could not recall seeing the 'Change of Applicant' letter dated 20 December 2018, addressed to him (the Regional Manager TLTB). According to the Acknowledgment Form dated 18 January 2018 (PEX9O), the Agreement for Lease document has been received by one Jason Zhong, not by Yuean Huang, the tenant. Inosi has signed it as the witnessing officer. There is no confirmation that Jason Zhong had written permission from the tenant to collect the Agreement for Lease.

18. Inosi had signed the documents from the beginning to the end (Except for the Agreement for Lease PEX9B), deviating from the normal process with TLTB. Other officers were supposed to check them before they were released.
19. File No. 10/42553 relates to the lease issued to Yuean Huang (PEX10A). However, the lease application had been lodged by one Zhong Xian Zhong. This file has also been accepted and processed by Inosi. Masi confirmed he signed only the Agreement for Lease (PEX10A). All other documents, Change of Applicant (PEX10J), Offer Letter (PEX10I), IPR (PEX10X), have been signed by Inosi.
20. File number 10/ 42486 relates to the lease given to Giaoling Huang. The application for lease has been lodged by one Jason Zhong. The name change request (PEX12K) has been approved by Inosi without his knowledge or approval. The Agreement for Lease Qiaoling Huang (PEX12 A), has been signed by Inosi when he was not authorised to sign. The Lease Agreements PEX12A and PEX10A have been signed on the same day (18 January 2019). Both should have been signed by him because he was present at the office. He could not explain why Inosi had signed one of them when no authorisation was given for Inosi to sign.
21. Under cross-examination, Masi agreed that the recommendation section of the checklist PEX9J could be signed by the Senior Estate Officer if the Estate Officer was not available and all the requirements had been fulfilled. He agreed that the date mentioned on top of the IPR (PEX 9M) as the date of receipt of the Application (23rd November 2018) could be a typing mistake.
22. Inosi could sign only a limited number of documents. For example, the Offer Letters and the Lease Agreements are supposed to be signed by the Regional Manager. There should be a note in the file if the Manager has given authority for the Senior Estate Officer to sign.

PW2 Adi Nanise Lewatu Nalukuya

23. Nanise belongs to Tokatoka Nadrau, Mataqali Vunaivi, in the village of Saunaka. Inosi informed Adi Tema Varo about the meeting held at Sawaieke House, in which she was present with Adi Tema Varo, Makelesi Rayasi, and Adi Salote. They all belong to the same

family, Tokatoka Nadrau. This was the meeting between her family unit and the TLTB Officer Inosi. All who were present filled out the Attendance Forms. She just wrote her name, but she forgot to sign it. There was no discussion about the land in Waimalika and about the leases to be issued to the Chinese people. The discussion was on the land in Nasoso and about the Fiji roads. Having perused the minutes PEX9K, she denied its content that she and her family were consulted and that they had given consent to the TLTB to lease the Waimalika land to the Chinese people.

24. Under cross-examination, Nanise said that Taito Nalukuya referred to in paragraph 7 of PEX9K is her cousin who has rights to the Mataqali.

PW 3 Waisea Tomunakece Tavatucicila

25. In the 2018-2019 period, Waisea was employed at the TLTB Nadi Branch as a GIS Officer. His responsibility was to confirm the availability of land that had been applied for lease. He would confirm the land through digital mapping and GPS machines and if the land had any encroachment or been leased already.
26. Between 2018 and 2019, he prepared locality diagrams for land belonging to Mataqali Vunaivi, Tokatoka Nadrau in Nadi for some Chinese applicants who had applied for commercial leases. The particular area is named 'Legalega Part Of' located in Waimalika. He prepared the two diagrams PEX9P and PEX10B on 1 November 2018 for Huan Yuean. He also prepared locality diagrams PEX11A and PEX12B for Xizhan Guan and Qiaoling Huang. He prepared all these diagrams on the instructions of the Senior Estate Officer Inosi Tauvoli.

PE 4 Esekaia Nabou

27. Nabou is the complainant in this case on behalf of the landowners. Between 2018 and 2019, Nabou was employed as an Estate Land Officer for Tunnel Investment Ltd, a company run by the landowners of Tokatoka Nadrau in Saunaka. The company is run by the director Taito Nalukuya, who is also a member of the 'Tokatoka'.

28. The complaint was about the mistrust on the lease with TLTB at Waimalika in Nadi when its previous lease had expired on 30 June 2018. When the development lease given to Sushil Deo was about to expire, he was dealing with Soloveni Masi and Senior Estate Officer Operations Inosi Tauvoli, who were handling the case about a new lease.
29. They trusted Inosi that they would be served faithfully and truthfully. Inosi promised that he would come for a consultation with the landowners as required when the lease expired on 30 June 2018. However, Inosi did not come for a consultation, putting forward various excuses. Since there was no positive response till early 2019, he went to see Inosi again. Inosi informed him that they had to wait for the response to the offer given to Sushil Deo. He questioned how an offer was given to Sushil Deo without a consultation with the LOU.
30. He informed the director of the company and the landowners about what had happened. The director advised him to seek legal advice from Mr Niko Nawaikula. Mr Nawaikula wrote to TLTB on 2 February 2019, informing them that the landowners were still awaiting a consultation. Masi advised Inosi to address the issue as soon as possible. Inosi promised to work on it and provide updates. That was the last time he met Inosi.
31. The legal advisor wrote again to TLTB, requesting a response to the first letter. Those two letters were unanswered to date. He was informed that Inosi had resigned. He then went to see Tomu, who oversaw the plan section to confirm whether a lease had been issued. Upon checking the system, he was surprised that the land had been subdivided into four lots and leased to Chinese individuals without consulting the landowners. Inosi promised that he would come to the office and sort out the issue, but he didn't show up. As they were unsuccessful in getting both parties to resolve the matter, he reported the matter to FICAC.

PW 5 Akuila Ratu

32. Between 2018 and 2019, Akuila was based at TLTB Nadi as an Estate Officer. He handled all lease applications in the district. The Estate Operation Manual (EOM) (PE1) stipulates the guidelines and processes that the officers who handle the applications must follow. If EOM is not complied with, the officers can be given caution letters.

33. Referring to the EOM, the witness described the steps to be followed in processing lease applications. The first step would be to receive the lease applications at the counter. The counter clerk receives and screens the application and refers it to the Senior Estate Officer for approval. If it's approved, the applicant is referred to the cashier for payment of application fees. After the application fee is processed, the Estate Officer and the Estate Assistant (Estate Team) are supposed to do the inspection of the subject land and consult the landowners regarding the applications. A meeting with the head of the Mataqali is arranged to confirm the status and interests in subject land. It is the duty of the head of the Mataqali to inform the members of the LOU. The approval is taken from those who attend the meeting. If approval is given, an inspection using GPS machines and pegging is done to identify the land. The IPR is prepared and approved, then the Lease Offer Letter is processed.
34. The relationship between the landowners and the TLTB is one of trusteeship. As the trustee, TLTB is mandated to follow the process when it comes to leasing Mataqali lands. The landowners are the real beneficiaries of that trust, while a poundage is deducted from the premium and the rent for the TLTB.
35. The TLTB administers two types of lands: the lands that are reserved and those outside reserve. Reserved lands are demarcated for the use of the landowners only. If an Applicant has applied for land that is in reserve, TLTB will need to get 51% consent from the landowners and refer the matter to the Reserve Department in Suva. The Reserve Department would verify the landowner's consent through the *Vola ni Kawa Bula* (VKB) where all the landowners are registered with the Department in the iTaukei Land Commission Office. Once it's confirmed that the 51% consent threshold has been met, TLTB could release the land from the reserve status enabling the leases to be issued.
36. A six-week timeline is given for the offeree to pay the fees. Once the lease money has been deposited, the Technical Department prepares the lease plans, and the Service Department prepares the lease documents. Then, the lessee is called upon to sign the Agreement for Lease, which is finally sent for registration of titles. The Agreement for the Lease confirms that the lessee is the legal owner of the lease subject to the terms and conditions stipulated

therein. Once recommended by the Estate Officer, the approval is granted by the Senior Estate Officer.

37. In this case, deviating from the normal process, the approval has been given directly by Inosi without it being recommended by an Estate Officer. As per the meeting minutes (PEX9K), the landowners have been consulted and obtained their consent. The Agreement for Lease is generally witnessed by the Estate Officer and signed (ratified) by the Manager. If the Manager is not in the office, the Senior Estate Officer could sign (ratify) with the prior written approval of the Manager. The approval should be minuted or attached to the file. If the Manager is present, the Senior Estate Officer cannot sign.
38. In the case of commercial leases, when the applicant is an individual, the business plan and documents (bank statements) to confirm the capital is required. The bank statement must be that of the applicant. Deviating from the normal process, Yei Ha Yuen's application has been supported by a bank statement of one Zhong Xian Zhong.
39. Inspection Precise and Recommendation Report (IPR) states the type of land, the fees, the term of the lease and the type of lease being issued. Inosi has signed the IPR (PEX10H) and 'Subject to Contract Agreement for Lease' (PEX10-I) for Zong Ziang Zong instead of Manager Masi without any authority. The Agreement for Lease for Yuen Huang (PEX10A) has been ratified by Inosi when it should have been signed by Manager Masi. The request to change the name of the lessee from Zhong Xiang Zong to Yuen Huang PEX10J has not been approved by Manager Masi.
40. The Application Screening Form for Jaihoo Investment (Pvt) Limited (PEX11C) has not been witnessed by a TLTB Officer. The checklist (PEX-11E) has been approved by Inosi without a recommendation from an Estate Officer. The attendance sheet (PEX-11F) and the minutes (PEX11-H) have been prepared by Inosi. The request to change the name of the applicant (PEX- 11J) has not been approved by Manager Masi. The revised offer, after changing the original applicant to Xizihan Guan (PEX-11I) has not been approved by the Manager. The Agreement for Lease for Xizihan Guan (PEX-11B) has been signed by the

Manager. However, the Acknowledgement Form (PEX-11M) has been witnessed by Inosi although he was not authorised to do so.

41. The application screening form for Jason Hong (PEX12D) needs to be witnessed by clerk at the counter, but no officer has signed it. The checklist for Application to Lease (PEX-12E) was not recommended by an Estate Officer before being approved by Inosi. The attendance sheet (PEX-12G) and minutes (PEX-12H) of the consultation with the LOU dated 07 July 2018 have been completed by Inosi. As per the IPR (PEX-12I), the application was received on 23 November 2018, and the inspection took place on 01 November 2018, even before the application was received. The Subject to Contract Agreement for Lease (PE -12L), was meant to be signed by Manager Masi; however, it was signed by Inosi without any authorisation from Manager Masi. Jason Zhong's request (PEX-12K) for a name change to Qiaoling Huang has not been approved by Manager Masi, and there is no comment on the letter by the Manager. However, Inosi has signed the letter without authorisation from the Manager. The acknowledgement form (PEX12M) is supposed to be filled by an officer at the Services Department. However, it has been witnessed and signed by Inosi.
42. In processing the lease applications for all four lands, Inosi has not followed the EOM.
43. Under cross-examination, Akuila said that even though all the documents stated in the application checklist have been submitted, it would still require a recommendation from the Estate Officer for approval. The TLTB consults landowners on each application they receive, irrespective of the volume of work each officer is assigned. The lands that are in question are not reserved lands. Therefore, the lease processing requires only a consultation with the landowners.

PW 6 Adi Tema Varo

44. Adi Varo belongs to 'mataqali Vunaivi', 'tokatoka Nadrau'. She is the registered 'Marama Taukei na Ua' or the chief of Saunaka Village. Her tokatoka clan owns a lot of lands situated in Nadi, Waimalika, Nasoso and Legalega.

45. Inosi of TLTB convened a meeting in the village with her clan on a Saturday between 2018 and 2019 to discuss some land leases. The majority of those present with her in the meeting were her sisters, Adi Nanise, Adi Salote and Adi Makelesi. She recognized the attendance sheets (PEX9I) and (PEX10G) Inosi took of the meeting. Except for Adi Nanise, all the other sisters signed the attendance sheet.
46. They were consulted only once, and that was on the lease issue to FIFA Holding Ltd. There was no discussion or consultation on Waimalika land to be leased to Chinese people. She denied the consultation minutes (PEX10F) to be a true record of what was discussed at the meeting on 7 July 2018. The minutes were not given back to the land-owning unit to verify its accuracy. Without consulting her LOU, Inosi should not have allowed Waimalika lands to be leased out.
47. Under cross-examination, Adi Varo admitted that Taito Nalukuya is related to her and that he is a member of LOU or '*mataqali*'. She could not recall if any conversation concerning Waimalika land was held with Taito.

PW7 Unaisi Finau Tabuakuro

48. Unaisi is currently the Training Officer for the TLTB. Between 2018 and 2019, she was based at TLTB Southwestern Region Office in Nadi as an Estate Officer Services. Her responsibility was to cross-check all the lease applications received at the counter and from the cashier. She would create all the tenancy details and forward the lease applications to the Lease Applications Team.
49. She explained the lease (lease case type 1) processes stipulated in the Estate Operational Manual (EOM -PEX1). She described it as the Holy Book of the Operations Team, which the officers are bound to follow in processing lease applications. Once an application for a lease has been received, the requirements in the checklist are ticked, and if all the information/ documents are enclosed in the application, the system is updated accordingly. As per EOM, it's the responsibility of the counter officer at the Services Team to receive a lease application. The recommendation portion of the Lease Application Checklist is supposed to be filled by a junior officer recommending it to the Senior Estate Officer.

50. Referring to the checklist (PEX9J), Unaisi mentioned that an Estate Officer had not filled out the recommendation section because the Senior Estate Officer himself processed it. The Senior Estate Officer is the one who conducts the necessary checks to recommend the lease applications for processing. Even without a recommendation, approval can be granted by a Senior Estate Officer, as he functions similarly to an Assistant Manager in the Region. That is the established practice with the Regional Office, according to the EOM that existed at that time. According to the revised EOM approved last year, the approval process begins with the junior officers, then proceeds to Estate Officers, and finally to the Senior Estate Officer.
51. The Regional Manager is authorised to sign the Lease Offer Letters and Agreement for Lease Revised Offer Letters. A Senior Estate Officer could sign those documents on behalf of the Regional Manager only if authorised in writing (via email confirmation) by the Regional Manager. There is no email confirmation attached to the Lease Offer Letters and Agreement for Lease Revised Offer Letters for Inosi to sign. Therefore, Inosi had no authority to sign those letters.
52. Unaisi described Inosi's conduct as 'insubordination of authority' and 'laxity of the work process. 'As a Senior Estate Officer, he should have ensured that instructions from his superiors were included in the land files to prevent audit issues. His failure to follow the EOM would impact the trust the LOU would have in the TLTB, the trustee of their lands. His actions could pose a risk to the organisation, particularly its landowning units, and negatively affect the income generated from lease rentals. Due to the corrupt and non-compliant practices of the officers, the organization's reputation would suffer as a result.
53. Under cross-examination, Unaisi agreed that the TLTB established a work target (financial target) for each officer to achieve every month. Different regions had varying targets. The target for the Southwest Region ranged from \$ 250,000 to \$ 350,000 per year. The TLTB takes 8% of the financial gain as fees, while the remainder goes to the LOU. Officers who fail to meet the set target risk non-renewal of their contracts and loss of bonuses at the end of the year. The TLTB sets the financial targets in the best interests of the landowners as their trustee.

The Case for Defence

DW1 Inosi Tauvoli (The Accused)

54. Inosi worked as a Senior Estate Officer (Operation) at the TLTB during the period between 2018 and 2019. He attained a Bachelor of Arts degree in Land Use, Planning and Real Estate. He first joined the TLTB in 2009 and worked there until he resigned in 2014. Then, he joined the TLTB again in 2016 and resigned in 2019. Whilst based at the Nadi Office, he looked after the Operation Team that processed new applications and conducted consultations and other work required by TLTB.
55. The officers at TLTB were not properly trained for their positions and were overworked. Their work was guided by the EOM and a lot of other policies. He was familiar with the EOM and the role he was supposed to play as a Senior Estate Officer. To his knowledge, he did not violate any of the policies or the EOM. After this case had come up, he realised that he had compromised some of the standard working procedures.
56. His responsibility was to forecast the targets and to ensure that the financial and management targets were achieved on a monthly basis. He looked for potential clients who could accept the offers and ensure that the targets were met to secure the financial returns for the rightful landowners.
57. He worked within the scope of his job description. He sometimes acted outside the scope of his work and standard operation procedures when delegated to him by his superiors as permitted by the (employment) contract. Because of the work volume, he may have compromised some policies and taken things for granted. His sole priority was to ensure that the targets were met, and financial performance was achieved. These cases were processed towards the end of the year when they were closing off business for the year during which a lot of clients wanted their cases processed, and a lot of landowners wanted their rent money. They were burdened with the volume of work with added responsibilities. His actions did not affect or cause any loss to the TLTB financially.

58. He didn't have any personal interests in or gain anything from his work. The only reason why he expedited the cases was to achieve the financial targets required of him as a Senior Estate Officer.
59. When lease applications were received, the LOU had to be consulted, and due to the volume of work, a blanket consultation was done for all cases within the LOU. He advised Mr Taito to attend the consultation. He called *Marama na Taukei Nua* and arranged a consultation with the LOU on a Saturday because a lot of LOU members had work commitments on weekdays. He went alone in his private vehicle at his own expense.
60. His work did not affect the TLTB in terms of the financial targets. The lease money that was rightfully owed to the landowners was paid through the normal process and the rates was based on the assessment of the officer who attended to the case.
61. He had never faced any disciplinary inquiry in his 15+ years of employment or had any misconduct record. He was posted to Suva and promoted as a Senior Estate Officer because of his good financial performance. His actions, in this case, might have been misunderstood by the TLTB. He admitted that the work procedures were compromised but his intention was just to ensure that he achieved what was required of him. He does not deny the charges brought against him.
62. He had a business, and it went down because he was not able to meet his payment requirements. Then he lost his work; his family had to relocate back to the village. Luckily, he had a farm, so he managed to sustain himself.
63. Under cross-examination, the Accused said that he resigned in 2014 because he was under financial stress in terms of repayments and joined EFL looking for better pay to cover his repayments. He regretted his decision and came back to TLTB after being with EFL for one year only. When asked by the Court, the Accused said his resignation was not so much because of the financial stress but because he just wanted a new work environment out of his comfort zone. He resigned in 2019 to run his own business and not because of his misconduct in processing lease applications or complaints from the landowners. He didn't have any reliable individual to look after his farm.

64. He admitted receiving all four lease applications on 19 October 2018 stepping out of his job description. They were processed together because all the applications were related to the same subdivision.
65. He admitted to having approved the checklists without any recommendation from the Estate Officer. He denied giving verbal instructions to provide the documentation for the preparation of the IPR. He would have signed the Lease Offer Letter and the Agreement for Lease on verbal approval by Regional Manager Masi. When referred to the evidence of Masi that he did not give approval, Inosi agreed that he didn't have the approval to sign the Agreement and the Revised Offer Letter.
66. He consulted the LOU members on all cases that were to be processed within their LOU, including Waimalika. He agreed that, to meet the targets, he could not breach the rules and the guidelines given in the EOM and that the rights of the landowners should come first, ahead of his financial targets.
67. He agreed that he would completely miss out on some of the issues that he had to address, and then, after a few days, he would edit the minutes to reflect on whatever was discussed.
68. He agreed that the reputation of the TLTB and its officers would have been affected or tarnished if he had failed to abide by the procedures of the EOM in processing the lease applications. The people would have lost faith in TLTB and been scared to come forward to TLTB regarding their land issues.

Evaluation/ Analysis

69. The Accused is charged with Abuse of Office under the first limb of Section 139 (Misdemeanour) of the Crimes Act. The following elements need to be proved by the Prosecution:
 - (i) The Accused, Inosi Tauvoli;
 - (ii) whilst being employed in the civil service;
 - (iii) did or directed to be done an arbitrary act;
 - (iv) in the abuse of the authority of his office; and
 - (v) the act is prejudicial to the rights of another

i. The Accused

70. The first element, the identity of the Accused, is not disputed. PW2, PW4 and PW6 identified the Accused in Court.

ii. A Person Employed in the Civil Service

71. The second element, that the Accused is employed in the Civil Service, is also uncontested. The Defence has acknowledged that the Accused at all relevant times pertaining to the case was employed in the Civil Service in accordance with Section 4 of the Crimes Act 2009. The iTaukei Land Trust Board (TLTB) is a statutory body established by the iTaukei Land Trust Act 1940, and the Accused's appointment was made according to the provisions of the said Act.

72. There is no dispute that as the custodian of all iTaukei native lands in Fiji, the TLTB administers all leases concerning native lands. The Accused, at all times to the offending, held the position of Senior Estate Officer (Operations).

iii. Did or directed to be done an Arbitrary Act

73. Regarding the third element, there is no dispute that the Accused processed all four lease applications in his capacity as a Senior Estate Officer. To get an idea of what constitutes an arbitrary act, it is important to examine the interpretations provided by the Courts in Fiji. In *Tomasi Kabunavanua v The State*¹ while interpreting Section 111 of the Penal Code, which is analogous to Section 139 of the Crimes Act, the Court stated that the word "arbitrary" indicated nothing more than the exercise of one's own free will².

¹ (1993) FJCA 8

² Quoted by the Supreme Court in *Patel v FICAC* [2013] FJSC 7 (26 August 2013)

74. Jesuratnam J in *State v Humphrey Kamsoon Chang*³ stated that an “arbitrary act” is an *autocratic act, an act not guided by normal procedures but by the “whims and fancies” of the accused*. This interpretation was adopted in *State v Rokonvunisei*⁴ in which the Court said that the meaning of “arbitrary act” was said to include an *unreasonable act, a despotic act which is not guided by rules and regulations but by the whims of the accused*. In *State v Vakaloloma*⁵ Fatiaki J (as he then was) stated that “*the arbitrary” nature of the offending act(s) is a question of fact and inference is undoubtedly coloured by its close association with the alleged abuse of authority by the accused*.”
75. In the present case, the Prosecution alleges that the Accused, in processing the four lease applications, [two leases for Yuean Huang (File Nos. 6/10/42552 and 6/10/42553) (*these were the files reference numbers given as soon as the application was created*), the 3rd lease for Zing Zang Kung (File No. 6/10/42460) and the final lease was for Qiaoling Huang (File No. 6/10/42486)] violated the provisions of the EOM, and thereby caused prejudice to the rights of the TLTB.
76. PW 5 and PW 7 produced evidence as to the stranded procedure that ought to be followed by the officers of the TLTB as per the EOM (PEX1). The Defence did not dispute this evidence. Four officers of the TLTB, namely PW1, PW 3, PW 5 and PW 7, gave evidence to show how the Accused deviated from the normal process that the EOM has stipulated in processing the lease applications.
77. The Prosecution contend that the Accused’s conduct in accepting and processing the four lease applications constitutes an arbitrary and despotic act, an act which is not guided by rules and regulations but by the “whims and fancies” of the Accused.
78. According to the Prosecution’s evidence (PW1, PW5, and PW7) and the EOM, the reception and screening of lease applications are reserved for the counter clerk at the Services Department and that the Accused exceeded his authority by accepting and screening all four lease applications on 19 October 2018 for further action. In his testimony, the Accused

³ Crim.Case No.8/1991

⁴ HAC 37B of 2010

⁵ [1993] FJHC 93

admitted to receiving all four lease applications on 19 October 2018. The Accused has in fact signed the Application for Lease PEX9I as the witness to acknowledge the receipt of the application. Therefore, it is not necessary to call a Counter Attendant witness from the Services Department to prove that the Accused received those applications.

79. The Accused explained that all applications were processed together because they pertained to the same subdivision. However, according to the EOM, he is not the officer assigned to receive and screen lease applications. Paragraph 1(i) EOM (Case Type 1) specifically provides that *'The Counter Attendant/Clerk shall receive the application for lease...'*(Emphasis added)
80. The Defence in its written submission argues that there is no clear guidance on the specific situation where a counter attendant is unavailable and therefore the receipt of the applications by the Accused is not prohibited or obnoxious to the standard practice.
81. It was never the position of the Accused that he accepted the applications because the counter attendant was unavailable. He has accepted not only one but four applications and processed them together in a suspicious manner, disregarding the standard procedure.
82. Once a lease application has been received, the checklist must be ticked by an Estate Officer to ensure that all required documents are enclosed so that he or she can recommend the application for approval by the Senior Estate Officer. The checklists in all four files were not recommended by an Estate Officer prior to being approved by the Accused. Instead, the Accused struck out the recommended part and approved all of them.
83. The Prosecution witnesses were not consistent on the issue of whether the approval given by the Accused without a recommendation from an Estate Officer is regular. According to PW1, the Accused had conducted the necessary checks before the lease applications were processed without a recommendation from an Estate Officer. PW7, on the other hand, referring to PEX9J, stated that an Estate Officer had not filled out the recommendation section because the Senior Estate Officer himself processed the checklist. She opined that the approval can be granted by a Senior Estate Officer even without a recommendation, as

he serves in a capacity similar to that of an Assistant Manager in the Region, to which I would not agree

84. The Lease Application Checklist standard form has been printed for a purpose, that is, to ensure transparency and double-check that all required documents are enclosed in the application before it can be approved. According to paragraph 2(d) of the standard application form, one of the important documents that must accompany the lease application is 'the last six (6) months' bank statements' of the applicant. That requirement is there for the TLTB to satisfy itself that the applicant has the financial capacity to carry out the business plan.
85. The Regional Manager Masi (PW1)'s evidence on this point exemplifies how important the scrutiny and recommendation from an Estate Officer is before an application can be approved. The bank statement attached to the application of Yei Ha Yuen is not the bank statement of the Applicant. The Accused was supposed to check all the documents before being submitted for the Manager's signature. However, he has failed to do that. Therefore, even if a Senior Estate Officer were authorised to approve the checklist without it being recommended by an Estate Officer, as PW 7 said, the Accused has failed to exercise his discretion properly because he approved the application when all the required documents were not enclosed. The same irregularity occurred when Yei Ha Yuen's application was processed. According to PW5, Yei Ha Yuen's application had been supported by a bank statement of one Zhong Xian Zhong, who was not the applicant.
86. PW1 testified to the other irregularities on the Accused's part, specifically regarding the leases issued to Yuean Huang (file reference Nos. 6/10/42552 and 6/10/42553). PW1 confirmed that he is the officer authorised, and he signed only the Agreements for Lease marked as PEX10A and all other documents, Change of Applicant (PEX10J), and Offer Letter (PEX10I) have been signed/approved by the Accused. In File No. 10/42486, the name change application (PEX12K) has been approved by the Accused without the knowledge or approval of the Regional Manager. The Agreement for Lease issued to Qiaoling Huang (PEX12A) has been ratified by the Accused without the approval of PW1.

87. Estate Officer Akuila Ratu (PW5) and Training Officer Unaisi Finau (PW7) who testified to the leases issued to Xizhan Guan (file reference No. 4/10/42460) and Qiaoling Huang (file reference No 4/10/ 42486) further highlighted the irregularities in the processing of lease applications by the Accused. Accordingly, the Accused is not authorised to sign/ approve the Offer Letters (Subject to Contract-Agreement for Lease), the Agreements for Lease and the applicant's name change requests on behalf of the TLTB. The Defence hardly contested these issues.
88. However, given some inconsistencies in the Prosecution's evidence, albeit not highlighted by the Defence, on delegation of powers of the Regional Manager to the Senior Estate Officer, I must clarify why the Court should accept the version of the Prosecution. PW1, who is authorised in his capacity as the Regional Manager to sign/approve those documents as per the EOM, stated that whenever he was out of the office and if there was an urgency, he would have delegated his authority to the Senior Estate Officer via phone or email to sign those documents on his behalf.
89. PW1 emphasised, however, that a minute or email should have been attached to the relevant document if he had delegated his authority to the Senior Estate Officer. The absence of evidence to that effect suggests that PW1 had never delegated his authority to the Accused to sign/ approve those documents on his behalf. PW7 took a similar view and said that a Senior Estate Officer could sign those documents on behalf of the Regional Manager only if authorised in writing (via email confirmation) by the Regional Manager. She further said that as a Senior Estate Officer, the Accused should have made sure that instructions (of his superiors) were enclosed in the files to avoid audit issues. There is no email authorisation or minute attached to the Lease Offer Letters and Agreement for Lease Revised Offer Letters authorising the Accused to sign. Therefore, the Accused had no authority to sign those documents.
90. The fact that PW1 had ratified the Agreements for Lease (PEX10A) and (PEX9B) on 18 January 2019 suggests that he was available in the office that day. However, the Lease Agreement (PEX12A) which had been ratified on the same day, had not been ratified by PW1, but by the Accused, on behalf of PW1, using the Regional Manager's seal. PW1 could

not explain why the Accused had ratified those documents when he was in the office. This further reinforces that the Accused ratified PEX12A without authority. The Accused finally admitted, albeit reluctantly, that he didn't have the approval to sign the Agreements for Lease and the Revised Offer Letters.

91. PW1 had never seen the letter titled 'Change of Applicant' dated 20 December 2018, addressed to him (the Regional Manager). Without the approval of the Regional Manager, the Accused had allowed the name change of the Applicant. According to the Acknowledgment Form dated 18 January 2018 (PEX9O), the Agreement for Lease had been received by one Jason Zhong and not by Yuean Huang, the lessee. The Accused was the officer who had witnessed the acknowledgement. There is no confirmation that Jason Zhong had written permission from the lessee to collect the Agreement for Lease PEX9B.
92. The Defence, in its written submissions, contends that EOM 2017 does not provide any explicit instruction or guideline regarding the requirement for a confirmation or note when the powers of the Regional Manager have been delegated to the Senior Estate Officer. I am unable to agree. The EOM is based on the principle of separation of powers, where each officer's role is clearly demarcated. As PW7 said, whenever an officer steps out of his/her scope, he or she must justify his/her action.
93. The Defence hardly contested the Prosecution's evidence save on one point. The contested point relates to the consultation meeting that took place on 7 July 2018 with the LOU-Tokatoka, Nadrau. In the consultation minutes, signed and enclosed in each file by the Accused, it is stated that the landowners were consulted on all four leases concerning the land (Leqaleqa Part of) in Waimalika that were to be issued to the Chinese applicants. The Accused had not given the minutes to the LOU to verify its accuracy. He said that he would later edit the minutes to reflect on whatever was discussed.
94. The landowners Adi Nanise (PW2) and Adi Varo (PW6) agreed that the Accused consulted them on the issues about other lands but vehemently denied that they were consulted about Waimalika leases that were to be issued to the Chinese people.

95. Nabou (PW4) confirmed the landowner's evidence. When he learned that the Accused had resigned, he checked the system at the TLTB office and was surprised to learn that the Waimalika land had been subdivided into four lots and, without consulting the landowners, leased to Chinese individuals. There is no reason for the Chiefs (PW2 and PW6) to lie in Court and for PW4 to complain to the TLTB if the LOU was consulted on the Waimalika land. I am sure that the Accused had not consulted the LOU and that he dishonestly and deliberately prepared the false minutes to justify his irregularity.
96. The Defence, in its written submissions, contends that the EOM is ambiguous, failed to meet the ISO standards and does not adequately address 'grey areas' that may come across in practice. However, it was never Defence's case at the trial that the EOM was ambiguous or failed to provide clear guidance on the processing of lease applications.
97. The Accused does not deny the allegation that some of the rules and procedures were compromised. The Accused alone had signed/approved most of the documents involved in the process from the beginning to the end, deviating from the normal process and outside the scope of his authority. His actions were not by chance or accident but deliberate. The evidence is overwhelming for me to find that the Accused was not guided by the processes and normal procedures laid down in the EOM but by his "whims and fancies". I accept the Prosecution's evidence and find that the Accused's conduct is arbitrary, unreasonable and unbecoming of a civil servant.

(iv) Abuse of the Authority of Office

98. The Prosecution contend that the Accused's acts constitute abuse of the authority of his office. The Supreme Court in *Naiveli v The State*⁶ (decided when S. 111 of the Penal Code, which is comparable to Section 139 of the Crimes Act, was in force) stated that:

Central to the commission of any offence under S.111 is the doing or directing to be done an arbitrary act, "in abuse of the authority of" the "accused's office". What differentiates something done in abuse of office from something not done in abuse of office in many cases will be the state of mind of the accused. An act done or direction given, which is otherwise within the power of authority of an

⁶ [1995] FJSC 2

officer of the public service, will constitute an abuse of office if it is done or given maliciously with the intention of causing loss or harm to another or with the intention of conferring some advantage or benefit on the officer. They are just two instances of abuse of office. No doubt other instances may be given. But it would be unwise for us to attempt an exhaustive definition of what constitutes an abuse of office, to use a shorthand description of the statutory expression “abuse of the authority of his office”.

99. In *Fiji Independent Commission Against Corruption (FICAC) v Laqere and Others*⁷, Rajasinghe J, in his summing-up, directed the assessors at [20] on the element of ‘abuse of the authority of his office’ as follows:

..... If the accused uses his position in the public service for the furtherance of an illegitimate agenda, based on a bad or dishonest faith or an improper motive that constitutes abuse of the authority of his position in the public service. In order to determine what is an abuse of authority of the office, it is required to consider the motive of the accused to act in such a manner. If you are satisfied that the accused has acted in some bad faith and has used his position to fulfill that motive, then this element is proven. In order to determine the state of mind of the accused, you have to take into consideration [of] all the evidence adduced in this hearing.

100. No doubt, the powers of the office of Senior Land Officer were given to the Accused to act diligently and in good faith in the best interests of the landowners and those who sought the services of the TLTB. The Accused does not deny that he compromised the rules and procedures laid down in the EOM. His position is that his failures were due to the excessive workload in meeting the targets set by the TLTB. He maintained that he acted in good faith to perform well in the best interests of the LOU.
101. The Court needs to consider the Accused’s intention of what motivated him to act in the manner he acted. To form an idea about the Accused’s state of mind it is necessary to draw inferences from his conduct.
102. Nabou (PW3) said that the landowners trusted the Accused that they would be served faithfully and truthfully. He described how the expectations of the LOU were shattered by the Accused. The Accused had repeatedly promised that he would come for a consultation with the landowners when the then-existing lease was about to expire on 30 June 2018.

⁷ Summing Up [2017] FJHC 336; HAC56.2014 (1 May 2017)

However, the Accused failed to arrange a consultation, putting forward various excuses, one of which was highly questionable. The excuse that he was awaiting a response to the offer given to the previous lessee was not tenable as the Accused could not offer leases to anybody without consulting the LOU.

103. Being worried about the delaying tactics of the Accused, the LOU resorted to legal advice to compel the Accused to arrange a consultation. Despite the promises to work hard to expedite the work and provide updates, the Accused suddenly resigned. Upon checking the TLTB system after the Accused's resignation, it was revealed that the (Waimalika) land had been subdivided into four lots and leased to Chinese individuals without consulting the landowners. The promise given to the LOU that he would come to the office to sort out the issue was not kept.
104. The Prosecution says that the Accused resigned because of his misconduct in processing the lease applications and complaints from the landowners. The Accused denies this. Let me find out what led to the Accused's resignation in February 2019.
105. The PW3's evidence on the questionable conduct of the Accused in the run-up to his resignation was not challenged by the Defence. The Accused's evidence that he resigned in 2019 to run his own business is not consistent or credible. He had resigned twice. In 2014 he resigned because he was under financial stress in terms of repayments. He joined EFL looking for better pay to cover his repayments. When asked by the Court, the Accused said his resignation was not so much because of the financial stress but because he just wanted a new work environment out of his comfort zone. The Accused regretted his decision to resign in 2014 and came back to TLTB after being with EFL for one year only. He had re-joined the TLTB knowing very well that the salary earned at the TLTB was inadequate to meet his repayments. Defence evidence on this issue is inconsistent and thus not appealing to me.
106. I accept the version of the Prosecution that the Accused resigned in 2019 because he felt guilty of misconduct in processing the lease applications for Chinese people.
107. The Accused was trying to blame the TLTB for his lapses. His complaint that the officers at TLTB were not properly trained cannot be accepted. The fact that Unaisi (PW7) is

specifically designated as a training officer suggests that the TLTB had a training unit for the officers. His complaint that the officers were overworked is not supported by evidence. It was never suggested to the PW1 or other officers that the TLTB office lacked staff to carry out its work.

108. The Accused was a qualified and experienced Senior Estate Officer. He had attained a degree in Land Use, Planning and Real Estate. He had worked for the TLTB for almost nine years. He admitted to being familiar with the EOM, and the TLTB's policies and practices. Being an experienced officer familiar with the EOM, the policies and the practices, there is no justification for him to violate the accepted procedures even to achieve the financial targets. PW7 described the Accused's conduct as 'insubordination of authority' or 'laxity of the work processes'. I find that the Accused deliberately and dishonestly compromised the standard working procedures for an ulterior motive.
109. The Accused maintained that he didn't have any personal interests in or gain anything from his work. Since the FICAC dropped the charge originally framed on the basis that the Accused did arbitrary acts for gain, it is not for me to engage in a fishing expedition to discover the real motive behind the Accused's conduct. However, for the Court to be satisfied that the Accused abused the authority of his office, I need to examine the motive behind his actions.
110. As was observed in *Naiveli (supra)*, if the arbitrary acts were done, for example, maliciously with the intention of causing loss or harm to another or with the intention of conferring some advantage or benefit on the officer, the element- 'abuse of the authority of the office' is satisfied.
111. The Accused maintained that the only reason why he fast-tracked the process was to achieve the financial targets required of him as a Senior Estate Officer. However, he had entertained four lease applications from three Chinese individuals in a single day (which the Prosecution suggested could not be a coincidence) and made extraordinary efforts to process them together in a short period, violating the procedure stipulated in the EOM. He had given verbal instructions to the Estate Team to prepare the location diagrams. He had gone for the

consultation in his private vehicle on a public holiday and prepared false minutes that he consulted the landowners. This conduct strengthens the assertion that the Accused was not acting honestly and in good faith.

112. There is no dispute that the financial targets have been set for the TLTB officers. PW 7 confirmed that the officers who fail to achieve the set targets face non-renewal of contracts and loss of bonuses etc at the end of the year. However, except for the Accused's claim, there is no evidence that the Accused was under pressure to meet those targets or that he faced any risk of being not renewed or disciplinary action. It was never put in cross-examination to PW1, the Accused's immediate supervisor, and sought calcifications from him about any of these things that would have put the Accused under pressure to compromise the standard procedure. Since all four lease agreements were finalised in January 2019, the Accused's claim that he was under pressure to meet the target set for the 2018 financial year cannot be accepted.
113. I agree that if an officer is under professional or personal stress, he or she might be seen as more prone to misuse his/her authority in a way that is linked to emotional or psychological provocation. This could be a factor in assessing the mental state of the Accused at the time of committing the offence. While provocation (e.g. undue pressure from peers or political figures) could explain the accused's actions, it is ultimately insufficient to provide a full defence.⁸ Provocation in the form of external pressures or stressful work conditions is not sufficient to negate the dishonest element required for the abuse of office⁹.
114. The Accused agreed that, to meet the targets, he could not breach the rules, and the procedure stipulated in the EOM and that the rights of the landowners should come first, ahead of his financial targets. The only inference that can be drawn is that the Accused acted arbitrarily with the intention of conferring some advantage or benefit, perhaps to earn the bonus, to himself and causing loss or harm to the TLTB and the LOU.

⁸ R v Qoro [2007] FJCA 21

⁹ R v Ba [2013] FJHC 109; FICAC v Salato [2019] FJHC 383

115. The Accused agreed that the reputation of the TLTB and its officers would be affected or tarnished if he had failed to abide by the procedures of the EOM in processing the lease applications. Despite being aware of the damage his actions would cause to the TLTB and the landowners, the Accused acted arbitrarily. I am unable to accept that the Accused's motive was to achieve the financial targets set by the TLTB. By compromising the standard procedure, he has attempted to promote his interest at the expense of the interests of the landowners and the TLTB. I am satisfied that the Prosecution proved that the Accused's acts constitute abuse of the authority of his office.

V. Prejudice to the Rights of Another

116. A person is prejudiced if his or her interests are put at a disadvantage. All public servants, including the TLTB officers, are expected to discharge their duties according to the established rules and procedures. When they act arbitrarily, disregarding the established rules and procedures, the reputation and faith in the institution are demeaned.
117. PW 7 described how the arbitrary actions of the Accused prejudiced the rights of the TLTB and the LOU. The TLTB administers a trust with landowners as its beneficiaries. The reputation of the TLTB is of utmost importance in fulfilling its role as trustee. The EOM exists to ensure the accountability and transparency of the officers' conduct. The corrupt and opaque practices of the officers, in failing to adhere to the EOM, could undermine the trust that the LOU would have in the TLTB. The Accused's actions have posed a risk to the organisation, particularly concerning its LOU. The landowners may lose faith in the TLTB and hesitate to come forward to address their land issues.
118. PW3 described how the LOU Tokatoka Nadrau lost faith in the TLTB due to the arbitrary and unscrupulous conduct of the Accused. Consequently, the LOU sought legal assistance and action as their rights were compromised. PW7 further elaborated on how the unscrupulous behaviour of the Accused could negatively impact the income generated from lease rentals. The failure to follow standard procedures will influence the income derived from lease administration. The TLTB retains 8% of the financial gain as fees, while the remainder is allocated to the LOU.

119. A good example of how the rights of the TLTB were prejudiced is provided in File 10/42552, where the Accused approved an application for a commercial lease without verifying the applicant's financial capacity, as he did not check the applicant's bank statement before granting the lease. Checking the applicant's financial capacity is essential to ensure the viability of the business plan and to ensure that the land is properly administered in the best interests of the LOU. Therefore, the Accused's assertion that his actions did not affect the TLTB financially is unfounded.
120. I am satisfied that the arbitrary acts of the Accused prejudiced the rights of the TLTB and the LOU Tokatoka Nadrau.
121. I am satisfied that all the elements of the offence of Abuse of Office are satisfied. The Prosecution proved each count beyond a reasonable doubt. I find the Accused guilty on all counts. The Accused is convicted accordingly.



Aruna Aluthge
Judge

20 March 2025

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