IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

APPEAL CASE NO. HACDA 001 OF 2025

APPEAL CASE NO. HACDA 002 OF 2025

APPEAL CASE NO. HACDA 003 OF 2025

APPEAL CASE NO. HACDA 004 OF 2025

BETWEEN:	**FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION "FICAC"**	**APPELLANT**
A N D:	**BHARAT JOGIA**	**FIRST RESPONDENT**
A N D:	**SAMUELA DAKUITOGA**	**SECOND RESPONDENT**
A N D:	**IFEREIMI SAVOU**	**THIRD RESPONDENT**

Counsel: Ms. L. More for FICAC/Appellant
Mr. A. Singh for 1st Respondent
Ms. A. Prakash for 2nd Respondent
Mr. M. Yunus for 3rd Respondent

Date of Hearing: 17th March 2025

Date of Judgment: 02nd July 2025

J U D G M E N T

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1. The Fiji Independent Commission against Corruption (FICAC) instituted proceedings in the Magistrate's Court against the three Respondents/Appellants (hereinafter referred to as the three Respondents), where the first Respondent was charged with one count of Bribery contrary to Section 4 (1) (b) of the Prevention of Bribery Act, the second Respondent with two counts of Bribery contrary to Section 4 (2) (b) of the Prevention of Bribery Act, and the third Respondent with one count of Abuse of Office, contrary to Section 139 of the Crimes Act. Following the entry of pleas of not guilty by the three Respondents, the matter proceeded to a hearing. The Prosecution presented evidence from five witnesses and tendered 18 documents during its case. Subsequently, the Defence made an application under Section 178 of the Criminal Procedure Act, stating that there was no case made against the three Respondents to provide a defence. The Learned Magistrate, in her ruling dated 27 October 2020, found that there was a case to answer and proceeded to hear the Defence's case.

2. Meanwhile, the presiding Learned Magistrate was transferred pending the no case to answer ruling. The matter was listed before the Resident Magistrate, Mr. Daurewa. It was eventually transferred and listed before Resident Magistrate Mr. Savou. The three Respondents made applications for a rehearing of the Prosecution's witnesses, which the third Learned Magistrate refused in his ruling dated 8th October 2021. The matter then proceeded to the Defence's case.

3. The Learned Magistrate delivered the judgment on 12 July 2024, finding the first Respondent guilty of one count of Bribery, the second Respondent guilty of one count of Bribery, and the third Respondent guilty of one count of Abuse of Office. Additionally, the Learned Magistrate found the second Respondent not guilty of one count of Bribery. On 12 December 2024, the Magistrate sentenced each Respondent to 18 months' imprisonment, suspending the sentence for a period of two years. Moreover, he fined each Respondent $F1,000.00, with a default penalty of 100 days' imprisonment.

4. Aggrieved by the said sentence, the Appellant filed this appeal on the following three grounds:

    1. ***THAT*** *the Learned Magistrate erred in law and in fact in passing a suspended sentence for the 1st and 2nd Respondents, despite correctly*

identifying the set tariff for the offence of bribery in ***FICAC -v- Pritam Singh [2024] FJHC 71***

2. ***THAT*** *the Learned Magistrate erred in law and in fact in passing a suspended sentence for the 3rd Respondent, despite correctly identifying the set tariff for the offence of abuse of offence in* ***FICAC -v- Ana Laqere – Sentence [2017] FJHC 337***

3. ***THAT*** *the Learned Magistrate erred in law and in fact in failing to properly apply the instinctive Synthesis Approach to explain the Court's rationale for passing a suspended sentence for all the Respondents.*

5. The three Respondents also respectively filed three appeals against the conviction on the following grounds:

First Respondent's Grounds of Appeal

1. *The Honourable Magistrate fell into error by not adequately considering the Appellant intent and actions in the context of flowing apparent Police directions, as the evidence demonstrates that the Appellant acted under the guidance of law enforcement officers, honestly believing that their instructions were lawful and appropriate therefore the Honourable Magistrate erred in concluding that this actions constituted Bribery without properly assessing the Appellant's understanding and intent at the time of the alleged offence.*

2. *The Prosecution failed to prove beyond reasonable doubt, the elements of the offence of bribery. The evidence presented did not unequivocally demonstrate, that the Appellant acted with the requisite intent for the charge.*

3. *The conviction is unsafe and vexing as its sets a wrongful precedent that may deter individuals from cooperating with Police from fear of being wrongfully convicted of bribery. The Court was duty bound to consider the broader implications of the judgment on public trust in law and enforcement in the willingness of citizens to assist Police in investigations.*

4. *The delay in the Prosecution in the matter and then a refusal to grant a trial de novo, was erroneous, contrary to law and in breach of the Appellant's right for fair trial.*

5. *The Appellant also appeal against sentence as the record of a conviction in the matter was excessive and unjust.*

6. *The Appellant respectfully requests that the High Court return the conviction for Bribery, as it is not supported by the evidence and is contrary to the principles of justice.*

Second Respondent's Grounds of Appeal

a) ***THE*** *Learned Magistrate erred in law when he refused to grant the trial de novo.*

b) ***THE*** *Learned Magistrate erred in law when he proceeded to find that Appellant guilty when there was insufficient evidence.*

c) ***THE*** *Learned Magistrate erred in law when she allowed the evidence of both Complainants via Skype at Albany Police Station.*

Third Respondent's Grounds of Appeal

Ground 1:

The second Learned Magistrate erred in law to refuse the Application for trial de novo made by the Appellant pursuant to section 139 of the Criminal Procedure Act 2009 and caused a substantial miscarriage of justice to occur.

Ground 2:
That the second Learnd Magistrate erred in law and in fact by failing to exercise judicial discretion to consider declaring the rial de novo and start the trial afresh due to the First Learned Magistrate hearing all the Prosecution, in order for the Second Learned Magistrate to be able to correctly decide on the demenour and credibility of the above witnesses in the interest of justice and the fairness to the Appellant.

Ground 3:
The Second Learned Magistrate finding of guilt and conviction against the Appellant is not supported by the evidence adduced in the trial as there was no shred of evidence of an arbitrary act causing prejudice to the Fiji Police Force.

The Appellant reserves the right to add, correct, amend any ground of appeal against conviction or sentence upon the receipt of the copy records and transcript of evidence from the Sua Magistrate's Court.

6. At the hearing, both the Appellant and the Respondents agreed to first address whether the Learned Magistrate has the discretion to refuse the Respondents' demand to re-summon and re-hear the five Prosecution witnesses under Section 139 (2) of the Criminal Procedure Act. Additionally, the Counsel for the second Respondent raised another ground, stating that the judgment by the Learned Magistrate, who convicted the three Respondents based on evidence not recorded before him, materially prejudiced the Respondents. Therefore, the conviction should be set aside under Section 139 (3) of the Criminal Procedure Act.

7. Section 139 of the Criminal Procedure Act states:

i) Subject to subsections (1) and (2), whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise

jurisdiction in the case and is succeeded (whether by virtue of an order of transfer under the provisions of this Act or otherwise), by another Magistrate, the second Magistrate may act on the evidence recorded by his or her predecessor, or partly recorded by the predecessor and partly by the second Magistrate, or the second Magistrate may re-summon the witnesses and recommence the proceeding or trial.

ii) In any such trial the accused person may, when the second Magistrate commences the proceedings, demand that the witnesses or any of them be re-summoned and reheard and shall be informed of such right by the second Magistrate when he or she commences the proceedings.

iii) The High Court may, on appeal, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced and may order a new trial.

8. The gravamen of the contention of the Respondents is that the Learned Magistrate has no discretion but to re-summon and rehear the witnesses who had already testified before his predecessor, if the Accused demanded exercising his right as stipulated under Section 139 (2) of the Act.

9. It is apparent that Section 139 (2) of the Act places a mandatory obligation on the Learned Magistrate to inform the Accused of his right to demand, if he wishes, to re-summon and rehear the witnesses who have already testified before his predecessor. The failure of the Learned Magistrate to inform the Accused, especially if he is unrepresented, of the Accused's right to demand under Section 139 (2) of the Act undermines the procedural fairness of the proceedings. (*vide; Qaqanivalu v State [2023] FJHC 169; HAA14.2022 (24 March 2023*).

10. Premethilaka RJA, in his ruling in **Angira v State [2023] FJCA 107; AAU0088.2019 (14 June 2023)**, raised two significantly important issues concerning the interpretation of the scope of Section 139 (2) of the Act, where Premethilaka RJA observed:

"Thus, it is clear that an accused has an unequivocal and absolute right to be informed of his or her right to demand re-summoning of witnesses. Does the accused also have such an absolute right to have the witnesses re-summoned? There can be two answers to this question. The first is that when the accused makes such a demand, the second Magistrate has a discretion to accede to that demand or reject it, fully or partially. If the second Magistrate accedes to the accused's demand, he must re-summon the witnesses but if he rejects the demand, he can act on the evidence already recorded. Second answer is that when the accused demands that witnesses be re-summoned, the second Magistrate is always obliged or has no option but to re-summon the witnesses. There does not appear to be an authoritative pronouncement by an appellate Court on this matter. If so, this aspect needs clarity by way of a full Court decision by this Court or the Supreme Court.

11. Consequently, the Fiji Court of Appeal raises a pertinent question as to whether the Accused's right to demand the re-summoning and rehearing of witnesses is an absolute right or a qualified right.

12. Premeathilaka RJA further discussed, stating that the accused being informed of his statutory right to demand re-summoning of witnesses is not the same as the Counsel for the Prosecution and the Defence agreeing to adopt the proceedings before the successor Magistrate. His Lordship stated:

[16] It is one thing for the Counsel for both parties to agree to adopt the proceedings (which is not is dispute) but it is quite a different thing for the appellant to be informed of her statutory right to demand re-summoning of witnesses. The High Court judge had stated that 'it is apparent that the provisions of ***section 139*** *of the Criminal Procedure Act have ben complied of before, even though the journal entries do not expressly record so'. The Learned judge had then concluded that 'The accused had neither objected to the continuation of trial nor demanded a trial de novo. Accordingly, it is clear that the accused being given the due opportunity did not demand a trial de novo.'.*

These reasons are at best based on arguments and at worst speculative. However, there is no unequivocal evidence on record that the appellant had been informed of her right to demand that the witnesses or any of them be re-summoned and reheard.

[17] Therefore, what interpretation out of the two possible constructions highlighted at paragraph 13 above should be placed on ***section 139*** *of the Criminal Procedure Act is a pure question of law and whether the second Magistrates had in fact complied with* ***section 139*** *of the Criminal Procedure Act is, of course, a mixed question of law and fact but it concerns the appellant's right to a fair trial absence of which may tantamount to a remediable irregularity or a miscarriage of justice. The full Court may consider both these aspects at the hearing. Whether the proviso to section 23(1) of the Court of Appeal could come into play is another matter for the full Court to determine. Re-trial is another option for the Full Court.*

13. In this case, according to the record of the Magistrate's Court proceedings, the Learned Magistrate did not inform the three Respondents of their right to demand as per Section 139 (2) of the Act. Instead, the Learned Counsel for the Respondents made an application to re-summon the Prosecution witnesses, which the Learned Magistrate denied in his ruling dated 8th of October 2021. Considering the conclusion, I reached below, and the comments made by the Fiji Court of Appeal in **Angira v State (supra)**, it is prudent to wait until the Fiji Court of Appeal determines the correct interpretation and scope of Section 139 (2) of the Act.

14. The central argument of the Respondents under Section 139 (3) of the Act is that the official transcript of the evidence given by the Prosecution witnesses before the previous Resident Magistrate was unavailable; therefore, the judgment was delivered without the benefit of the official transcript, which materially prejudiced the Respondents. Consequently, I will now proceed to determine whether the judgment and subsequent conviction recorded against the three Respondents by the Learned Magistrate, based on the evidence of the Prosecution witnesses who testified before his predecessor, have materially prejudiced the three Respondents.

15. It is evident from the record of the Magistrate's Court proceedings that on 27 March 2024, the Learned Counsel for the second Respondent informed the Learned Magistrate that the only transcript available to the parties was the evidence of the first, second, and third Prosecution witnesses. The matter was then adjourned until 29 April 2024 so as to establish the availability of the transcript of the evidence given by the Prosecution witnesses. On 29 April 2024, the Learned Magistrate informed the parties that, after reviewing the recordings, they had found that the audio of the transcript was missing. The Learned Magistrate then directed that the parties be provided with the notes of the evidence made by the previous Learned Magistrate. The relevant minutes of the record of the Magistrate's Court proceedings are reproduced below for clarity.

27 March 2024

Prosecution:	***Mr. Pathak***	
Accused 1:	***Present***	***Mr. Matanitobua***
Accused 2:	***Not Present***	***Mr. Prakash***
Accused 3:	***Not Present***	***Mr. Yunus***
Court Clerks: Sheenal/Ilisapeci		

Accused 2: *Is a witness in Nasinu.*
Accused 3: *Is sick.*

(Presence excused)

Court Transcript

Ms. Prakash: *The only transcript that parties have is for PW1, PW2 and PW3 out of a possible 4.*

Court: *Registry to confirm the record of proceedings held before RM Prakash.*
(Revert to RM thereafter)
Mention on 29 April 2024 at 2.30 pm.
Bail extended for all.

Mr. Jeremaia Savou
Sgd: Resident Magistrate

29 April 2024

Prosecution: *Mr. Work [FICAC]*
Accused 1: *Present* *Mr. Matanitobua*
Accused 2: *Not Present* *Mr. Prasad*
Accused 3: *Not Present*
Court Clerks: *Roneel/Ilisapeci*

Court: *We have reviewed the recordings we don't have the audio of the transcript that's missing.*
We have the matter note of RM.

Parties: *We can take the minutes of the RM.*
(Secretary to type RM's notes for Prosecutions case)
28 May 2024 at 2.30 pm.
Bail extended for all.

Mr. Jeremaia Savou
Sgd: Resident Magistrate

28 May 2024

Prosecution: *Mr. Prasad*
Accused 1: *Present* *Mr. Singh*
Accused 2: *Not Present*
Accused 3: *Not Present* *Mr. Prasad*
Court Clerks: *Neelam/Luke/Ilisapeci*

Court: *The record of Prosecution's case has not been typed.*
SCO is directed to see to it that the record is typed and delivered to Prosecution and Counsel for Defendants within 28 days. (By 25th June 2024)
This is the record of RM Prakash notes during Prosecutions case.
Mention on 2nd July 2024 at 2.30 pm – closing submissions.
(Parties can present and closing arguments or in writing)
Bail extended to all Accused.

Mr. Jeremaia Savou
Sgd: Resident Magistrate

16. The Learned Counsel for the second Respondent, Ms. Prakash, submitted that the judgment of the Learned Magistrate did not include any narrative of the evidence given by the Prosecution witnesses and merely stated that he considered the summation of the Prosecution witnesses in his predecessor's no case to answer ruling dated 27th October 2020. (*vide paragraph 22 of the*

judgment). The Learned Counsel further highlighted that there is no such summation of the Prosecution's witnesses in the no case to answer ruling dated 27th October 2020.

17. Having carefully reviewed the record of the Magistrate's Court proceedings, I find that the official transcript only contains the evidence of the first, second, and third Prosecution witnesses, confirming the contention raised by Ms. Prakash in her submissions.

18. Section 132 of the Criminal Procedure Act outlines the procedure for recording evidence before Magistrates. If a device capable of contemporaneously recording the evidence and producing a written transcript is available, proceedings must be recorded in that manner. The alternative method of the Magistrate taking notes in English can only be used if such a device as described in paragraph (a) is not available. Section 132 of the Act states:

In trials before a Magistrate the proceedings, including the evidence of the witnesses, are to be recorded as follows—

a) if there is available the means by which the proceedings (including the evidence) can be contemporaneously recorded and reproduced in written form by a device which will provide a transcript of the proceedings as nearly contemporaneously as is possible, the proceedings are to be recorded in that manner;

b) if a device as described in paragraph (a) is not available

i) the evidence of each witness, or so much of it as the Magistrate considers material, is to be taken down in writing in English by the Magistrate, or in the presence and hearing and under the personal direction and superintendence of the Magistrate, and when signed by the Magistrate will form part of the record,

ii) evidence taken down by a Magistrate under subparagraph (i) is normally to be taken down not in the form of questions and answers but in the form of a narrative, except that the

Magistrate may, in his or her discretion, take down or cause to be taken down any particular question and answer.

iii) *a summary of any application or submission by or on behalf of a party to the proceedings on the law, evidence and facts must be noted by the Magistrate and included in the record.*

19. The Learned Counsel for the second Respondent drew the Court's attention to the observation made by Keith J in **Salauca v State [2025] FJSC 2; CAV0021.2023 (29 April 2025)**, where Keith J emphasized the importance of the transcript of the audio recording. Keith J said:

> *[34] There purports to be a second source of what was said at the trial. They are the trial judge's notes. They were written in hand, and are purported to have been subsequently transcribed.*[10] *I say "purported to have been" because they are very similar to the transcript of the audio-recording.* ***It is very doubtful that the judge's handwritten notes were as detailed as the transcription of them purports to be. In my opinion, the safest course to take is to put what purports to be the transcription of the judge's notes to one side, and to concentrate on the transcript of the audio-recording. (emphasis added)***
>
> *[35] The transcript of the audio-recording was prepared by a senior secretary within the Judicial Department. It was checked against the audio-recording by a senior Court officer who certified it to be "a true copy", which I take to mean that the transcript was complete and accurate. Kelepi has had the transcript for a long time. So far as I can tell, Kelepi had never said what passages in the transcript were inaccurate or where in the transcript passages had been left out, nor had he said in what way the transcript duly corrected would have revealed additional grounds of appeal.*

20. Appraising the observation made by Keith J above, the manner stipulated under Section 132 (1) (a) of the Act is the most accurate form of the written transcription of the evidence recorded. If the right of demand given to the accused under Section 139 (2) of the Act is qualified,

granting the discretion to the Learned Magistrate to allow it, such a discretion is not *carte blanche*. He must exercise that discretion judicially, so as to ensure the Accused receives a fair trial.

21. Hence, the paramount consideration when exercising such discretion is to ascertain whether the record of the evidence of the witnesses who testified before his predecessor is properly transcribed and available, before proceeding with his ruling dated 8th of October 2021, which refused the demand of the Respondents to re-summon and rehear the Prosecution witnesses. Hence, it is apparent that the Learned Magistrate failed to properly exercise his discretion, if he had such a power under Section 139(2) of the Act, before he refused the application to re-summon and rehear the witnesses who had already testified before his predecessor.

22. In his judgment, the Learned Magistrate provided a summary of the evidence, offering a narrative of the allegations against the three Respondents. (*Vide; para 16 to 21 of the Judgment)* He then stated that he had considered the Prosecution evidence summarized in the "No case to answer" ruling made by his predecessor. Paragraph 22 of the Judgment states:

> *"This Court has considered the summation of the Prosecution evidence in my predecessors no case to answer ruling dated 27th of October 2020 and this Court does not find it proper to regurgitate the same"*

23. Having carefully considered the ruling on no case to answer dated 27th October 2020, I find no such summary of the Prosecution's evidence, explaining what the Prosecution's witnesses testified in Court. (*vide, page 902 to 915 of the Copy Record Volume 2*). The Learned Magistrate then reached his conclusion at paragraph 23 of the judgment as:

> *"In considering the Prosecution evidence, this Court finds that Prosecution has proved all the elements of the offences beyond reasonable doubt for count 1, 2, and 3."*

24. The Learned Magistrate then explained why he refused the evidence of the Defence. (*vide paragraphs 27 to 38 of the Judgment*).

25. Section 142 (1) of the Criminal Procedure Act expounds on the contents that need to be included in a judgment, where it states:

> *Subject to subsection (2), every such judgment shall, except as otherwise expressly provided by this Act, be written by the Judge or Magistrate in English, and shall contain—*
>
> *a) the point or points for determination.*
> *b) the decision and the reasons for the decision; and*
> *c) shall be dated and signed by the Judge or Magistrate in open Court at the time of pronouncing it.*

26. Young J in **Wang v State [2023] FJSC 39; CAV0013.2021 (26 October 2023)** emphasized the importance of a reasoned resolution in the judgment and discussed the scope of Section 142 of the Act, where His Lordship held:

> *60. In his reasons, Ranasinghe J referred to the judgment of Grant ACJ in Pal v R 2 and cited the following passage:*
>
> > *I would take the opportunity, as the judgment of the lower Court in this case is a clear example, of drawing attention to what appears to be a trend on the part of some Magistrates to set out in a judgment a summary of the evidence of the witnesses in the order in which they were called regardless of the fact that this bears no relationship to the sequence of events which is the subject matter of the trial; and a tendency to omit reasons for the decision reached. Witnesses very often give evidence out of order, but one does not expect a Magistrate to simply restate same seriatim in his judgment. In order to arrive at a proper conclusion, the Magistrate must have considered the matter in its logical progression, and have formulated reasons for his ultimate conclusion, and the judgment should be expressed accordingly. As a*

general rule, the judgment should commence with a description of the charge, followed by the relevant events and the material evidence set out in correct sequence in narrative form, the identifying number of each pertinent witness being incorporated at the appropriate places, after which the Magistrate should state what witnesses he believes and whose evidence he accepts or rejects, and should proceed to make his findings of fact, apply the appropriate law to those facts, and give his reasoned decision; bearing in mind throughout the provisions of Section 154 (I) of the Criminal Procedure Code. If these considerations are kept in view, not only will it make the task of an appellate Court easier, it might well lead to fewer decisions being upset.

61. I see the advice offered in Pal as being as apposite today as it was when provided, nearly 50 years ago. The Magistrate's decision in this case largely followed the model deprecated by Grant ACJ in that it involved a summary of the evidence in the order it was given and a failure to analyze the case in terms of what Grant ACJ called "logical progression".

62. Also relevant is another passage from Sena (Sena v Police [2019] NZSC 59; [2022] I NZLR 575 at [38] - [40].:

[Reasons] should show an engagement with the case, identify the critical issues in the case, explain how and why those issues are resolved, and generally provide a rational and considered basis for the conclusion reached. Reasoning which consists of a conclusory credibility preference is unlikely to suffice. The language of [the New Zealand section corresponding to s 142(1)(b) of the Criminal Procedure Act] reflects an assumption that the reasons given by a judge will reflect that judge's assessment of the evidence and why that assessment resulted in a conviction. ... ***[A] reasoned judgment is essential to a fair trial. A failure to provide a reasoned resolution of a significant evidential dispute may ... suggest a misapprehension of the***

effect of the evidence, for instance a misapprehension of the significance of the dispute. (Emphasis added)

63. I accept that the result reached by the Magistrate was in a sense justified by "reasons" in the form of credibility findings, but these were in conclusory terms and did not reflect engagement with the totality of the State's case, as I have explained at [55], above. And, as I have noted, there was no "reasoned resolution" of the evidential dispute…….

27. As outlined by Young J in **Wang v State (supra)**, a reasoned judgment is a critical element of a fair trial. The Learned Magistrate, in his judgment, failed to engage with the case by identifying the disputed issues and providing reasons for how those issues are resolved. Consequently, the judgment lacks reasoned analysis, which undermines the fairness of the trial. These identified deficiencies further reinforce the Respondents' argument that the evidence recorded before the previous Magistrate was not fully available to the Learned Magistrate when he made his ruling under Section 139(2) of the Act, as well as the final judgment, which caused material prejudice to the Respondents.

28. Besides the incomplete official transcript of the evidence of the Prosecution recorded under Section 132 (1) (a) of the Act, I found a transcript made by the Appellant covering the evidence given by all the witnesses during the hearing, including the five Prosecution witnesses included in the certified copy record of the Magistrate's Court proceedings provided to this Court, which persuaded me to invite the Learned Counsel for the Appellant and the Respondents to submit further arguments on the legality of such transcript and whether it was open to the Learned Magistrate to rely on the transcript made by the Appellant in making his judgment.

29. Section 285 of the Criminal Procedure Act deals with the other means of recording proceedings, where it states:

iv) Nothing in section 283 affects the power of any Court to—

a) approve the use of any other appropriate means to record the proceedings of any trial or hearing by any Judge or Magistrate; and

b) recognize any written or recorded record of the proceedings as the official Court record of them.

ii) Any party to a criminal proceeding may apply to the Court for permission to record the proceedings at the cost of that party, but all records produced during such an approved recording must be made available at no charge to the Court and to all other parties, at the time that it becomes available to the party making such a recording.

30. As per Section 285 of the Act, two main steps must be followed to recognize a written or recorded record of the proceedings, made using any appropriate means, as the official Court record: i.e. first, the Court must approve the use of such means to record the proceedings; second, it must recognize the written or recorded record as the official Court record.

31. The permission obtained under Section 285 (2) of the Act does not automatically render the recording official unless it is approved and recognized by the Court under Section 285 (1) (a) and (b).

32. The Learned Counsel for the second and third Respondents affirmatively asserted in their submissions that no such order was made by any of the Learned Magistrates presiding over these proceedings, granting approval or recognizing the recording or the written transcript made by the Appellant under Section 285 (1) of the Act. Hence, I conclude that the transcript made by the Appellant was not an official Court record recognized by the Court under Section 285 of the Act. As a result, it was not open for the Learned Magistrate to rely on it in making his ruling refusing the application to re-summon and rehear the Prosecution witnesses, nor in making his judgment.

33. Considering the reasons outlined above, I conclude that the judgment and subsequent conviction entered against the three Respondents by the Learned Magistrate, based on the

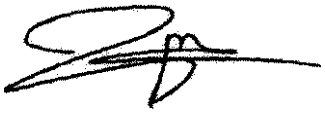
evidence of the Prosecution's witnesses whose testimonies were recorded before his predecessor Magistrate, has materially prejudiced the three Respondents.

34. Despite the fact that this matter was instituted in 2016, relating to an incident that occurred in 2015, the allegations are extremely serious in nature and attract greater public interest. Hence, I find no reason not to order a re-trial.

35. In conclusion, I make the following order:

i) The Appeal filed by the Appellant against the sentence dated 12th December 2024 is allowed,
ii) The Appeals filed by the three Respondents/Appellants in HAA against the Judgment dated 12th July 2024 are allowed.
iii) The judgment dated the 12th of July 2024 is quashed, and the subsequent sentence is set aside.
iv) A re-trial is ordered before a different Resident Magistrate.

36. Thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

02nd July 2025

Solicitors.

Fiji Independent Commission Against Corruption (FICAC) for Appellant.

Anil J. Singh Lawyers for 1st Respondent.

Messrs. Neil Shivam Lawyers for 2nd Respondent.

M.Y. Law for 3rd Respondent.