IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO: HACDA 005 OF 2025

BETWEEN	:	**STATE**
		APPELLANT
AND	:	**KALAVETI RAVU**
		TEKATA TOAISI
		RESPONDENTS

Date of Hearing	:	**23 July 2025**
Date of Judgment	:	**5 September 2025**

Counsel	:	**Ms N Tikoisuva for the State**
		Mr T Vakalalabure for the 1st Respondent
		Mr J Cakau for the 2nd Respondent

JUDGMENT

Background

[1] The respondents were charged by the Fiji Independent Commission Against Corruption (FICAC) with the following offences:

First Count

Statement of Offence

Abuse of Office: Contrary to section 139 of the Crimes Act 2009.

Particulars of Offence

That **Kalaveti Ravu**, sometime between 25 July 2023 and 31 August 2023 at Suva in the Central Division, whilst employed in the civil service as the Minister of Fisheries and Forests, in abuse of the authority of his

office, did an arbitrary act, namely interfering in the lawful process of a Ministry of Fisheries investigation into the illegal trade of banned species of beche-de-mer, which was an act prejudicial to the rights of the Ministry of Fisheries and Forests.

Second Count

Statement of Offence

Aiding and Abetting Abuse of Office: Contrary to sections 45 and 139 of the Crimes Act.

Particulars of Offence

That **Tekata Toaisi**, between 25 July 2023 and 31 August 2023 at Labasa in the Northern Division, being employed in the civil service as the Principal Fisheries Officer (Northern/Regional Manager Northern) in the Ministry of Fisheries and Forests, aided and abetted **Kalaveti Ravu** in the commission of the offence stated in Count 1.

[2] A trial was held in the Magistrates' Court before Magistrate Mr Savou on 5 February 2025 after both respondents pleaded not guilty.

[3] At the close of the prosecution's case, on 28 February 2025, the learned Magistrate acquitted both respondents following a defence application for *no case to answer.*

[4] FICAC appealed the acquittal. While the appeal was pending, counsel for the first respondent, Ms Rokoika, was appointed Acting Commissioner of FICAC. Due to this conflict of interest, the Director of Public Prosecutions (DPP), with FICAC's consent, took over the appeal.

Grounds of Appeal

[5] The DPP amended the grounds of appeal for clarity as follows:

1. The Magistrate erred in law and fact by failing to properly apply the legal test for *no case to answer* when assessing the prosecution evidence against both respondents.

2. The Magistrate erred in law and fact in ruling on admissibility of prosecution evidence on 28 February 2025, wrongly excluding exhibits MF16, MF17 and MF18, which was prejudicial to the State.

3. The Magistrate erred in law by acquitting the second respondent without proper legal analysis, following the acquittal of the first respondent.

Legislative Framework and Test for *No Case to Answer*

[6] The power of a Magistrates' Court to acquit at the close of the prosecution case is derived from section 178 of the Criminal Procedure Act (CPA), which provides:

> *If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused.*

[7] In *Sahib v The State* [2005] FJHC 95, Shameem J explained:

> In the Magistrates' Courts, both tests apply. The Magistrate must ask:
> (i) whether there is relevant and admissible evidence implicating the accused on each element of the offence; and (ii) whether, on the

prosecution case taken at its highest, a reasonable tribunal could convict.

Where the evidence is entirely discredited, the court may uphold a *no case* submission. However, where one possible view of the evidence could lead to conviction, the case should proceed to the defence.

Prosecution Case at Trial

[8] The prosecution called nine witnesses and tendered a number of documents. The disputed evidence comprised three extracts of Viber messages from the respondents' mobile phones (MF16–18).

[9] The respondents' official roles were not in dispute:

- The first respondent was Minister of Fisheries and Forests.
- The second respondent was Principal Fisheries Officer, Northern Division.

[10] The prosecution alleged that the first respondent interfered with a lawful fisheries investigation through the second respondent, who directed that seized exhibits be returned to a suspect. The incriminating evidence of this interference was contained in MF16–18.

Ruling on Admissibility of Evidence

[11] Instead of holding a *voir dire* to rule on admissibility, the Magistrate deferred the decision until the close of the prosecution case. When the prosecution attempted to put MF16–18 to witnesses, defence counsel objected, and the Magistrate upheld the objection without giving reasons. Reasons were later provided in a separate ruling on 28 February 2025, the same day the acquittal was delivered.

[12] The Magistrate excluded MF16–18 on the basis that the search warrant used to seize the phones had not been disclosed to the defence. He reasoned that

the absence of the warrant "muddies the water" as to the relevance of the extraction reports.

[13] This reasoning was legally flawed. The prosecution had led evidence that the phones were seized lawfully under warrant and voluntarily handed over by the respondents. If disclosure of the warrant was considered essential, the Magistrate could have directed the prosecution to provide it before proceeding. Instead, he wrongly excluded the evidence outright.

[14] Defence argued that under the Cybercrime Act 2021 a separate judicial warrant was required for data extraction. However, the respondents were not charged with cybercrime offences, and section 17 of that Act makes clear that computer-based evidence is admissible in any proceedings, provided it is relevant. Furthermore, even if unlawfully obtained, the Magistrate had discretion under section 14(2)(k) of the Constitution to admit the evidence in the interests of justice (*Singh v State* [2008] FJSC 52).

[15] Accordingly, MF16–18 was relevant and admissible. The Magistrate erred in law by excluding them.

Ruling on *No Case to Answer*

[16] As far is the no case to answer ruling is concerned, the Magistrate correctly set out the test for *no case to answer* but misapplied it. His analysis focused solely on whether there was evidence of an "arbitrary act." Having excluded MF16–18, he concluded there was no such evidence and therefore no case to answer for either respondent.

[17] This was a shortcut. He failed to evaluate the prosecution's entire case, and he failed to consider the elements of the offences against each accused separately.

[18] Had MF16–18 been admitted, there would have been direct or circumstantial evidence supporting each element of the charges. The Magistrate's error led to a wrongful acquittal. At this stage, credibility and weight are not relevant—the only question is whether, taken at its highest, the prosecution case could sustain a conviction.

Outcome

[19] The appeal succeeds on all three grounds.

[20] **Orders**

1. Extracts of phone messages (MF16–18) are admitted into evidence.

2. The *no case to answer* ruling and acquittals are set aside and replaced with a ruling that both respondents have a case to answer.

3. The case is remitted to Magistrate Mr Savou to proceed with the defence case without delay, after advising the respondents of their options.

4. The matter is listed for mention before Magistrate Savou at the Nasinu Magistrates' Court on 19 September 2025 at 9:30 a.m.

5. Bail for both respondents is reinstated.

HIGH COURT OF FIJI
SUVA

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Hon Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Vakalalabure Lawyers for the First Respondent

Vosarogo Lawyers for the Second Respondent