

**STATE v RATU JOPE SENILOLI and 5 Ors (HAC0028 of 2003)**

HIGH COURT — CRIMINAL JURISDICTION

5 SHAMEEM J

3–5, 6 August 2004

10 **Criminal law — offences — taking an engagement in the nature of an oath — meaning of “purporting to bind accused” — scope of defence of compulsion — Criminal Procedure Code ss 144, 293 — Penal Code ss 2(a), 16, 50, 52 — Public Order Act ss 5, 5(b), 7 — Public Safety Act.**

15 **Criminal law — sentencing — taking an engagement in the nature of an oath purporting to bind persons to acts of treason — whether Defendants guilty.**

On 19 May 2000, George Speight and his supporters held as hostage the Prime Minister and other members of the parliament. The first Defendant Ratu Jope Seniloli (D1) was offered the position of President and the other Defendants namely Ratu Rakuita Vakalalabure (D2), Ratu Rakuita Vakalalabure (D3), Isireli Leweniqila (D4), Perceli Rinakama (D5) and Viliame Savu (D6) were offered various ministerial posts in the Speight government. They all took an oath of the positions they accepted.

The Defendants were charged with the offence of taking an engagement in the nature of an oath to commit a capital offence.

25 The Defendants filed an application for a motion in arrest of judgment claiming that: the charge in the information with respect to each of the Defendants was duplicitous on the ground that s 5(b) of the Public order Act (the Act) refers to the taking of an oath or engagement but does not clearly and specifically indicate the description of the said oath under para (a) of s 5 of the Act and because of the reference “purporting to bind that person to commit an offence punishable by death” had the effect of charging the Defendants of two charges in one, the taking of the oath and treason.

30 The counsel for D1 and D2 submitted that intemperate inflammatory languages were used in the closing address of the prosecuting counsel (Mr Tedeschi) which appeared to have prejudiced the assessors. Moreover, they claimed there were references relating to matters in the closing address of Mr Tedeschi which were not included in the evidence. Thus, counsel for D2 sought a declaration for mistrial while counsel for D4 sought for a strong direction to the assessors asking them to disregard any persuasive and strong submissions made by Mr Tedeschi.

35 Shameem J directed the assessors to act as judges of facts and draw inferences from the acts done by the Defendants on 20 May 2000. The issue for them to consider was whether the defence had shown that the Defendants were probably compelled to take the oaths. D1, D2 and D3 claimed that they were not serious in taking the oath. D4 raised lack of intention, compulsion and that the ceremony was a sham. D5 submitted that the ceremony was a sham, the oath did not purport to bind him to acts of treason and raised lack of intention and compulsion as defences.

40 On 6 August 2004, the five Defendants, D1, D2, D3, D5, and D6 were all found guilty of taking an engagement in the nature of an oath purporting to bind them to commit acts of treason.

45 **Held** — (1) Section 5(a) and (b) of the Act refer to different offences. While para (b) provides “takes any such oath or engagement, not being compelled to do so”, the description of the oath or engagement is specifically indicated in full under para (a) which says “Any person who administers, or is present at, or consents to the administration of any oath or engagement in the nature of an oath purporting to bind that person who takes it to commit murder or any offence punishable by death, shall be guilty of an offence and shall be liable upon conviction”. The words “any such oath or engagement” in para (b)

refers only to an oath or engagement which is made an offence under para (a). The core of the offence under para (a) is that the oath or engagement in the nature of the oath should have purported to bind that person who takes it to commit an offence punishable by death or to commit murder. Thus, in order to charge an accused under para (b), one must refer and consider the definition of the oath under para (b). Accordingly, the submission of the defence that the prosecution should have charged the offence under para (b) and not to have referred to the description under para (a) would have resulted to give sufficient particulars to the accused cannot stand.

(2) The applications sought were refused. Based from Mr Tedeschi's closing address, the alleged offending words were different from what was alleged in the case and while the way that Mr Tedeschi delivered his closing address was strongly put, it was not intemperate. The submissions made by the Mr Tedeschi had no probability to prejudice the assessors because they have the right make submissions in a very strong way as it is their duty as counsel but the same cannot be considered as evidence and the assessors have the right to reject what the counsel have said in their submissions.

(3) Agreeing with the majority opinion of the assessors D1, D2, D3, D5 and D6 were convicted of the offence charged. D4 was found not guilty. D1 as guilty for taking an oath as an interim president in the Speight government while there was a lawful president in Fiji and considered his act as a deliberate flouting of the law and failure to support the president. The mitigating circumstances of good character, years of service to the community, apology in court, age, current position as Vice President were considered. D2's culpability was evidenced by his participation in the planning of the Speight government, choosing ministers for various portfolios and accepting the position of Home Affairs Minister. The aggravating circumstances for D2 included the fact that he was a lawyer who was expected to fight for the law but betrayed it. The level of culpability of D3 than that of D1 and D2 were lowered based on the fact that he was a lieutenant-colonel in the army who supported the Speight government. For D3 the mitigating circumstances of good character, service in the military, expressed regret and remorse, family circumstances and years of service were applied. In D5's case, his betrayal in office for being a member of the parliament and taking position in the Speight government, was an act of undermining parliament democracy and respect for the law. D6 took active part in the Speight government and his acceptance of the position offered to him. Accordingly, the Defendants were sentenced as follows: (a) Ratu Jope Seniloli was sentenced to 5 years' imprisonment; (b) Ratu Rakuita Vakalalabure was sentenced to 6 years' imprisonment; (c) Ratu Viliame Volavola was sentenced to 3 years' imprisonment; (d) Perceli Rinakama was sentenced to 3 years' imprisonment; (e) Viliame Savu was sentenced to 12 months' imprisonment.

Applications dismissed. Sentences imposed.

**Cases referred to**

*State v Ratu Timoci Silatolu* [2002] FJHC 71; *State v Viliame Savu* [2002] FJHC 73, cited.

*M. Tedeschi, G. Allan and A. Prasad* for the State

*M. Raza* for the first Accused

*A. K. Singh* for the second Accused

*S. Naqase* for the third and sixth Accused

*D. Sharma* for the fourth Accused

*A. Seru* for the fifth Accused

**Shameem J.** This is an application by the defence under s 301(1) of the Criminal Procedure Code. It is an application for a motion in arrest of judgment on the ground that the charges laid under the information do not state any offence

known in law. The crux of the submissions made by the defence are that the charge in the information in relation to each of the Accused persons is duplicitous, first on the ground that the charge under subs (b) of s 5 of the Public Order Act refers to the taking of an oath or engagement but does not specifically  
5 incorporate the wording and the description of the oath and engagement described under para (a) of s 5 of the Public Order Act.

The second submission is because of the reference to purporting to bind that person to commit an offence punishable by death, in effect the Accused persons are facing two charges in one, and that is in the context of this case the charge  
10 of taking the oath and the charge of treason. A reading of s 5(a) and (b) of the Public Order Act shows that they create different offences but para (b) only says, "takes any such oath or engagement not being compelled to do so". The description of the oath or engagement is laid out in full under para (a). Paragraph (a) read: "Any person who administers, or is present at, or consents to  
15 the administration of any oath or engagement in the nature of an oath purporting to bind that person who takes it to commit murder or any offence punishable by death, shall be guilty of an offence and shall be liable upon conviction", and so on.

The words "any such oath or engagement" in para (b) can only refer to an oath  
20 or engagement which is made an offence under para (a). The crux of the offence under para (a) is that the oath or engagement in the nature of the oath should have purported to bind that person who takes it to commit an offence punishable by death or to commit murder. For the prosecution to have laid a charge under para (b) and not to have referred to the description of the offence under para (a)  
25 would have led to a charge that failed to give sufficient particulars to the Accused persons and therefore that submission of the defence is unsuccessful. In order to lay a charge under para (b), the prosecution must refer to the definition of the oath under para (a).

The second submission is that two charges are laid in one, that is, the taking  
30 of the oath and of treason. I have already in the ruling at no case to answer stage, defined the elements of the offence in this case. I have already very carefully explained to counsel that there is no need for the prosecution to prove treason, or even an intent to commit treason.

There are many offences in the Penal Code which are offences which say that  
35 a person for instance breaks and enters into a dwelling house with intent to commit a felony and such an offence does not create a duplicitous one. In this particular case the prosecution only has to prove that the oath or engagement in the nature of the oath taken purports to bind that person to an offence punishable by death.

40 In this case I find that in fact the Accused persons are not faced with two charges in one. They are not being charged with treason in any way. They are being charged with taking an oath which purports to bind them to commit treason which is another offence altogether.

For these reasons the application made by the defence this morning is refused.  
45 It is dismissed. We are now ready for closing submissions.

#### 4 August

Counsel for the first (A1) and second Accused (A2) have made submissions  
50 about the manner of the closing address of prosecuting counsel in this case. In particular the suggestion is that, intemperate language was used, inflammatory language was used and language that was used which had the ability to prejudice

the assessors, and that there were references to matters and the closing address of prosecuting counsel which did not feature in the evidence.

Counsel for A2 asks that I declare a mistrial at this stage in respect of A2 and counsel for the fourth Accused (A4) asks for a strong direction to the assessors asking them to disregard any persuasive and strong submissions made by counsel in closing. I have considered the alleged offending words in the transcript of the evidence from Mr Tedeschi's closing address yesterday, and I have also looked at the various authorities that have been submitted to me. It appears that the offending words prosecuting counsel in those authorities are quite different from what is alleged in this case. I'm also satisfied that the way in which Mr Tedeschi delivered his closing address yesterday was certainly strongly put. It certainly put the prosecution case in a very strong way, but that it was not intemperate.

I don't think that it had the potential of prejudicing the assessors, particularly when I will as is customary to tell the assessors in my summing-up that counsel have the right to make submissions. They have the right to make submissions in a very strong way, that is their duty as counsel but it is not evidence and the assessors have every right to reject what counsel have said in their submissions. That is my customary warning and I feel that any such warning would deal with the situation. In the circumstances the applications are refused.

## 20 **5 August**

The majority opinion of the assessors is that A1, A2, the third (A3), the fifth (A5) and the sixth Accused (A6) are guilty of the offence with which they have been charged. I direct myself in accordance with my summing-up. I agree with the opinions of the assessors and I convict A1, A2, A3, A5 and A6 accordingly.

The unanimous verdict of the assessors is that A4 is not guilty of the charge. Again I direct myself in accordance with my summing-up and I acquit him.

## **6 August**

The five defendants, Ratu Jope Seniloli, Ratu Rakuita Vakalalabure, Ratu Viliame Volavola, Mr Peceli Rinakama and Mr Viliame Savu have all been found guilty of taking an engagement in the nature of an oath purporting to bind them to commit acts of treason.

The maximum penalty for this offence is life imprisonment. There have been, to my knowledge, no previous sentences passed in relation to s 5 of the Public Order Act in Fiji. Thus, there is no established tariff for the offence. As such I will pick starting points for each Accused depending, in each case, on differing levels of culpability and participation. In picking starting points in each case, I am conscious also, of the seriousness of the offence itself. The taking of an oath purporting to bind persons to acts of treason, is potentially an offence, which causes great insecurity and fear among those who witness it. When it is widely publicised, as this ceremony was, it causes widespread insecurity and fear among the people of Fiji. In this case, in respect of all the defendants, there is an element also, of betrayal, betrayal of traditional leadership and of oaths of office already taken under the law.

The oaths taken in this case, were part and parcel of a number of events in parliament after 19 May which caused great instability in the country. Many lives were destroyed and disrupted. The president eventually stepped aside from office and a resulting period of legal uncertainty caused more chaos and anguish in Fiji.

I have perused the authorities in other treason-related sentences passed, referred to me by counsel. In *State v Samu Konataci* Scott J imposed sentences of one-and-a half years, 2 years' and 3 years' imprisonment on a number of men

charged with unlawfully confining the hostages in parliament. However each had been held in remand for 13–19 months prior to sentence, an effective term of imprisonment of two-and-a-half years. Thus, Ilisoni Ligairi for instance received the equivalent of five-and-a-half years' imprisonment. Further, all accused  
5 persons pleaded guilty. In *State v Viliame Savu* [2002] FJHC 73, Gates J sentenced the accused, (the fifth defendant in this case) to 2 years' imprisonment for misprison of treason. He considered 3 years' imprisonment to be appropriate but reduced the term on the grounds of age (then 65 years) and 3 months spent in custody.

10 I have also been referred to *State v Ratu Timoci Silatolu* [2002] FJHC 71. The offences were treason and both accused were sentenced to life terms with minimum fixed terms of 9 and 7 years. However because the two defendants were convicted of actually conducting the takeover of parliament, I do not derive much assistance from that case.

15 I do note however that all persons convicted of coup-related cases have received custodial sentences, and that all the judges concerned referred to the great harm which resulted from the coup, the damage done to lives, livelihood, the economy and Fiji's reputation abroad. Clearly all judges were of the view that  
20 deterrent custodial sentences were inevitable given the enormity of the events which arose from the crisis of 2000.

Of course, not all of the events in parliament can be laid at the defendants' door. Indeed I accept that none of the defendants was part of the takeover nor was responsible for it. Further, I also accept that in times of crisis and emergency, it  
25 is not always easy to act wisely. Many people in Fiji may have regrets about the wisdom of their actions in 2000. Wisdom is easy in hindsight. I think that this is particularly so, in this case for Ratu Volavola who expressed in his interview both disquiet and disillusionment about the turn of events in parliament after 20 May 2000. However, all defendants lent their weight, the weight of their social status,  
30 their traditional status and of their official status to the coup. The sentences I pass in this case, must express the disapproval of all our communities to the acts of those who support illegal coups, who agree to form illegal governments with rebels, and who deliberately undermine and destroy the authority of the President of Fiji and of the rule of law. The sentences I pass must reflect that disapproval  
35 in the context of Fiji's history of political instability and illegal takeovers of government.

### **Ratu Jope Seniloli**

You swore an oath to serve as an interim president in the Speight government  
40 when you knew that Fiji already had a lawful president, Ratu Sir Kamisese Mara. Yours was an act of the deliberate flouting of the law, and the failure to support, the lawful president. I pick as my starting point, 6 years' imprisonment.

I have considered all the mitigating circumstances outlined by counsel, your good character, your years of service to the community, your current position as  
45 the Vice-President of Fiji, your position of traditional leadership on Bau and your many years as a school teacher. I also take into account your apology in court, your age and the delay in the laying of charges. For these factors, I give you a discount of 3 years' imprisonment.

50 However, I cannot ignore that you, as a chief of Bau, supported Speight and his illegal regime in order to give it credibility and weight. Nor can I ignore the fact that, at a time when you as a traditional leader were expected to lead your

people towards respect for the law and support for the lawful authority of Ratu Mara, you failed to display such leadership.

Your act was a betrayal of those expectations.

In these circumstances I consider that the sentence should be increased by 5 2 years to reflect these matters. I consider that a sentence of 5 years' imprisonment to be appropriate. However, in the light of your age, I reduce it further by 1 year to 4 years' imprisonment.

#### **Ratu Rakuira Vakalalabure**

10 Having heard the evidence in this case, I am left in no doubt that much of the planning for the Speight government was done by you. This is obvious from the videos shown during the trial. Further, I consider that you also had some input into the choosing of ministers for various portfolios. You yourself earlier accepted a position as home affairs minister before you swore the oath to be 15 Attorney-General. To reflect your greater culpability, I choose a starting point of 8 years' imprisonment.

In your favour is your good character, the remorse expressed on your behalf by counsel, your army record and your service to the country both as a peacekeeper and as a lawyer and a parliamentarian. I also take into account your family 20 circumstances and all I have heard about your wife and your children. I also take into account the disciplinary proceedings conducted by the law society, which resulted in a finding that you would be debarred for life. The charge was the swearing of the oath in the Speight government thereby being guilty of professional misconduct. That order has now been stayed by the Court of Appeal 25 pending appeal. Further, I accept as counsel says, that any period of incarceration is traumatic for you and that you are shocked and demoralised by the court proceedings. I also take into account the delay since 2000. To reflect these matters, I reduce your sentence by half, to 4 years' imprisonment.

However I cannot disregard the fact that as a lawyer you were expected wisely 30 to counsel those around you. As a lawyer you should have been prepared to fight for the rule of law. Instead you worked with those who destroyed it. Also aggravating your sentence is that you betrayed your oath as a parliamentarian and showed no commitment to democracy in Fiji. This country should have been able to look to our young educated leaders, particularly those with legal qualifications, 35 to lead with a vision for the future. Leadership is easy in stable and calm times. It is really put to the test in times of adversity. Your failure to lead others along the correct path after the takeover of parliament may have led the other defendants to believe that the Speight government had some legal status. I increase the term by 2 years to reflect these aggravating circumstances and 40 sentence you to 6 years' imprisonment.

#### **Ratu Viliame Volavola**

I set your level of culpability as one, which is lower than that of the first and second defendant. Although I have no hesitation in rejecting your suggestion that 45 you were forced to take the oath, I accept that you took part in the Speight government because you felt in a misguided moment, that you were helping the people of Fiji. I take as the starting point 4 years' imprisonment. I reduce that by 3 years for good character (I disregard your very old previous convictions), service in the military, the delay since 2000, your expressed regret and remorse, 50 your family circumstances and many years of service to the community. I also consider the fact that you withdrew your support from the coup when you

realised that those involved in it had unacceptable motives. This speaks well for your sense of personal Honour. However I cannot disregard the fact that you, a lieutenant-colonel in the army, lent your support to a government you knew was unlawful and did not have the support of your superior officers. Certainly you  
5 betrayed Ratu Sir Kamisese Mara and the Commander of the Military Forces. You also betrayed your constitutional oath as a parliamentarian. You failed to uphold the rule of law and democracy. After adjusting for mitigating and aggravating circumstances I arrive at a sentence of 3 years' imprisonment.

10 **Mr Peceli Rinakama**

In your case also, I choose as my starting point 4 years' imprisonment. I take into account all that has been said on your behalf, your good character, your family circumstances, the delay in the case, your career and your service to the community at Naitasiri. I also accept that you might not have taken the oath had  
15 it not been for the support of your traditional leaders, and you may have thought you had little choice in the matter.

However, you also were and are, a leader in your own right. You were a member of parliament and you betrayed your oath of office and your colleagues then held hostage, to take a position in the Speight government. You gave the  
20 Speight government strength and you undermined the efforts of the President of Fiji, to restore law and order in Fiji. Your actions undermined parliamentary democracy and respect for the law.

I consider that a sentence of 3 years' imprisonment to be appropriate, and sentence you accordingly.

25 **Mr Viliame Savu**

Having read the sentencing remarks of the trial judge in your trial on the charge of misprison of treason, I consider that you played an active role in the events in parliament. You clearly knew about the planning of the coup, and  
30 arrived at the Complex on the 20th to see how you could gain from it. You did not hesitate to accept the position offered to you, and I have no doubt that you willingly, even enthusiastically, lent your support to the illegal regime. However I accept that you had a lesser role than the others.

I also pick as my starting point 4 years' imprisonment. I take into account your  
35 family circumstances and your career. I have also considered the evidence of Mr Ilaitia Vere Tuisovivi, from the Prison Fellowship who spoke on your behalf to say that you had helped the fellowship. These matters do you credit. I note that you are due for an operation shortly but consider that arrangements can be made for this by the prisons department. However I cannot treat you as a first offender  
40 as I have the other defendants. I consider a sentence of 4 years' imprisonment to be appropriate. I note however that you have served 2 years' imprisonment for a related offence and consider that if you had been tried for both offences in one trial, you may have received concurrent sentences. However any sentence for this offence would have been longer than that for misprison of treason, because the  
45 act of taking an oath to commit treason requires active participation unlike the passive role played by any accused in relation to misprison. I therefore deduct 2 years from the 4 years I impose on you. I arrive at a sentence of 2 years' imprisonment. I deduct a further year on account of your age. You are sentenced to 12 months' imprisonment. In summary, the sentences are as follows:

- 50 Ratu Jope Seniloli — 4 years' imprisonment;  
Ratu Rakuita Vakalalabure — 6 years' imprisonment;

Ratu Viliame Volavola — 3 years' imprisonment;  
Mr. Peceli Rinakama — 3 years' imprisonment;  
Mr. Viliame Savu — 12 months' imprisonment.

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*Applications dismissed. Sentences imposed.*

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