

**IN THE MAGISTRATES COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 536 of 2013*

**STATE**

v

**ILAISA TUMURI**

Appearance : **WSGT Mere** for the Prosecution  
**Ms Singh. M** for the Accused

Ruling : **7 June 2019**

**RULING**

**NO CASE TO ANSWER**

1. Ilaisa Tumuri you stand tried for *Fail to Comply With Condition of a Fishing Licence* contrary to section 10 (2) (a) of the *Fisheries Act*.
2. The particulars of offence are that on 14 December 2012, at Vanualevu, in the Northern Division, you being a holder of a valid fishing licence, failed to comply with the condition of that particular licence by fishing within the Raviravi customary registered fishing ground.

3. The Accused pleaded not guilty to the charge on 4 January 2017. The case proceeded to trial on 12 March 2018.
4. The Prosecutor called Alifereti Tuinamata (Alifereti) as the first witness and Filipe Rokaidroka (Flipe) as the second and final witness. The Prosecutor closed her case.
5. The Counsel for the Accused made an application for no case to answer. The submission was on filed 23 March 2018.

#### **Application**

6. The Defence submitted that there is no evidence to show that the Accused failed to comply with his fishing licence conditions.

#### **Law**

7. *Section 178 of the Criminal Procedure Act* provides for application like in this case to be made.
8. *Section 10(2)(a) of the Fisheries Act, state;-*  
    "*(2) Any person who;-*  
        *(a)being the holder of a licence under this Act fails to*  
        *comply with any of the conditions of his licence."*
9. The elements of the offence are;-
  - a. *the accused,*
  - b. *is a holder of a fishing licence,*
  - c. *fails to comply with the condition of his licence.*

10. The test for no case to answer in the Magistrate Court was stated in ***Shabib v The State*** [2005] FJHC 95; HAA0022J.2005S (28 April 2005):-
- a. *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
  - b. *Whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.*
11. The burden of proof is on the Prosecution.

**Analysis and determination**

12. The Accused was identified by Filipe in court as one of the person who was illegally fishing at Raviravi Sawana fishing ground on the night of 14 December 2012.
13. Filipe said that they asked for their licence and they have their fishing licence. It was not clear from the evidence as to who is the holder of the fishing licence. He did not say that the Accused is the holder of the fishing licence that they viewed or inspect on that night.
14. Alifereti testified that he was called in for a case, to identify if the Accused holds a legal fishing licence. He said that the Accused holds a valid licence for fishing in Bucaisau. There are conditions of the licence. One of the conditions that he has to fish within Bucaisau boundary and no other place. The Accused fishing licence or copy of the licence was not tendered as evidence. These are issue of contention and documentary evidence must be tendered to prove the same to the court. He said, that according to the licence

the Accused fishing area is from Mataniwai up to the first passage reef beside the Sausau passage and end up in land at Vavalagi. He said if the Accused is fishing outside Bucaisau then he contravene his licence condition.

15. Filipe stated that the Accused was fishing outside his licence area. He said the Accused were fishing around 500 meters away from Sausau Island into the Raviravi Sawana area. He said Bucaisau and Raviravi Sawana fishing ground are next to each other they arrived at the spot where the Accused was fishing around 10.30pm and it was dark. When they arrived there, they are not sure if it is Raviravi Sawana or Bucaisau fishing ground.

16. The Accused is a holder of a fishing licence. There is no evidence that they were fishing under his fishing licence on that night on 14 December 2012. With no clear evidence on whose licence was used on that night, it creates doubt that the Accused breached his fishing licence condition. The evidence of Filipe that when they arrived at the spot where the Accused was fishing, and they are not sure if that is Bucaisau fishing ground or Raviravi Sawana fishing ground because it was dark further creates doubt if there is any breach if the licence holder is the Accused. There is no evidence on how they confirmed that the Accused were fishing 500 meters into Raviravi Sawana fishing ground. When they initially had that doubts.

17. The evidence adduced with the issue discussed in paragraph 15 and 16 above, no tribunal will convict on the evidence. I find there are insufficient evidence to require the Accused to put his evidence.

18. Pursuant to section 178 of the *Criminal Procedure Act*, I dismiss the case against the Accused and I acquit the Accused.

**28 days to appeal**



A handwritten signature in blue ink, appearing to read "C. M. Tuberi".

C. M. Tuberi  
**Resident Magistrate**