

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA -CRIMINAL DIVISION

FCCC Case No. 27 of 2019

BETWEEN : Fijian Competition and Consumer Commission
Prosecution

AND : Semiti Qalowasa **Accused No.1**
Chantelle Khan **Accused No.2**
Suliana Siwatibau **Accused No.3**
Samuela Alivereti Saumatua **Accused No.4**
Mere Krishna **Accused No.5**
Vijay Naidu **Accused No.6**
Akuila Yabaki **Accused No.7**
Kevin Barr **Accused No.8**
Cama Raimuria **Accused No.9**
Aisake Casamira **Accused No.10**

For Prosecution : Ms. S Ali

Appearances

Accused No.1 : Mr.Singh & Mr. Kumar (***Jiten Reddy Lawyers***)
Accused No.2 : Mr. G. O'driscoll
Accused No.3, 4, 5, 7 and 10 : Mr. P. Katia (***Siwatibau & Sloan***)
Accused No.6 : Mr. R. Singh (***Parshotam Lawyers***)

Date of Ruling : 8th June 2023

NO Case to Answer Ruling - Written Reasons

1. All of the accused persons are jointly charged for the following offences:
 - a. Count 1 - *Accepting Payments without being able to supply* contrary to Sections 88, 132 and 129 (1A) (3) and (4) of the ***Fijian Competition and Consumer Commission Act 2010***;

- b. Count 2 - *Misleading Conduct* contrary to Sections 88, 132 and 129 (1A) (3) and (4) of the ***Fijian Competition and Consumer Commission Act 2010***;
 - c. Count 3 - *Unconscionable Conduct* contrary to Sections 88, 132 and 129 (1A) (3) and (4) of the ***Fijian Competition and Consumer Commission Act 2010***
2. At the outset it is prudent to state that Kevin Barr is now deceased whilst charges against Cama Raimuria have been withdrawn.
 3. Prosecution offered no evidence.
 4. Upon close of Prosecution case, counsels for the accused persons made an application for No Case to Answer.

No Case to Answer

5. Section 178 of the ***Criminal Procedure Act 2009*** is the prevailing section for the purposes of a *no case to answer* application. It is set out herein as follows:

"Acquittal of accused person where no case to answer

178. 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 person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused."

6. In *State-v-Ganesh* [2009] FJHC 207; HAM030.2008 (17 September 2009) *Goundar J* had adjudged that the test for *no case to answer* in the Magistrates court had two limbs, that is:

- (i) Whether there is relevant and admissible evidence implicating the accused in respect of each element of the charged offence;

(ii) Whether the prosecution evidence has been so discredited by cross examination that no reasonable tribunal could convict.

7. *Goundar J* in *Ganesh* (supra) also adjudged that either limb of the test can be relied upon to make an application for *no case to answer* in the Magistrates Court.

8. The position undertaken by *Goundar J* in *Ganesh* (supra) had been crystalized in an earlier decision of *Shameem J*(as she then was) in *Sahib v The State* [2005] FJHC 95; HAA0022J.2005S (28 April 2005) as follows:

"So the magistrate must ask himself or herself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.

In considering the prosecution case at its highest there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission of no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case."

Discussion

9. Prosecution at this stage must show that there is relevant and admissible evidence implicating the accused persons in respect of each element of the charged offences and that the same has not been discredited to a degree that no reasonable tribunal could convict.

10. Existing case law has firmly established that the test at this stage is an *Objective* one in so far as it relates to the evidence produced by prosecution in support of the charge and in regard to its sufficiency to convict as it would appear to a reasonable tribunal in conduct of the matter.

11. As highlighted at paragraph 3 above-herein, there is no evidence at all offered by Prosecution.

12. Therefore, pursuant to Section 178 of the Criminal Procedure Act 2009, the Court rules that there is No Case To Answer on the basis that no evidence has been led on any of the elements of the offence. All of the Accused are acquitted of the charges.

13. 28 days to appeal.


JEREMAI N.L SAVOCA
Resident Magistrate


