

**IN THE MAGISTRATES' COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

*Criminal Case No. 347 of 2023*

**STATE**

**v.**

- 1. JOSAI VOREQE BAINIMARAMA**
- 2. SITIVENI TUKAITURAGA QILIHO**

**For the State:** Mr. D. Toganivalu, Acting Director of Public Prosecutions & Ms. N. Shankar for the Director of Public Prosecutions

**For the Accused:** Mr. D. Sharma & Ms. G. Fatima of R. Patel Lawyers

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**JUDGMENT**

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**A. INTRODUCTION**

- 1. Josaia Voreqe Bainimarama (the first Defendant) and Sitiveni Tukaituraga Qiliho (the second Defendant) are charged as follows:**

**Count 1**

*Statement of Offence*

**Attempted to Pervert the Course of Justice contrary to section 190 (e) of the Crimes Act 2009**

*Particulars of Offence*

**Josaia Voreqe Bainimarama** sometime between July, 2020 and September 2020 at Suva in the Central Division, attempted to pervert the course of justice by telling **Sitiveni Tukaituraga Qiliho**, the Commissioner of Police of the Republic of Fiji, to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019.

**Count 2**

*Statement of Offence*

**Abuse of Office:** contrary to section 139 of the **Crimes Act 2009**

*Particulars of Offence*

**Sitiveni Tukaituraga Qiliho** on the 15<sup>th</sup> day of July, 2020, at Suva in the Central Division, being employed in the civil service as the Commissioner of Police of the Republic of Fiji, directed the Director of the Criminal Investigations Department Serupepeli Neiko and Inspector Reshmi Dass to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, in the abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of the University of the South Pacific.

**B. THE STATE'S CASE**

2. The State and the Defence agreed to the following facts pursuant to section 135 of the **Criminal Procedure Act 2009**. These facts are deemed proved beyond reasonable doubt<sup>1</sup>:

“1. The first Accused is Josaia Voreqe Bainimarama.

2. The first Accused was the Prime Minister of the Republic of Fiji in 2014 until 2022.

3. The second Accused is Sitiveni Tukaituraga Qiliho.

4. The second Accused was appointed on 10 November 2015 as the Commissioner of Fiji Police by his Excellency the President of Fiji, Ratu Epeli Nailatikau.

5. The second Accused was suspended as the Commissioner of the Fiji Police Force on 26 January, 2023 by his Excellency the President, Ratu Wiliame Katonivere.”

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<sup>1</sup> See **Ali v. State** [2011] FJCA 28; AAU0041.2010 (1 April 2011).

3. During the course of trial, the State with the consent of the Defence tendered the Statements of 16 witnesses pursuant to section 134 of the **Criminal Procedure Act 2009**. By law, each Statement is admissible in evidence to the like extent as oral evidence to the like effect by that person.
  
4. **Prosecution Witness 1: Emi Vakacegu** is the Personal Assistant for the Prime Minister, the Hon. Mr. Sitiveni Ligamamada Rabuka. She took over that post on 23 December 2022 and she reports directly to the Prime Minister. Prior to that she was the Personal Assistant to the former Permanent Secretary for the Office of the Prime Minister, Mr. Yogesh Karan. She handles all administrative issues and correspondences for the Prime Minister. When she took over from the previous Personal Assistant, no handing over was done. When she walked into the office of the Personal Assistant on her first day, there were only empty files and one cabinet. No documents from the last year or the previous years were in the office. When she started in the role she had to start from scratch. That is the extent of her evidence per her statement to the Police. Nothing ultimately turns on this evidence.
  
5. **Prosecution Witness 2: Susan Kiran** was Secretary to Cabinet. She served in that position from 2014 under the Bainimarama led Government to, at least, the date she had written her statement - namely 18<sup>th</sup> January 2023. Her role was to oversee the Cabinet Office which provides administrative assistance to the Cabinet of the Government of Fiji. On 1 February 2023 she received a search warrant for original or certified copies of letters of appointments, contracts, and personnel files for Aiyaz Sayed Khaiyum and Josaia Voreqe Bainimarama for the period they had been members of parliament. The Police also required a police statement for the appointments of the above persons or any other relevant/necessary documents and information. She provided police officers the personnel files of Mr. Aiyaz Sayed Khaiyum and Mr. Josaia Voreqe Bainimarama. Their personnel files contained their Oath, Ministerial Assignments from 2007 to 2022 and she also provided to the Police their leave matrixes for the two periods: 2014 – 2018 and 2018 – 2022. She further stated that the Prime Minister and Ministers do not have a contract of service as their appointments are made pursuant to the provisions of section 92 and section 95 of the 2013 Constitution, and the oaths that they took before his Excellency, the President of the Republic of Fiji serves as the key document for their appointment in office.

She states that their portfolios are confirmed through the gazette of ministerial assignments and their remuneration and benefits are guided by the **Parliamentary Remuneration Act 2014**. That is the extent of her evidence per her Statement to the Police.

6. **Prosecution Witness 3: Elesi Waiwalu** was appointed to be Assistant Hansard Reporter to the Parliament of Fiji in 2014. In 2015, she was appointed to be Secretary to the Director Legislative Services and in 2016 she was appointed to be the Acting Senior Secretary to the late former Speaker of Parliament Dr. Jiko Luveni for a period of 06 months. She was then transferred to the Library Unit of Parliament and in 2021, she became Secretary to the Director Legislative Services. On 1<sup>st</sup> February 2023, the date she wrote her statement, she was the Acting Deputy Committee Clerk and in that capacity she undertook executive duties for the Secretary General to Parliament Mrs. Jeanette Emberson. On 2<sup>nd</sup> February 2023, she provided the Oath of Affirmation of Member of Parliament of Hon. Josaia Voreqe Bainimarama and Hon. Aiyaz Sayed Khaiyum which took place on the 24<sup>th</sup> of December 2022 to the Police. She also included the Gazette of the Vacancy of Parliament whereby the notice that the seat of Hon. Aiyaz Sayed Khaiyum became vacant dated 06<sup>th</sup> January 2023.
7. **Prosecution Witness 4: ASP Devika Narayan** is Manager Records and Registry at the Fiji Police Force Headquarters, a position she has held since 10 February 2022. She enlisted with the Fiji Police Force on 30 August 2004 and as at the date of her Statement, has served 19 years in the Force. The core roles and responsibilities of the position of Manager Records and Registry is enshrined under Force Standing Order Number 15 and the position holder reports directly to the Coordinator and Director Human Resource Management. The duties of the position mainly involves ensuring the safe keeping and updating of records and management of all personnel files of all police officers enlisted within the Fiji Police Force under the Regular Force and Special Constables cadre, giving action to and sorting out all incoming correspondences, ensuring the weekly production of the Force Routine Orders inclusive of the formalization of all directives and policies issued by the Commissioner of Police and other Chief Officers. The Manager Records and Registry is also responsible for ensuring the processing of subordinate reenlistment, preparation of leave allowance, updating of leave records, preparation of leave compensation for officer attrition as a result of dismissals, terminations, resignations or deaths. Her statement was

in response to an ongoing investigation against SSP Mesake Waqa Regimental Number 1940. SSP Waqa joined the Fiji Police Force on 29<sup>th</sup> May 1989. He is an active member of the Fiji Police Force and is based at CID Headquarters and, as at 06<sup>th</sup> February 2023, held the post of DCID. SSP Mesake Waqa has served in the following police stations: Basic Recruits Course at the Fiji Police Academy (1989), Central Police Station (1989), Traffic/CPS (1991), Crime OPS (1993), CP's Special Task Force (2004), CID/Major Crime (2007), Peacekeeping Duty South Sudan (2012) and promoted to Corporal in the post of Crime Officer/Suva Tourism Police Unit, promoted to Sergeant in the post of Senior Investigator/CPSCID (2005), promoted to Inspector of Police to the post of Investigator Major Fraud (2009) and transferred from CID to DCO/Eastern (2013) and promoted to Assistant Superintendent of Police in the post of Divisional Crime Officer (2015). He was transferred from DCO/East to DCO/South in 2016, promoted to Superintendent of Police in the post of DCO/South in 2017 and was promoted to Senior Superintendent of Police in the post of Director CID in 2018.

8. **Prosecution Witness 5: A/Sgt. 3618 Ilikimi N.** serves with the Economic Crime Unit in the Anti-Money Laundering & Proceeds of Crime Unit based at CID HQ, 53 Suva Street, Suva. On the date of his statement, 15 February 2023, he was attached to the CID HQ Taskforce Team which deals with cases of national interest. He recalled that on Tuesday 14<sup>th</sup> February 2023 at about 3.27pm, whilst at the Video Recording Interview room at CID HQ, former Prime Minister Mr. Josaia Voreqe Bainimarama called in voluntarily for interview. At the waiting room, he effected the arrest of Mr. Josaia Voreqe Bainimarama, informed him of the reason for his arrest and cautioned him that he was not obliged to say anything unless he wished to do so but that whatever he said could be taken down and may be given in evidence. Mr. Bainimarama understood the caution put to him and A/Sgt. 3618 Ilikimi N. left the room as Mr. Bainimarama consulted with Legal Aid representatives for legal advice.
9. **Prosecution Witness 6: Detective Inspector of Police Waisiki Baleilevuka** is based at CID Headquarters as an investigator currently attached to the Taskforce Unit. As an investigator, his role is to conduct investigations into matters that are reported through the office of the D/CID. He also assists other units and stations in conducting investigations into other major cases as directed. On 9<sup>th</sup> March 2023 at 3.15pm, he went to Lot 8, Domain

Road, Suva with A/IP Paula Kaikai, D/Sgt 4597 Wainiu Vuadreu, and DC 5156 Tomasi Dabecuva to arrest Mr. Josaia Voreqe Bainimarama. Upon arrival at his residence they were informed that he was out and they asked if he could be contacted as they needed to see him. Mr. Josaia Voreqe Bainimarama then arrived and he approached Mr. Bainimarama and informed him that they needed to take him to CID Headquarters. He then effected Mr. Bainimarama's arrest whereby he informed Mr. Bainimarama of the reason of his arrest, and of his constitutional rights. He was then escorted to CID Headquarters and when they arrived, he handed Mr. Bainimarama over to A/ASP Josua Vosataki at the Organized Crime Office for Mr. Bainimarama to be formally charged.

10. **Prosecution Witness 7: Acting Inspector Paula Kaikai** is based at CID/HQ at the Major Crime Unit. On 8<sup>th</sup> February 2023, he was part of the Task Force Team that conducted an investigation into a case of alleged Abuse of Office against Commissioner of Police Brigadier General Sitiveni Qiliho and others. At 8.56am, he informed Mr. Qiliho in the presence of his lawyer, Mr. John Rabuku, that he was effecting arrest on him. He informed Mr. Qiliho of his constitutional rights as an arrested person as stipulated in section 13 of the Constitution. Mr. Qiliho was first advised of the reason for his arrest and the offence for which he was arrested, and A/IP Kaikai advised Mr. Qiliho of the likely charge against him. This was communicated to Mr. Qiliho in the English language which he understood.
  
11. **Prosecution Witness 8: Sunia Maniala** is a police officer based at the CID/HQ Taskforce Unit. On 9<sup>th</sup> March 2023 at 3.07pm at CID/HQ, he personally arrested Mr. Sitiveni Tukaituraga Qiliho in the presence of his lawyers, namely Mr. Devanesh Sharma and Ms. Gul Fatima. Mr. Qiliho had called in voluntarily to CID/HQ after being informed via phone call. During the arrest, he touched Mr. Qiliho and informed him of the reason for his arrest. Mr. Qiliho was informed that the Police would continue his caution interview which had been suspended on 14<sup>th</sup> February 2023 in relation to the allegation of Abuse of Office, whereby he instructed the Police to stop the investigation of the University of the South Pacific case vide CID/HQ/PEP 12/7/19, and that is the reason such case was filed away. He cautioned Mr. Qiliho that he was not obliged to say anything unless he wished to do so, but what he said may be taken down in writing and given in evidence. Mr. Qiliho was given all his rights including his right to remain silent. He understood his rights and did not wish to make a complaint. He is the investigating officer of the case against Josaia Bainimarama

and Sitiveni Qiliho. He recalled that on 3<sup>rd</sup> July 2023 at around 4.00pm, he personally approached Director Narcotics Bureau: Senior Superintendent of Police Seru Neiko to find out if he had made a note of the phone conversation between he and Mr. Sitiveni Qiliho on 15<sup>th</sup> July 2020, to which SSP Neiko stated that he had not made any other note apart from the note in his police notebook. SSP Seru Neiko was asked if he had lodged a report against Mr. Sitiveni Qiliho's conduct to stop the investigation of the USP case CID/HQ/PEP 12/7/19, and SSP Seru Neiko said no. A/ASP Reshmi Dass was approached at CID/HQ in relation to records kept during the discussion of serious cases at CID/HQ which she stated that no one recorded the discussion because it was only presentations to senior officers, and there were confidential matters to be discussed. Upon enquiring with A/IP Mereisi, she provided the file which was stored and saved on her desktop titled Administration. The two PowerPoint file documents highlighting the USP case against Winston Thompson and others was prepared by her for the Economic Crime Unit presentation to Director CID. One was prepared on the 27<sup>th</sup> of October 2020 at 12.37pm, and the other presentation was prepared on the 01<sup>st</sup> of December 2020 at 10.58pm, the time and date taken from the properties of the two PowerPoint presentation documents.

12. **Prosecution Witness 9: Susana Vuniani** is the Administrative, Litigation and Registry officer at the Office of the Director of Public Prosecutions. She started work at the Office of the Director of Public Prosecutions in 2017. She oversees the smooth flow and monitoring of investigation files. This involves receiving police investigation files, receiving notices from court, entering information regarding case details into the ODPP database, and overseeing the return of investigation files to respective police stations after being advised by the Office of the Director of Public Prosecutions. Police officers approached her in relation to the movement of Police Investigation File CID/HQ/PEP 12/7/19, which was dispatched to the Office of the Director of Public Prosecutions for perusal and legal guidance. According to the Office of the Director of Public Prosecutions Registry Records, the said Police Docket CID/HQ PEP 12/7/19 was received by her office on 18<sup>th</sup> June 2020. On 23<sup>rd</sup> June 2020, the said Police Docket was returned to CID HQ for further investigations. From that time to 16 March 2023, the day of her statement, the said Police Docket was not returned to the Office of the Director of Public Prosecutions.

- 13. Prosecution Witness 10: Semal Nitlesh Kumar** is the liaison officer for Vodafone Fiji. As liaison officer he is in charge of providing call records, registration details, M-Paisa Statements, mobile data history, IMEI tracking and general requirements for search warrants. On 19<sup>th</sup> April 2023, a police officer from CID/HQ approached him at his office and wanted to clarify the results of a search warrant report that the IT department had provided to the Police on March 17, 2023. He confirmed that mobile number 9906989 was activated in 2012 and registered to Ameer Husain. Later the number expired and was terminated by Vodafone because the customer did not reactivate the number. In 2014, the number was activated as a post-pay number registered to the Fiji Police Force under Sitiveni and the said number was terminated on 30<sup>th</sup> January 2023 at the request of the Fiji Police Force. The registration of the number as a prepay number will remain as is unless the number is re-registered and re-cycled to another customer. In the case of a number that is changed from pre-pay to post pay, sometimes the previous registration details of a customer remains the same. The post pay number is not registered to a person under a company name. In respect of registered number 9906989 that was registered to Ameer Hussain in 2012. He confirmed that in 2014 the number was activated under the Fiji Police Force to Sitiveni Qiliho.
- 14. Prosecution Witness 11: Amelia Kamsoo** is a police officer based at the Fiji Police Communication Unit. She is in charge of the administration of the Communication Unit, and her role is to deal with all Vodafone issues and the allocation of police phones to police officers and to prepare phone bills on a monthly basis and forward bills to Police Accounts for settlement. Police Officers from CID/HQ approached her on 20<sup>th</sup> April 2023 and wanted to clarify the user of mobile phone number 9906989. To the best of her knowledge and understanding, the said mobile number 9906989 was used by Commissioner of Police Sitiveni Qiliho. When he was appointed to the post of Commissioner of Police in 2015, he was already in possession of phone number 9906989. He wanted to continue using that phone number so she registered that phone number with the approval of Vodafone and she then applied for a change of plan so that the number would come under the Fiji Police Force allocation. He continued to use the phone until she applied to Vodafone for its disconnection in January, 2023.



- 15. Prosecution Witness 12:** A/ASP Josua Vosaki is an investigator in the Major Crime Unit based at CID Headquarters at 53 Suva Street, Suva. On 9<sup>th</sup> March, 2023 at 5.48pm, at the OC/Major Crime Office, he formally charged Josaia Voreqe Bainimarama for one count of Abuse of Office contrary to section 139 of the **Crimes Act 2009**. He was charged in English whereby all his rights were put to him in the presence of his counsel, Mr. Devanesh Sharma. W/Sgt. 4024 Lavenia Qereqeretabua was his witnessing officer. The charge completed at 6.16pm.
- 16. Prosecution Witness 13:** A/ASP Petero Tupici joined the Fiji Police Force in 1990. He works at the CID Headquarters as an investigator in the Major Crime Unit. On 09<sup>th</sup> March 2023 at 6.21pm, he formally charged Sitiveni Tukaituraga Qiliho for the offence of Abuse of Office. The charge completed at 6.47pm. D/Sgt. 3650 Semi Volikitikoro was his witnessing officer. Mr. Qiliho was given his constitutional rights and he opted to be charged in the English language.
- 17. Prosecution Witness 14:** D/IP Suliasi Dulaki has been a police officer with the Fiji Police Force since December 05<sup>th</sup>, 2005. He is based at CID Headquarters, 53 Suva Street, Suva. He has served in the Fraud & Anti-Money Laundering Unit where he conducted investigations individually or as part of a team into fraud related offences, money laundering and proceeds of crime offences, illicit drug related offences, sedition cases, and other offences referred to him by his supervisors. For six months prior to 05<sup>th</sup> July 2023, he has been with the CID Taskforce Team based at CID Headquarters, 53 Suva Street, investigating cases referred to them by Director CID. On 08<sup>th</sup> February 2023 at 9.46am, he caution interviewed and video recorded the interview under caution of suspended Commissioner of Police Sitiveni Tukaituraga Qiliho. A/Inspector Paula Kaikai was his witnessing officer. The interview was conducted in English and Mr. Qiliho was accorded his constitutional rights. He understood the allegation put to him and also the cautionary words put to him per Judges' Rules No. 2. There was no threat, force, promise or any inducement brought to bear against Mr. Qiliho to enable him to give the answers to his interview and he voluntarily signed the discs containing the record of his Interview. On 9 March 2023 at 3.51pm, he continued Mr. Qiliho's interview. Sgt. 3618 Iliki Nacama was his witnessing officer and Mr. Devanesh Sharma was present throughout the interview.

**18. Prosecution Witness 15: Ato'ese Morgan Tuimaleali'ifano** wrote a statement dated 15 May 2020 regarding an allegation of abuse of office by University of the South Pacific Pro Chancellor Winston Thompson and former Vice Chancellor Rajesh Chandra. He was employed by the University of the South Pacific in 1977 and he has been an associate professor in history at the University of the South Pacific since 2008. He is a former President of the Association of USP Staff and on 15 May 2020 was a member of that Association. On 8 July 2019, he accompanied the General Secretary of the USP Staff Union to lodge a formal complaint at the Totogo Police Station, Suva. The complaint was entered as Serial No. 303.07/19 dated 8 July 2019. The nature of the complaint was that while holding the office of Pro Chancellor and Chair of the USP Council from 2016 to 2018, Mr. Winston Thompson aided and abetted an act of abuse of office by Professor Rajesh Chandra. He further alleged that Professor Chandra had committed two acts of abuse while holding the office of Vice Chancellor and President (VCP) of USP from 2013 to 2018. He noted that the particulars of the abuse of office was contained in a confidential paper written by current USP Vice Chancellor Professor Pal Aluwhalia titled "Issues, Concerns and Breaches of Past Management and Financial Decisions" that appeared in the public domain on 10 May and June 2019. Annexed to Prof. Tuimaleali'ifano's Statement was the confidential paper and articles by Samisoni Pareti and Peni Komaisavai published in *Island Business*. According to Prof. Tuimaleaili'ifano, the paper contained two specific allegations of Professor Chandra's deferred payments:

- (1) back-pay of 2016 – 2018 salary, and
- (2) allowances claimed for Professional Development Leave taken in September and October 2018 (3 months prior to Prof. Chandra's end of contract in Dec. 2018).

It is alleged that both deferrals had been approved by the USP Pro Chancellor and Chair of Council, Mr. Winston Thompson. Prof. Tuimaleaili'ifano expressed his view that the conduct by Mr. Winston Thompson was illegal and in violation of the University of the South Pacific's mandate to its stakeholders, namely staff and students, governing council of the 12 member countries and two development partners. He asked that Mr. Winston Thompson and former Vice Chancellor Rajesh Chandra be charged and prosecuted for breaches of Fiji's laws.

19. **Prosecution Witness 16: Ilima Jone Finiasi** wrote a statement on 15<sup>th</sup> May 2020. On 8 July 2019, in his capacity as the Secretary General of the University of the South Pacific Staff Union (USPSU), he had lodged a complaint at the Totogo Police Station and it was assigned the complaint number 303/07/19. The USPSU received an allegation of University mismanagement which was widely made available through public domain on 10 May 2019 and 17 June 2019 (Pareti and Komaisavai in *Island Business*). These allegations amongst other allegations of mismanagement by Pro Chancellor Mr. Winston Thompson involved:

1. Deferred payment of backpay of former VCP/P 2016 – 2018
2. Deferred payment of Professional Leave allowance for former VCP/P
3. Responsibility allowance for Mr. Jai Karan, the Director Strategic partnership, communications and marketing (SPAC)
4. Financial delegation breach and attempted use of 2019 VCP contingency fund.

He expressed his concerns about these allegations of serious mismanagement at the senior most level and he expressed his view that it was in the interest of the union that the allegations be pursued.

20. The State also tendered the following documents by consent.

21. **Prosecution Exhibit 1: Fiji Police Minute Sheet No. 01** which was a minute by A/SSP S. Neiko in his capacity as Director CID dated 17 June 2020 to the Director of Public Prosecutions forwarding CID HQ PEP 12/07/2019 for his perusal and legal guidance. In that minute he explained that the case was in relation to the University of the South Pacific saga whereby a complaint had been registered with Police by Ilima Jone Finiasi who made allegations against the Pro Chancellor, Mr. Winston Thompson, for mismanagement. Based on their preliminary investigations they could confirm that there were some breaches of USP's internal policies and guidelines that resulted in some major decisions causing loss to the Institution as per the BDO Investigations Report dated 21 August 2019. Given the nature and circumstances of the allegations made and the current hyped up situation at USP, he sought the DPP's legal guidance and advice to assist them in aligning their investigations to the criminal aspects of the matter only. He noted in the minute that a statement had also been provided to the Police by a former President of the Association of

USP staff and current member, Ato'ese Morgan Tuimaleali'ifano, who confirmed accompanying the General Secretary Ilima Finiasi to lodge the complaint against Mr. Winston Thompson and former Vice Chancellor and President Rajesh Chandra that between 2016 to 2018 they violated processes within USP and abused their office resulting in mismanagement of USP resources. A statement was recorded from Dulari Doras Turagabeci Trail, Director Assurance and Compliance at USP who highlighted the following allegations:

- (i) That Pro Chancellor Mr. Winston Thompson abused his authority in approving Professional Development Leave of VCP on 15<sup>th</sup> August 2018 including the period 2014 to early 2016, a period prior to the formulation of the Professional Development Policy. Among other issues, also highlighted was the payment of airline tickets and per diems amounting to \$20, 041.07 to former VCP.

Findings of the BDO Investigation Report revealed that the said amount should be refunded and that the PDL should have been taken as annual leave, hence a calculated amount of \$42, 765 together with the \$20, 041.07 should be refunded.

- (ii) That USP's former Interim Human Resources Director, Dhiraj Bhartu facilitated a cash bonus payout, amounting to \$2, 804.35 for Shobna Kiran, USP's Manager Payroll; *and*
- (iii) That USP's former Interim Human Resources Director Dhiraj Bhartu facilitated cash bonuses amounting to \$5, 417.96 to Jaindra Karan, USP's Director Development, Marketing, Communication and Alumni.

The docket also contained other relevant documents and the statements recorded by USP's internal investigation team to substantiate the claims. At that stage, they anticipated the likely offence of Abuse of Office contrary to section 139 and Conspiracy to Defraud – obtaining a gain contrary to section 327 under the Crimes Act, and he indicated that they looked forward to receiving the DPP's legal guidance.

**22. Prosecution Exhibit 2** is a letter from the then Chief of Intelligence, Investigation and Prosecutions (CIIP), Assistant Commissioner of Police (ACP) Biu Matavou. The letter is dated 25 August 2020 and it is addressed to Mr. Ilima Finiasi. The reference reads "Follow-up on progress of Police Investigation vide report No. 303/07/19". The letter reads:

*"Reference is made to the above and to your letter dated 18 August 2020 to the Acting Commissioner of Police, Mr. Rusiata Tudravu, regarding the same.*

*Be advised that the investigation file is with the Director of CID after perusal by the Director of Public Prosecution (DPP) and has advised further investigation to be done. The investigation team at the CID Headquarters are currently working on the areas that the DPP have highlighted.*

*In the process of the investigation, your office will be advised of the progress."*

A copy of the letter is received by the CID/HQ Registry on 25 August 2020 and it is sent by DCID to DDEC for her file.

23. **Prosecution Exhibit 3** is a series of Police Minutes for CID HQ PEP 12/07/19, namely Minutes No. (7), (8), (10), (11), (12), (13), (14), (15) & (16).

Minute No. (7) is written by A/ASP Rajesh Kumar, Manager Major Fraud to Deputy Director Economic Crime. The minute is dated 10<sup>th</sup> July 2020. He re-submits CID HQ PEP 12/07/19 and brings to D/DEC's attention the work that had been done in respect of State Counsel from the ODPP's request:

- (i) Personnel files for all suspects had been obtained except for Job Description of Dhiraj Bhartu. Winston Thompson did not have any Job Description by virtue of his post. Copies of the personnel file for Rajesh Chandra was attached as (D-6) and Shobna Kiran was attached as (D-38).
- (ii) Statement of Veronica Yuen (A-4) had been recorded and was attached.
- (iii) Documents were obtained and attached as (D-9), (D-19) – (D-23) and a calculation of costs was explained by (A-4).
- (iv) Statement of Ravinesh Shankar (A-6) had been obtained who confirmed that Shobna Kiran's appeal was not heard during the Staff Appeal Committee meeting. Audio recording was in the possession of Investigating Officer. Salaseini Malo (A-7) confirmed that the appeal for Jaindra Karan was not heard in the meeting.

He asked for further advice on the nature of allegation against each suspect and indicated that a copy of the BDO Report was attached as D-2 and indicated that the original of the Report was in the possession of the Investigating Officer. He also indicated that a copy of the statement of Dulari Trail (A-3) was attached and he indicated that the original was retained in the original file along with her audit report.

Minute No. (8) is written by Deputy Director Economic Crime to the Manager Major Fraud. The minute is dated 31 August 2020 and via that Minute D/DEC returned CID HQ PEP 12/07/19 for his necessary action and via that minute she attached the feedback provided by CIIP to the complainant dated 25 August 2020. She directed the investigating officer to prepare for the identified suspects Video Recording Interview.

Via Minute No. (10) dated 4 January 2022 A/SP Rajesh Kumar in his capacity as Acting Deputy Director of Economic Crime forwards CID/HQ/PEP 12/07/19 for filing as directed by CIIP during the presentation of serious cases at CID/HQ. He indicates via that Minute that the docket is properly compiled and submitted to DCID's office due to verbal instructions by COMPOL to not carry out further investigations.

In response, via responding Minute (11), DCID directs DDEC to file away and update record.

In Minute No. 12, A/DDEC writes to Manager Major Fraud indicating that the case has been filed. He directs MMF to advise the complainant and return exhibits if any, and to re-submit the file for filing with copy of the advice letter attached.

Via Minute No. 13, A/SP R. Taoka in his or her capacity as D/DEC writes to DCID submitting CID HQ PEP 12/07/19 for perusal and further directions. A summary of facts was also attached and by way of background A/SP Taoka explains that the case had been filed by former DCID SSP Mesaka Waqa on 6<sup>th</sup> January 2022, that on 10<sup>th</sup> July 2020 ASP Rajesh Kumar had indicated by minute that the queries raised by the ODPP in their letter dated 23<sup>rd</sup> June 2020 had been attended to, and that the only pending tasks was to obtain the job description of Dhiraj Bhartu and Winston Thompson, and that they had obtained confirmation from Doras Trail that neither suspects had specific job descriptions. The minute ends with the note that the suspects had yet to be brought in for Video Record Interviews for the allegation of abuse of office.

Minute No. 14 references the received stamp by the CID/HQ Registry and Minute No. 15 is a minute from Director CID dated 31<sup>st</sup> January 2023 addressed to DDEC. Via that minute, Director CID returned CID HQ PEP 12/7/19 for continuation of investigation. Director CID asked DDEC to direct the Investigating Officer to finalize all pending investigations for the case and to comply with DPP's instructions as per their letter dated 23<sup>rd</sup> June 2020. She directed DDEC to ensure that all suspects were interviewed under caution and she directed DDEC to open a separate preliminary inquiry and to appoint an investigator to investigate the reason why the case had been filed. Director CID noted that

in his Minute No. 10, A/SP Rajesh had mentioned that there had been verbal instructions by COMPOL not to carry out investigations and she indicated that that needed to be investigated and she directed DDEC to direct investigations accordingly. The minute ends with a direction to submit progress by 10<sup>th</sup> February 2023.

By Minute No. 16 dated 1<sup>st</sup> February 2023, DDEC writes to MMF returning CID HQ PEP 12/07/19 for continuation of investigations. DDEC directed MMF to finalize all pending issues in the case as highlighted in para. 2 and 3 of Director CID's minute number 15 dated 31<sup>st</sup> January 2023 and to submit progress by 09<sup>th</sup> February 2023.

24. **Prosecution Exhibit 4** is Mr. Josaia Voreqe Bainimarama's Oath for Ministers sworn at Suva on 20<sup>th</sup> November 2018. It is signed by Mr. Bainimarama before his Excellency the President of the Republic of Fiji. It reads:

"I, **Josaia Voreqe Bainimarama**, being appointed as Prime Minister, swear that I will be faithful and bear true allegiance to the Republic of Fiji and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise to hold my office with honour, dignity and integrity, to be a true and faithful counsellor, not to divulge any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability. So help me, God!"

It also contains Mr. Josaia Voreqe Bainimarama's Oath of Allegiance sworn at Suva on 20<sup>th</sup> November 2018. It is signed by Mr. Bainimarama before his Excellency the President of the Republic of Fiji. It reads:

"I, **Josaia Voreqe Bainimarama**, swear that I will be faithful and bear true allegiance to the Republic of Fiji, according to law, and I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji. So help me, God!"

By Legal Notice No. 1 signed by Mr. Josaia V. Bainimarama in his capacity as Prime Minister, the following ministerial assignment is made:

"To: Rear Admiral (Retired) Josaia Voreqe Bainimarama

Prime Minister and Minister for iTaukei Affairs, Sugar Industry and Foreign Affairs  
In exercise of the powers vested in me as the Prime Minister of the Republic of Fiji under section 92 (3) of the Constitution of the Republic of Fiji, I hereby assign to myself in my

capacity as the Prime Minister and Minister for iTaukei Affairs, Sugar Industry and Foreign Affairs, the responsibility for the conduct of the following Government businesses, divisions and written laws (subject to the provisions of any other written law) –

| <b>Business</b>  | <b>Division</b>                     |
|--|-------------------------------------|
| (a) <i>Office of the Prime Minister</i>                        | <i>Office of the Prime Minister</i> |
| Coat of Arms of Fiji   | Cabinet Office                      |
| Commission of Inquiry  |                                     |
| Constitution of the Republic of Fiji                           | Mahogany Industry Council           |
| Honours and Awards   |                                     |
| Other minority groups (e.g. Kioa Island, Melanesian Community) | Constitutional Offices Commission*  |
| People's Charter   |                                     |
| Promissory Oath  | <i>Office of the President</i>      |
| Rabi Island Affairs  |                                     |
| Rotuma and Rotuman Lands                                       |                                     |
| (b) <i>iTaukei Affairs</i>                                     | <i>Ministry of iTaukei Affairs</i>  |
| Dispute Resolution   | iTaukei Affairs Board               |
| Education and Training   | iTaukei Development Fund Board      |
| iTaukei Affairs  | iTaukei Fisheries Commission        |
| iTaukei Fishing Rights   | iTaukei Lands Appeals Tribunal      |
| iTaukei Lands  | iTaukei Lands Commission            |
|  | iTaukei Land Trust Board            |
| (c) <i>Sugar Industry</i>                                      | <i>Ministry of Sugar Industry</i>   |
| Sugar Reform   | Sugar Unit                          |
| (d) <i>Immigration</i>   | <i>Department of Immigration</i>    |
| Deportation  |                                     |
| Immigration  |                                     |
| Passports  |                                     |
| (e) <i>Foreign Affairs</i>                                     | <i>Ministry of Foreign Affairs</i>  |
| Aid and Training   |                                     |
| Development Assistance   |                                     |
| Diplomatic Relations   |                                     |
| Marine Spaces  |                                     |



Treaties and Conventions

*[Note: \* indicates the responsibilities and is subject to any provision as to independence of office]*

(f) *Responsibility for all written laws regulating the businesses of (a), (b), (c), (d) and (e) above including in particular, the following Acts and subsidiary legislation made thereunder –*

....”

Listed in the Ministerial Assignment are all the Acts and subsidiary legislation relevant to the assignment made.

25. **Prosecution Exhibit 5** is Mr. Sitiveni Tukaituraga Qiliho’s Letter of Appointment as the Commissioner of Police signed by his Excellency the President of the Republic of Fiji, Major General (ret’d) J.K Konrote. It is dated 26<sup>th</sup> February, 2021 and is received by the office of the Commissioner of Police on 2<sup>nd</sup> March 2021 and it reads:

“Pursuant to section 129 (4) of the Constitution of the Republic of Fiji, and on the advice of the Prime Minister as Chair of the Constitutional Offices Commission, following consultation with the Minister responsible for the Fiji Police Force, please note that you will continue as the Commissioner of the Fiji Police Force for a period of three (3) months or until such time a substantive appointment is made following an open merit recruitment process.”

26. **Prosecution Exhibit 6** is Mr. Sitiveni Tukaituraga Qiliho’s Contract of Employment made on the 23<sup>rd</sup> of September 2021. It is a contract between the Prime Minister of the Republic of Fiji (as Chair of the Constitutional Offices Commission) for and on behalf of the Government of the Republic of Fiji of the one part and Sitiveni Tukaituraga Qiliho of the other part and it is a contract employing Mr. Qiliho as Commissioner of Police for a period of 05 years with effect from 16 September 2021. Per that contract he is entitled, amongst other things, to an official mobile phone. It is signed by Mr. Bainimarama for and on behalf of the Government of the Republic of Fiji, and Mr. Qiliho.

27. **Prosecution Exhibit 7** is a Letter notifying Mr. Qiliho of his Suspension as Commissioner of the Fiji Police Force. It is signed by his Excellency the President of the Republic of Fiji, Ratu Wiliame M. Katonivere. It is dated 26<sup>th</sup> January 2023.

28. **Prosecution Exhibit 8** is a letter from Brig.-General S.T Qiliho in his capacity as Commissioner of Police advising the Acting Minister of Defence & National Security & Foreign Affairs that Deputy Commissioner Rusiate Tudravu would be acting as Commissioner of Police for the period 24<sup>th</sup> May 2019 to 16<sup>th</sup> June 2019 and indicating via that letter that Mr. Tudravu has been advised to ensure that the efficiency and effectiveness of the organization was maintained at all levels.
29. **Prosecution Exhibit 9** is then Colonel Sitiveni Tukaituraga Qiliho's letter of appointment as Acting Commissioner of the Fiji Police Force by his Excellency the President of Fiji, Ratu Epeli Naulikau. It is dated 10<sup>th</sup> November 2015 and it reads:
- "1. Pursuant to section 129 (4) and 163 (2) of the Constitution of the Republic of Fiji, and on the advice of the Honourable Prime Minister as Chair of the Constitutional Offices Commission and following consultation by the Honourable Prime Minister with the Minister responsible for Police, I hereby appoint you to act as the Commissioner of the Fiji Police Force with effect from 11 November 2015.
2. Your acting appointment will be for a period of 3 months or until such time when a substantive appointment is made to the position of the Commissioner of the Fiji Police Force."
30. **Prosecution Exhibit 10** is Mr. Sitiveni Tukaituraga Qiliho's Contract of Employment made on the 29<sup>th</sup> of March 2016. It is a contract between the Prime Minister of the Republic of Fiji (as Chair of the Constitutional Offices Commission) for and on behalf of the Government of the Republic of Fiji and Mr. Sitiveni Tukaituraga Qiliho as Commissioner of the Fiji Police Force and it is a contract employing Mr. Qiliho as Commissioner of Police for a period of 05 years with effect from 4 March 2016. It is signed by Mr. Bainimarama for and on behalf of the Government of the Republic of Fiji, and Mr. Qiliho.
31. **Prosecution Exhibit 11** is the Force Standing Orders. According to the Force Standing Orders:
- "1. A docket is only a means to an end, i.e. the detection and successful prosecution of the offence. The writing up of a docket will, therefore, not be regarded as a duty, which takes priority over investigation. Nevertheless, the writing up of the docket is not to be

unnecessarily delayed and in any case will be written up and completed, as far as progress in the investigation permits, within fourteen days of a complaint being made.

2. Until the investigation is completed, the progress of the enquiry will be set out step by step in the Investigating Officer's Investigating Diary and the Investigating Officer should use this diary as the basis of his/her investigation.

### **Handing Over Notes: Dockets**

3. ...

### **Movement of Dockets**

4. The movement of a docket between the Investigating Officer and other officers concerned is to be kept to the barest essential minimum. There will be no minuting of a docket within the Republic of Fiji except as provided for below: -

a) Except in committal cases when immediate advice should/might be sought, the docket should always remain with the Investigating Officer until the Divisional Crime Officer is satisfied that he/she can make no further progress in the investigation. He/she will then seek the advice of the Assistant Commissioner of Police. When a docket is away from the station, the responsible Investigating Officer will nevertheless continue with the investigating and maintain a daily investigating diary of the action taken. A docket should not be sent away for advice if such advice can be obtained per personal contact with the Divisional Crime Officer or the Assistant Commissioner of Police/Crime.

b) Originally, a docket will move thus:

i) Minor arrest cases: minuted by Investigating Officer direct to the Prosecuting Office.

ii) Senior arrest cases: minuted by Divisional Crime Officer to Director Criminal Investigations Department to Director Public Prosecution, to the Assistant Commissioner of Police/Crime to Director Criminal Investigation and to Divisional Crime Officer.

iii) No arrest cases: investigation, as far as possible, by Divisional Crime Officer and then minuted to Director Criminal Investigation Department by Station Officers except at the stations mentioned below where it will be the responsibility of the officer indicated: -

a) Suva Station Crime Branch Officer

|            |   |   |
|------------|---|---|
| b) Ba      | } | Officer in Charge Police District Nausori |
| Nadi       |   |   |
| Tavua      |   |   |
| c) Lautaka | } | Divisional Crime Branch Officer           |
| Labasa     |   |   |

5. **Submission of Dockets to Director of Public Prosecution's Office**

Dockets may not be submitted to any person or official other than with the express permission of the Director CID. This restriction does not apply to dockets concerning sudden or unnatural deaths which will be submitted to Magistrates.

6. The Director Major Investigation Department shall submit dockets to the Director of Public Prosecution's office for advice. Such dockets may be so submitted only by the Director CID and therefore shall be forwarded to him by Divisional Crime Officers/Divisional Police Commanders and not submitted by them direct to the Director of Public Prosecution's Office.

- a) Cases which the Attorney General has requested be submitted to him. (Perjury cases etc.) From the date investigation initiated. **21 days**
- b) All cases which require sanction to prosecute by Attorney-General, whether or not such sanction has been granted before the completion of the investigation initiated. **21 days**
- c) All cases in which Government servants in the course of their official duties are alleged to have committed offences. From the date firstly reported. **14 days**

**Skeleton Dockets**

7. ...

**Minuting of Dockets**

8. It will be seen that dockets in certain classes of offences must be submitted to colony level for the information of the Attorney General or to seek instructions from him. Dockets in other types of offences be submitted to Police Headquarters, for advice on legal points or clarification of procedure. Dockets in the second category will not be submitted to Director CID without prior reference to the Divisional Crime Officer (by telephone if necessary) who may be in a position to give the advice or clarification necessary and thus avoid delay in clearing the point.

9. On initial submission to Police Headquarters, for whatever reason, either before or during the course of active investigations, Divisional Crime Officers will state in their minute the precise purpose of submission. Such vague expressions as:

- a) "Submitted for directions."
- b) "Submitted for instruction."
- c) "For your information and necessary action."

will not suffice and are unacceptable without amplification. The following are examples of appropriate minutes applicable to particular circumstances:

- a) "Submitted for attorney Generals authority to proceed with Preliminary Inquiry on the facts disclose in the summary (or precis)."
- b) ....
- c) ...
- d) ...
- e) ...
- f) "Submitted for Crown Counsel to prosecute the case as the accused has been committed to the Supreme Court for trial."<sup>2</sup>

#### **Allocation of Docket Numbers**

10. All dockets will be registered and bear an appropriate serial number allocated by the Station of origin. One docket number only will be allocated irrespective of the number of offences disclosed and Crime Register number allocated.

11. Where a series of offences are committed by one person or by the same gang at the same date, time and place, investigations into these offences will be embodied in the one docket, which will record as many Crime Register numbers as there are offences committed, but only one docket number will be allocated, e.g.

...

12. ....

#### **Typing**

13. ...

#### **Summary of Facts**

14. ...

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<sup>2</sup> The Court either received an outdated version of the Force Standing Orders, or the Force Standing Orders are in need of an update.

15. ...

16. ...

### **Investigating Diaries**

17. The Investigating Diary is a record of the proceeding of the investigating officer, written up day by day until the final report on the case is submitted. Should investigations be commenced by any other officer that officer will write up a diary to show the action he has taken and hand it to the Investigating Officer for filing in the Docket.
18. The Investigating Diary will contain the Crime Register number, the time at which information respecting the commission of the offence was received by the Investigating Officer and the means by which the information reached him/her. It will record the immediate action taken by the Investigating Officer such as telephoning or otherwise conveying instructions to subordinates, requested assistance and the time he/she commenced and closed his investigations for the day. If the Investigating Officer visits the scene he/she will record the time of arrival and what exactly he/she observed at the scene, what he/she discovered, what others discovered and reported to him/her, what exhibits were handed to him/her and by whom and the time when handed over and the condition they were in; what action he took and what instructions he/she gave to others; what places he visited in the course of his investigation; what s/he discovered at those places; the persons s/he questioned and what information he/she obtained from them. The Investigating Officer will record the time and place at which every arrest is made and by whom effected, if there is a post mortem that fact will be recorded; also, the fact of the holding of a Magistrates inquiry into the death and finding. The Investigating Officer will not repeat the recorded statements of witnesses. Every page of the investigation diary will be numbered as will every entry. At the conclusion of each day's investigation the Investigating Officer will sign the last entry and rule a line horizontally under it and across the page. When the Investigating Officer mentions a particular fact, which appears in any statement or elsewhere in the docket, he/she will quote the reference, i.e. (B-4) or (D-2). The Investigating Officer will note submissions of forms, reports, memos and letters, whether or not copies of these are included, as (D) folios in the docket. The Investigating Officer will note in his/her diary efforts made to contact persons required for interrogation. Often two or three day's elapse waiting to contact a witness who is sick or absent in the ordinary course of business. An entry in the Investigating Officer's diary will explain the cause of delay.

19. In all cases of serious crime the first officer on the scene shall submit a diary which will be enclosed in the docket whether or not he/she is the Investigating Officer.

**Tagging of Dockets**

20. ...

**Rank, Number and Name of Investigating Officer**

21. ...

**Statement of Suspect**

22. If there is only one suspect, that statement should be marked (B-1) and not B. There may, perhaps, be another suspect later on and confusion would then be caused.
23. When recording the statement of a suspect you should take care not to say anything to him/her which might suggest a line for him/her to follow.
24. It is generally a mistake to let a suspect know what you have found about the case.
25. An important matter, which is often lost sight of by Investigating Officers, is the question of alibi of the suspect. If the suspect says that at the relevant time (i.e. at the time of the offence) he/she was elsewhere, find out from him/her who his/her witnesses are who can prove this. Then you must contact them straight away, about the particulars of the time. If you have found that the suspect's alibi is false, produce those witnesses in court and get them to say what they have told you.

**Folios**

26. The docket cover provides for four types of enclosure: (A), (B), (C) and (D) folios. The (D) series is for all enclosure other than statements, and Investigation Diaries. If dockets grow bulky a second cover may be used for (D) folios only. This second cover will bear the docket number and brief leading details only. It will be marked clearly "(D) FOLIO ONLY" and will include an index recording in number series all folios enclosed and indicate their nature.
27. ...

**Minutes and Minute Sheets**

28. The Station and Docket number will be shown at the top right hand corner of each minute sheet. A line will be drawn down the center of each minute sheet or alternatively, the sheet folded down the middle, so that minutes are confined neatly to one half of the page. Whenever practicable minutes will be recorded in typescript, they will be numbered serially and no blank spaces left. Paragraphs of each minute will be numbered. Each minute sheet will be numbered serially and no blank spaces left. Paragraphs of each minute will

be numbered serially, i.e. sheet No. 1, then sheet No. 2. When submitting dockets, minute sheets must be in proper sequence.

29. .... 50

### **Results of Case**

51. The results of case at paragraph 10 of the docket will not be taken too literally. This space is commonly used only to show results of prosecution but when there is no prosecution or other court proceedings it will also be used to show the final results of police action. For example, if the docket concerns a murder and suicide, the Investigating Officer will enter the Magistrate's decision, even if no enquiry has been held. If the investigation is one in which the case is closed "undetected" this fact will be shown on page 4 with a brief note explaining the reason; e.g. "stolen property unidentifiable", or similar remarks, as appropriate to the circumstances.

52....

### **Docket Movements**

53. Docket movements will be recorded in the Case Register in blue-black ink for local movements and in red when sent out of the Station area or when brought up for direction to the Office in Charge Police District at a station other than his/her Headquarters Station, Divisional Police Commander, Divisional Crime Officer, or any Police Headquarters Officer.

### **Submission and Filing of Dockets**

54. The following dockets shall be forwarded to D/CID as follows: -

a) **Within 21 days of an Accused person being charged in Court:**

- i. Cases which are within the sole jurisdiction of the Supreme <sup>3</sup>Court.
- ii. Cases which the Director of Public Prosecutions has requested to be forwarded.
- iii. Cases which require Director of Public Prosecutions' sanction to prosecute.
- iv. Cases in which police officers and Government servants are alleged to have committed offences.

b) **Within 60 days of original report:**

Cases in which police officers and Government servants are alleged to have committed offences.

55. Only the Director CID shall have authority to direct the closure and filing of docket concerning cases listed in para 54 above.

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<sup>3</sup> Now the High Court.



56. The following dockets shall be submitted within 60 days to Divisional Crime Branch Officers who shall have authority on behalf of the Divisional Police Commanders to direct closure and filing: -

57. The following dockets shall be submitted within 60 days to the officer in charge police districts (in Northern Division to the Divisional Crime Officer) who shall have authority to direct closure and filing: -

*Cases which are punishable by imprisonment not exceeding two months and/or a fine of not more than 40.*

58. In order to ensure that dockets are submitted to Divisional Crime Officers and Officer in Charge Police Districts within the stipulated time it will be necessary for these officers to maintain a "Bring Up" Register in which will be noted the dates on which such dockets are due. Should dockets not be submitted within the stipulated time, local reminder action will be taken.

59. Divisional Crime Officers and Officers will be provided with the days on which the dockets they are authorized to close must be submitted to them by a form as shown at schedule II sent to them by OC/Criminal Records Office. OC/Criminal Records Office will despatch these forms having ascertained the relevant dates from the duplicate sheets of the case Registers submitted to him.

60. Nothing in this order shall prevent the commonsense submission of any docket to higher command for advice. D/CID may call at any time for any docket to be submitted to him.

..."

32. **Prosecution Exhibit 12** are notebook entries of **Prosecution Witness 21: A/ASP Reshmi Dass**. The relevant notebook entry reads:

"WEDNESDAY 15<sup>th</sup> July, 2020

0920hrs At Economic Crime Unit CID/HQ reported in for duty. At the office compiling Lautoka PEP 41/6/18

1040hrs At the office called by D/CID – A/SSP Seru Neiko to call COMPOL

1043hrs At D/CID's office, SSP Seru rang COMPOL and I spoke to him regarding case from USP. He asked if I had brought someone from USP to record statement last 2 weeks. I advised him that I brought the witness Ravinesh Shankar on 30/6/20 and that was the last time I met with him. COMPOL

informed that one vehicle is moving around the witness house every day. He instructed me to stop the investigation against Winston Thompson & others as FICAC had closed the file as it's USP's internal process. It's from PM's office. At CID/HQ D/CID's office briefed D/CID – A/SSP Seru about the conversation with COMPOL.

1055hrs Called back to the office and advised A/MMF A/ASP Rajesh about the status of the case.

1130hrs *Seen at CID HQ R Kumar*

At the office received call from Dulari Trail she asked if we are doing surveillance on Ravinesh Shankar's house as he had raised this with VCP & HR that 3 vehicles from CID are doing surveillance on his house. I informed her that we are not doing the surveillance on his house. At the office advised A/ASP Rajesh about the conversation with Doras Trail he instructed to inform Doras to ask Ravinesh to get the particulars of their vehicles doing the surveillance. I rang to Doras and told her to ask Ravinesh to get the vehicle details. At Economic Crime Unit CID/HQ reported off duty.”

33. **Prosecution Exhibit 13** are Notebook entries from the Notebook of **Prosecution Witness 25: SSP Serupepeli Neiko**. The relevant entries read:

“WEDNESDAY 15<sup>th</sup> JULY 2020

0700 Reported in for duty at the office.

0800 Commenced with the attendance to official administrative and investigation correspondences.

1040 COMPOL called from his official number 9906989 through my official number 9905707 and asked why we still investigating the USP matter when FICAC has revealed that it was an internal administrative issue for USP to (*sic*) with it internally. COMPOL asked for the IO to be called to the office so that he could talk to her. IO – IP Reshmi Dass was called into the office and the mobile phone was on speaker mode so that the instructions from COMPOL could be heard. COMPOL asked IO about Ravinesh Shankar who is a USP staff that was brought in for questioning. The IO replied that Shankar was brought in for his statement. COMPOL directed that we are to close the USP investigations file since FICAC has revealed that it was administrative issues within USP.”

34. **Prosecution Exhibit 14 is Prosecution Witness 21: A/ASP Reshmi Dass' Investigation Diary in P.E.P No: CID/HQ PEP 12/7/19 Station ECU CID HQ. It reads:**

| <b>"Date/Time</b> | <b>Diary No.</b> | <b>Particulars</b>  |
|-------------------|------------------|---|
|                   | 1                | At Major Fraud Unit/CID HQ I was instructed by SP Loraini Seru (DDEC) to have a meeting with Doras Trail of USP in respect one case reported by them.   |
|                   | 2                | At USP board room had meeting with Doras Traill, A/IP Osea with staffs of USP regarding the allegation against the Pro Chancellor, VCP Rajesh Chandra and other staffs for abuse of office.                     |
| 18/07/2019        | 3                | A team consisting D/IP Rajesh Kumar, D/Sgt 3201 Avinesh Maharaj, W/Sgt 3840 Mereisi, D/Cpl Osea and A/Cpl 3704 Temesi executed search warrant at USP for all the original documents and uplifted the documents. |
| 13/12/2019        | 4                | At Major Fraud office started recording statement of Doras Trail and asked her to start compiling the original documents in respect of the allegation.  |
|                   | 5                | At Major Fraud office email to Doras Trail for the documents and she stated that they will compile the documents and bring it over to CID/HQ  |
| 14/02/2020        | 5                | At Major Fraud Office received the instruction from ASP Rajesh to carry out the investigation into the alleged case of Abuse of Office  |
| 15/02/2020        | 6                | At the office read through the documents in the file.   |
| 06/05/2020        | 7                | At Major Fraud office completed the statement of Doras Trail. Advised her to make arrangement of the witnesses statements   |
| 15/05/2020        | 8                | At the office received the statements of the complainant Ilima Jone Finiasi and A M Tuimaleali'fano from USP  |
| 25/05/2020        | 9                | At the office I was instructed to compile the docket for onward submission for independent legal advice to ODPP   |

|            |    |  |
|------------|----|--|
| 08/06/2020 | 10 | At the office handed over the file to SP Loraini Seru to be sent to ODPP   |
| 27/06/2020 | 11 | At the office received the file from MMF to complete the pending tasking as raised by Ms. Prasad of ODPP.  |
| 28/06/2020 | 12 | At the office rang to Ms. Doras Traill to make arrangements of the witnesses for their statements  |
| 30/06/2020 | 13 | At the office recorded statement of Veronica Yuen accountant of USP  |
|            | 14 | At the office recorded the statement of Petra Sigavata Head of Section & Secretary to council of USP   |
|            | 15 | At the office requested Sgt 3201 Avinesh to record the statement of Salaseini Malo Associate Manager Regional Campuses of USP  |
|            | 16 | At the office recorded the statement of Ravinesh Shankar Manager Talent Acquisition & Management of USP  |
| 01/07/2020 | 17 | At the office recorded statement of Maciu Raikoti Assistant Accountant of USP  |
| 02/07/2020 | 18 | At the office recorded statement of Sweetika Rajini Kumar Assistant Manager OD/L of USP  |
| 06/07/2020 | 19 | At the office handed over the file to A/ASP Rajesh (MMF) for onward submission after completion of the issues raised by ODPP.  |
| 15/07/2020 | 20 | At the office I was called by A/SSP Seru Neiko (Acting DCID) to call the COMPOL  |
|            | 21 | At DCID's office A/SSP Neiko rang and gave the phone to me. When I answered the call, he said Commissioner speaking and asked me about the USP case. He asked me if I had brought someone from USP to record statement last 2 weeks. I told him that I brought the witness Ravinesh Shankar on 30/06/20 and that was the last time I met with him. Compol informed that one vehicle is moving around his house every day. He instructed me to stop the investigation against Winston Thompson and others as FICAC has closed |

the file as its USP's internal process, its from PM's office. After the conversation I informed A/SSP Neiko about the conversation with the COMPOL. Later I informed A/ASP Rajesh Kumar (MMF) of the status of the case and what had Compol said.

22 At the office received a call from Doras Traill and she asked if we are doing surveillance on Ravinesh Shankar's house as he had raised this with VCP & HE that 3 vehicles from CID are doing surveillance on his house. Informed her that we are not doing the surveillance on his house.

16/10/2020 23 At the office received the file from admin to complete the issues raised by SP Loraini Seru (DDEC)

17/10/2020 24 At the office rang to Doral Trail to arrangement for the witnesses statement

19/10/2020 25 At the office of VCP Professor Davindra Pal Singh Ahluwhalia recorded his statement

26 At the office recorded statement of Kolinio Boila Executive Director Finance of USP

20/10/2020 27 At Lodhias Travel Services at Shop #1 Kwong Tiy Plaza, Marks Street, Suva executed search warrant for the payments done for the purchase of ticket for former VCP Rajesh Chandra, uplifted documents and recorded statement of Vinod Mistri, Director of Lodhias Travel Services.

28 At the office requested A/IP Osea Tunidau to record statement of Anita Datt cashier at USP

29 At 1<sup>st</sup> Floor Caines Janif Building, Victoria Parade, Suva recorded the statement of Fay Yee Chartered Accountant and Lay Member of Council at USP

21/10/2020 30 At USP recorded statement of Krishna Sami Raghuwaiya Senior Lecturer and Secretary General at USP

04/01/2022 31 At the office handed over the file to A/SP Rajesh Kumar (A/DDEC) upon his verbal instruction."

35. **Prosecution Exhibit 15** contains the Program of Events and Minutes of the USP Council Special Meeting of 29 & 30 August 2019. Part A contained matters for discussion which required the decision of the Council and this included confirmation of the resolutions by the Council on Matters related to the Paper titled “*Issues, Concerns and Breaches of Past Management and Financial Decisions*”, to consider matters arising from the Minutes other than those appearing elsewhere in the agenda, to consider the Report by BDO on the Investigation into Matters related to the Paper titled *Issues, Concerns & Breaches of Past Management and Financial Decisions*, to consider a Report by the Chair of the Audit & Risk Committee’s review of the Draft investigation Report at the ARC Special Meeting held on 16 August 2019 and explanation regarding the decision to restrict the circulation of the Report prior to the Council meeting; and to consider the Response by the FICAC on the Allegation in the Paper titled, “*Issues, Concerns and Breaches of Past Management and Financial Decisions.*” Part B related to the Code of Conduct for Members of Council which was for the Council’s information only.

An Extract of Page 3 of the Confidential Minutes of the 88<sup>th</sup> Meeting of the USP Council held at the Conference Room, Holiday Inn, Port Vila, Vanuatu on Thursday 16 and Friday 17 May 2019 following the completion of items in Parts A & B of the agenda formed part of the Minutes for **Prosecution Exhibit 15**. The Minutes show that after following due process and ensuring that conflicts of interest were declared and those in conflict had left the room, the Council held a Confidential Session to deliberate on and address the recent allegations that had surfaced to the media relating to “*Past Management and Financial Decisions*” which had implicated the former Vice-Chancellor & President, a number of USP senior management staff including the Pro-Chancellor & Chair of Council. The Council agreed that no minute taking would be done during that session and only the resolutions agreed to by Council would be drafted and presented to members when the Council meeting reconvened after the lunch break. The Council approved the following resolutions:

“(i) Council supports the investigation currently underway by FICAC.

(ii) Council requests an independent investigation on all matters related to the Paper on Past Management Decisions to report to the Audit & Risk Committee (ARC), Terms of Reference to be developed by ARC and circulated for approval to Council by 31 May 2019 and receipt of confirmation by Council members by Friday 7 June 2019. The ARC will secure an independent investigation organization with a report to a Special Meeting of

Council by the end of August 2019 in Nadi, Fiji. ARC will seek EOI from member states for expertise that could assist in the development of the TOR and the oversight of the investigation.

(iii) Council requests that Hon. Loau Keneti Sio, Minister for Education, Samoa and Hon. Fauoa Maani, Minister for Education, Tuvalu be asked to meet with the Pro-Chancellor and Vice-Chancellor & President to consolidate their relationship and ensure a positive environment for governance and management.

(iv) The Council requests that all communication with the media regarding this matter be cleared through the Chair of ARC and the Deputy Pro-Chancellor.

(v) The Council requests that the Chair of ARC takes the responsibility to update the University on progress.

The Resolutions were *Moved* by the Minister for Education, Government of Kiribati, *Seconded* by the Minister for Education, Government of Tonga and *Passed* unanimously by the Council.”

**Prosecution Exhibit 15** also contained the BDO Report dated 21 August 2019 regarding Investigations it had conducted at USP per its Terms of Reference. BDO Auckland had been instructed by the Audit and Risk Committee of the University of the South Pacific (“USP”) to undertake an investigation into the allegation raised in a paper tabled by Vice-Chancellor Professor Ahluwalia at a Meeting of the Council of USP on 15 and 16 May 2019 in Vanuatu. The paper was titled, “Issues, Concerns, and Breaches of Past Management and Financial Decisions.” The objectives of the BDO investigation was to independently determine the existence of possible breaches as reported in the Paper “Issues, Concerns and Breaches of Past Management and Financial Decisions.” BDO investigated each of the allegations, tested the allegations against USP Statutes/Ordinances/Policies and suggested improvements, recommendations where applicable; and they listed their sources of information for the purposes of preparing the Report at Appendix 2.

The BDO Report notes that “The University of the South Pacific has been operating within the South Pacific for just over 50 years – it celebrated its golden jubilee in 2018. Established in 1968, USP is one of only two universities of its type in the world, the other being based in the West Indies. USP was established by Royal Charter on 4 February 1970. In essence, this means that USP “...has all the powers of a natural person, including the

*power to own property in its own right. The grant of Charter creates a corporate entity, free standing, public in nature. Unlike other corporate forms it has no shareholders or owners....The grant of the Charter was not made to the Member countries and territories, the effect was rather to create a corporate body which does not exist in any particular place.*" The governments of the 12 member countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Samoa, are significant stakeholders in USP. USP has campuses in all member countries. The main campus, Laucala, is in Fiji. The Alafua Campus in Samoa is where the School of Agriculture and Food Technology is situated, and the Emalus Campus in Vanuatu is the location for the School of Law. USP is governed by its own Council, which includes representatives of the member country governments, academic staff, students and community and business leaders, the Pacific Islands Forum Secretariat, Secretariat of the Pacific Community, the American Council of Education, the Privy Council, Australia and New Zealand. The Senate is the academic authority of USP, responsible for matters such as teaching and research. The Council and the Senate are served by committees working in such areas as Finance, Human Resource Management and Academic Planning. Other committees deal with special projects and day-to-day work of USP. The ceremonial head of USP is the Chancellor. USP's Chancellors have been drawn from the leaders of USP's member governments and include Prime Ministers, Presidents and Heads of State. The Pro Chancellor is Chair of Council and the executive head of USP is the Vice-Chancellor. The Vice-Chancellor is assisted by two Deputy Vice-Chancellors and two Vice-Presidents. The Senior Management Team is responsible for the welfare of the USP community. The Executive Director of Finance is concerned with control of University finances. The Director Human Resources manages USP's human resources."

According to the BDO Executive Summary:

"In this report, we have investigated a significant number of allegations and a number of which have been able to be substantiated and some are not able to be substantiated. We have set out in Table 2 a summary of the allegations and our findings. The detail of each allegation and our investigation is set out in our report in Section 3 Investigation Outcomes.

Our current view on the evidence reviewed to date, is that while the majority of the allegations are within the VCP's ordinance, however, when analyzed critically they do not make commercial sense. We are of the view that further investigation is



required and a number of Policies and Ordinances require significant alignment and stronger oversight from the Executive Committee and Council.

We note that similar themes and control weaknesses were identified by KPMG in its capacity as USP's internal audit service provider. These HR and payroll concerns were reported in accordance with USP's standard internal audit reporting process across three main reports (each commissioned as part of the 2017 Internal Audit Plan)...The conclusions within these reports point clearly to a need for greater oversight, control and management of the HR and Payroll functions at USP. While we have not performed a detailed review of, or independently verified, KMPG's work, it appears to be comprehensive. Our outcomes and observations suggest that the recommendations raised by KPMG have only been partially implemented, or in some cases, not at all."

36. **Prosecution Exhibit 15** also contains a letter written by Reshmi Aslam, then Acting Deputy Commissioner of the Fiji Independent Commission against Corruption, to the Chairperson of Council, University of the South Pacific. It is dated 1 July 2019. The letter reads:

**"RE: FICAC INVESTIGATIONS INTO USP MATTERS**

1. We write with reference to the above subject matter.
2. Subsequent to a complaint received, FICAC commenced an investigation into various abuse of office issues alleged against several staff members of USP. These were the allegations submitted by the Vice Chancellor Professor Pal Aluwhalia (VC) to the Executive Committee of the Council and later submitted to FICAC for investigations by a senior staff member. Apparently, most of the allegations were of administrative nature such as purported non-compliances to the relevant procedures stipulated within USP.
3. Due to the large number of issues raised and voluminous documents involved, it is expected that the investigations would take several months to complete. Meanwhile, we learnt that the Council also intends to carry out an investigation by engaging an independent agency. We respect the decision of the Council to carry out the independent investigation and as such, FICAC would cease its investigation into this complaint in order to avoid any duplication of work.

4. All material retrieved during this investigation shall be kept in the safe custody of FICAC and shall be delivered to the investigators nominated upon the advice of the Council.
5. Further, FICAC had also received a complaint against VC (Professor Pal Ahluwalia) that he, during the Council meeting in Vanuatu, alluded to the fact that FICAC had leaked the investigation material especially his report to the social media. This was a serious allegation as divulging investigation material to a third party is a criminal offence within the legal frame work FICAC operates. As such, this matter was also investigated to verify the accuracy of VC's claim against FICAC.
6. During this process, FICAC officers interviewed VC and requested him to provide cogent evidence to substantiate his claim. Nevertheless, he could not provide any cogent evidence. Instead, he relied on distant hearsay as his grounds. It was appalling to find that a person of this caliber, who was able to collate some 500 pages of documentary evidence to substantiate his allegations was relying on far-off hearsay as basis for his allegation against FICAC. This conduct of VC is not only mischievous but also capable of misleading the members of the Council.
7. On the other hand, FICAC officers were able to locate 2 separate copies of this document from the Assurance and Compliance section and the HR office respectively. The copy with the HR had uncanny resemblance to the document that appeared on Social Media. As such, it is doubtful whether these documents were kept in a confidential manner within USP or not. The copies of the relevant search lists are annexed for the ease of reference.
8. We wish to reiterate, as per the inquiry findings, that there is no basis to allege that FICAC had leaked this document to any third party. When FICAC officers visited the USP for the purpose of this investigation and also for other matters that had nothing to do with this investigation, VC had made it a point to meet with the officers personally indicating his keen interest in having FICAC investigations into these matters
9. , but unfortunately, he failed to verify the same with FICAC before he made the baseless allegation.
10. We bring these matters to the kind attention of the Council. Should the Council require any further clarification or assistance, please contact the undersigned."

**Prosecution Exhibit 15** also contains a copy of a FICAC Search List in respect of FEP 111/19 and it contains the USP Council – Code of Conduct. The Preamble to the USP Council Code of Conduct reads:

“Members of Council are subject to a range of legal duties, which they take on when they assume office. Most of these duties have a moral and ethical content as well in the sense that they seek to ensure that Council functions according to the highest standards of good governance, and in the interests both of all stakeholders in the University and the external communities which it serves.

As the primary governing organ of the University the Council and its members, collectively and individually, must perform their functions, not only effectively and efficiently, according to high standards of moral and ethical conduct. As such a governing organ the Council must provide an excellent model of corporate behavior for the University and the wider communities.

Whether viewed from a legal or an ethical perspective the duties of members of Council are generally of two kinds. The first are duties of competence, diligence and/or prudence, especially in, but not confined to, the area of decision making. There are expectations that members will take an active and informed role in the governance of the University through the medium of the Council. There are also expectations that members, whilst not experts in any particular field of management, will perform their duties and functions in a manner that will conform to reasonable standards of competence.

Being a fiduciary requires a concentration on the interests of the University rather than the personal interests of the member or of third parties who are alien to or remote from those interests. Those who are appointed to Council enter a fiduciary relationship with the University as a legal entity at the time of their appointment. The relationship is a multi-faceted one in respect of the kinds of duties which it imposes on a member of Council. It requires honesty in the performance of a Council-related tasks. It requires that the confidentiality of information of the institution be protected and not misused for purposes foreign to, or possibly in competition with, those of the University. It insists that powers be exercised for the proper purpose for which they were given and that the limits of those powers not be exceeded or otherwise abused.

A person who becomes a member of Council is put in a position of power and authority. Such a position creates an expectation of competence in performance and the exercise of a high degree of good faith and trust. It requires both responsibility and accountability in

ethical and in legal terms in order to ensure that the power and authority is exercised for those who are the proper beneficiaries of it: in this case the University as a whole, its particular stakeholders as well as the communities which are served by them...”

37. **Prosecution Exhibit 16** is the Minutes of the Special Meeting of the USP Council held at the Video Conference Room 1, Japan-Pacific ICT Center, Laucala Campus, Suva, Fiji from 10.00am to 4.00pm, Friday 4 September 2020. Mr. Winston Thompson, Pro Chancellor & Chair of Council, Ms. Aloma Johansson, Deputy Pro-Chancellor & Deputy Chair of Council [also Chair of Finance & Investments Committee and Co-Opted Member], Professor Pal Ahluwalia, Vice-Chancellor & President, and Mr. Mahmood Khan, Chair of the Audit & Risk Committee (ARC) [also Fiji Government Representative] were recused from the meeting. Professor Sushil Kumar declared his conflict of interest and was recused during discussions in respect of Item 2.1: the Report from the Special Executive Committee. The Council resolved to approve the Motion agreed by the Council body, namely, “that based on the detailed and painstaking work undertaken by the Special Executive Committee, that found as at 24 August 2020, there had been no Allegations where the consensus or clear majority view were deemed material, that the proceedings initiated against the VCP is terminated”. The Secretariat was to communicate the Council’s decision to the VCP, the University body and the Media Outlets in the same text.
38. **Prosecution Exhibit 17** is the Minutes of the Meeting of the Executive Committee (1/19) held on Wednesday 6 March 2019, from 10.00am – 4.00pm in the New Administration Conference Room, Laucala Campus, Suva *via video conference with Melbourne*. Amongst other things, “the Committee received a report from the Director Assurance and Compliance on the Whistleblowing Policy which has now become operational since its approval by Council in October 2017. To date 5 cases have been reported, one was sent to the Pro-Chancellor via the PS Education Fiji and the other 4 to the Assurance and Compliance Unit. The Committee was also asked to approve changes to the Whistleblowing Policy which will further protect whistle blowers and the independent role of the Assurance and Compliance Unit. The Committee considered the issues raised and made suggestions for improvement as follows:
- That the changes to the Whistleblowing Policy be in track changes for ease of reference to what was being requested.

- That dates be provided to the Summary Report of Whistleblowing & Report Fraud Cases so that the length of time it takes to revolve matters can be determined.
- Any issues to do with stealing money should be immediately reported to the police.
- In terms of additional resources required, Internal auditors, KPMG, would provide the backup services needed by the DAC office.
- Disciplinary action should be taken against staff members who blocked provision of information for any case.
- That the responsibility for escalating reports be moved from the Council Secretariat to the Pro-Chancellor and the Chair ARC.

The Committee was informed that a proper Risk Register will be established which will have scores attached and owners made aware of their responsibility to manage their respective risks. The VCP also clarified that while the Director ARC is a direct report, he regarded the unit as an independent office.

The Committee resolved

- (i) to note the report from the Director Assurance and Compliance on the Whistleblowing Policy; and
- (ii) that the changes to the Whistleblowing Policy be brought back to the Committee in track changes for clarity on what is being requested for amendment.”

In addition, the Committee discussed Past Management Decisions (ECI/19/6.3). The paper had been circulated before close of business on Friday 1 March 2019. According to the Minutes,

“Members were not happy that such a lengthy paper was circulated so late resulting in their not being able to give it the proper scrutiny that EC papers deserved. The Chair advised the Committee that the paper sets out many aspects of the administration of the former VCP. It was unfair to expect the committee to deliberate on a set of issues which have direct implications on another individual. The paper represented one side of the picture and it was important in terms of natural justice to also let former VCP see the allegations and present his response before the Committee can deliberate on the paper. It was agreed that the internal auditors should be called also to advise on the process to follow given that some of the allegations appeared to be serious. The Committee was asked to note that the paper was the outcome of 4 months of whistle blowing reports

received from staff as well as strict financial measures instituted from 1 January this year. It did not bear any malice and was to ensure that that type of activity did not occur again. The Committee resolved that the paper remain strictly confidential and be handed back to the VCP and Director Assurance and Compliance for safe keeping. The DAC would draft a statement to be circulated to EC members clarifying that the document was for the Committee only and that the internal audit unit would carry out the due diligence required before coming back to the Committee for its deliberations.” Mr. Winston Thompson as Pro-Chancellor of the University was Chair, and Professor Pal Ahluwalia was present in his capacity as Vice-Chancellor and President of the University. It had been Professor Pal Ahluwalia’s first meeting of the Committee.

39. **Prosecution Exhibit 18** is the Minutes of the Special Meeting of the USP Council held at the Video Conference Room 1, Japan-Pacific ICT Center, Laucala Campus, Suva, Fiji from 10.00am to 4.00pm, Friday 19 June 2020. Mr. Winston was present as Pro-Chancellor and Chair of Council, Ms. Aloma Johansson was present as Deputy Pro-Chancellor and Deputy Chair of Council, and Professor Derrick Armstrong was present as Acting Vice-Chancellor and President of the University. Also present was Mr. Mahmood Khan, one of five members appointed by the Government of Fiji and Chair of the ARC. The Council “considered the Agenda presented before them and agreed on the following:

- That item 1 to 4 would not be discussed in this Meeting on the basis that members had read and considered the reports. Thus, matters under 1 to 4 be taken as read and discussions to start under Item 5: “*To determine whether the decision of the Executive Committee to suspend the Vice-Chancellor and President was made in bad faith and should be overturned.*”
- That an additional item be included as Item 6: “*A Motion for the Pro-Chancellor & Chair of Council to Step Down during the Process of the Vice-Chancellor & President being Independently Investigated.*”

During the meeting, a “motion presented earlier by the Government of Samoa was raised...and seconded by the Government of Tokelau as read: “*That the Pro-Chancellor be recused from Chairing this Meeting and that the President of Nauru takes on the role of Chair. Further that, the Deputy Pro-Chancellor and the Chair of the Audit & Risk Committee also be recused from this meeting.*” A vote was taken on the Motion and the

“outcome of the vote resulted with 22 members who voted for the PC, DPC and Chair ARC to be recused, 7 members voted against this and 2 members abstained from voting. Following the vote the PC, DPC and Chair ARC recused themselves and vacated the meeting room. H.E the President of Nauru thereafter assumed the role as Interim Chair for the rest of the meeting.” During its discussion, the “Council was reminded that suspending a Vice-Chancellor is not a practice in most Universities. In terms of accepted good governance practices, a good governance process includes the opportunity to investigate before determining the extent of materiality. The list of allegations presented in the Papers before the Council are not of a serious nature that would merit immediate suspension of a VCP. Moreso, the suspension of the VCP is not a matter to be taken lightly and preceding discussions had highlighted that due process was not followed. The VCP was appointed by the Council as the academic leader of the University and thus the Council should offer him fair treatment on the matter as hand. This does not mean that the Council ignores the charges that are put forward under the Allegations but that the Council as the governing body, deals with them in line with the processes outlined under the University’s governing instruments....The relationship between the PC and VCP was also raised for discussion. The Council was reminded that this impasse was lengthily discussed and efforts to resolve this had started since the 88<sup>th</sup> Meeting of the USP Council and then the Special Council Meeting of August 2019; however, the relationship has not improved since. While acknowledging that this is a problem that has led to the present issues that Council has to deal with, it is not a matter than can be easily resolved at this Meeting. The Council therefore agreed to defer discussions regarding the impasse between the PC and the VCP and focus mainly on the following:

1. Revisit the decision of the Special EC meeting of 8 June 2020 and reverse the suspension of the VCP.
2. Agree on the way forward to address the Allegations levelled against the VCP but adhering to the University’s governance processes.

It was noted that there should be caution when using the words “bad faith” when referring to the EC decision of 8 June 2020. It must be recognized that the EC’s membership is comprised of respected Government Ministers from five (5) of the USP member countries and other members appointed to EC by Council based on their caliber, expertise and values. The EC members have the best interests of the University at heart. For Council to say that the decision was done in bad faith would impinge on the members’ integrity as office

bearers and question Council's initial decision to appoint them to represent Council on the EC. This is an area that the Council has to address carefully when deciding on the resolutions for this Meeting. The Council therefore agreed that the immediate way forward is to 'set aside' the decision of the Executive Committee Meeting of 8 June 2020 and reinstate the Vice Chancellor & President Professor Pal Ahluwalia. The Allegations levelled against the VCP will be addressed following the right procedures as outlined under the *University Statutes* and the *Ordinances for the Discipline of the Vice-Chancellor*."

40. **Prosecution Exhibit 19** is a paper from the Director Assurance & Compliance titled "Update on the implementation of the Whistleblowing policy 1.6.1.26" to the Council Executive Committee drafted and compiled by Ms. Miriama Michael, Senior Internal Auditor and reviewed and endorsed by Mrs. Dulari Doras Traill, Director Assurance & Compliance on 27 February 2019. The paper presented to the Executive Committee (EC) an update on the implementation of the current whistleblowing policy and procedure, proposed changes to the current whistleblowing policy 1.6.1.26, challenges faced by the Assurance and Compliance Team, and a summary of Whistleblowing and Reported Fraud Cases.
41. **Prosecution Exhibit 20** is the Minutes for the Special Meeting of the USP Council held at the Convention Center, Tanoa International Hotel from 9.00am to 6.00pm on Thursday 29 and Friday 30 August 2019 in Nadi, Fiji. During the meeting, the Resolutions by the 88<sup>th</sup> Council on Matters related to the Paper titled "*Issues, Concerns and Breaches of Past Management and Financial Decisions*" and the extract of page 3 of the Confidential Minutes of the 88<sup>th</sup> Council were confirmed. The Chair then invited the BDO Auckland Team to present its investigation report and respond to questions put forward by the Council. The Council noted the Letter by the Fiji Independent Commission against Corruption (FICAC) on the Allegations in the Paper titled, "*Issues, Concerns and Breaches of Past Management and Financial Decisions*". The Council made resolutions concerning the matters under discussion and the Council noted the Code of Conduct for Members of Council.
42. **Prosecution Exhibit 21** is the Minutes of the Meeting of the Executive Committee (2/19) held on Wednesday 17 April 2019 from 10.00am in the New Administration Conference



Room, Laucala Campus, Suva. Amongst other things, the Executive Committee discussed EC2/19/6 and the following is noted from the Minutes:

**“7. PAST MANAGEMENT DECISIONS (EC2/19/6)**

The Committee noted that in the last EC meeting, the Paper on Past Management Decisions was late in circulation and members were not happy to receive such a lengthy paper so late and not have proper time to give it the proper scrutiny that EC papers deserved.

The Committee had then resolved that the Paper remain strictly confidential and be handed back to the VCP and the Director Assurance & Compliance (DAC) for safekeeping. The DAC was requested to draft a statement to be circulated to EC members clarifying that the document was for the Committee only and that the internal audit unit would carry out due diligence required before coming back to the Committee for its deliberation.

The Chair stated that it was an incomplete report since the former VCP who was mainly involved in those issues did not have any input so the decision was that the DAC was to get a fuller story that should get the views of the former VCP and others mentioned in the document. The former VCP has informed the Chair that he has never been contacted so an explanation was expected by the DAC.

***Discussions***

- The DAC informed the Committee that in terms of the investigations the DAC's responsibility was to make sure that the Assurance & Compliance office collected all relevant statements and evidences before talking to the main person of interest which in this case is the former VCP. This is the standard and formal process of investigation undertaken in any civil setting or law enforcement setting.
- The DAC had decided that morning to hand over to FICAC 9 cases and was instructed by FICAC not to disclose the cases that were reported as FICAC did not want any information being taken out that can impair their ability to further investigate the cases.
- The Committee was advised that there could be implications on funding by the Government of New Zealand and the Government of Australia and USP.

- The Committee was advised that FICAC will be visiting the University this week to collect all the information pertaining to the investigation reports that the DAC had delivered to FICAC.
- The Committee was cautioned not to be drawn into controversy and not be seen talking and sharing information to outside parties, given that all are members of this committee and are privy to what is going on.
- The Committee resolved:
  - (i) to note the verbal update from the Director Assurance & Compliance regarding the Allegations on Past Management and Financial Decisions.
  - (ii) that if anyone is asked about these matters, they will respond saying that, “not able to comment at this time”.”

43. **Prosecution Exhibit 22** is the 1 July 2019 letter written by Reshmi Aslam in his capacity as Deputy Director of the Fiji Independent Commission against Corruption which was annexed to **Prosecution Exhibit 15** and which was noted by Council in the Minutes that constitute **Prosecution Exhibit 20**.

44. **Prosecution Exhibits 23, 24, 25, 26, 27, and 28** are FICAC search lists for File No. 111/19.

45. **Prosecution Exhibit 29** is a Transcript of Extracted Audio Recording from 17<sup>th</sup> September 2020 at 11.28.00am. It reads:

|                     |  |
|---------------------|--|
| Mr. Rusiate Tudravu | Sir, we...can we discuss later on this some of the investigation that are currently pending. Just wanted have clarification on the our stand that USP thing, it's...we discuss it later or tou sa veitalanoa ga. |
| Mr. Bainimarama     | Oh I suggested earlier to TUKS to stay away from that investigation.   |
| Mr. Rusiate Tudravu | The issue here now is...because they are saying that the audit is already been done now then the   |

|  |  |
|--|--|
|  | <p>complainant is asking what we are doing because they know that the DPP has already directed us ah to if we can just interview those ah....that is our stand and then I came to talk with DPP...well DPP told me that's operational matter you need to do it because you will be answerable to that. I have had advised them the guidance that it was given and that his stand to me so I just want a clarification on...because we are holding everything up and they are pushing. They want feedback on...we are holding all the investigations.</p> |
|--|--|

The full transcript was not tendered into evidence. The learned Acting Director of Public Prosecutions sought to tender only this portion into evidence at trial and there being no objection by learned counsels for the Defendants, this was the portion of the audio transcript from that day and that meeting that was tendered into evidence at trial as part of the State's case.

46. **Prosecution Witness 17: Dulari Doras Turagabeci Traill** was the first prosecution witness called to the stand for examination. She testified that she was employed by the University of the South Pacific (USP) as Director Assurance and Compliance. She testified that she had been employed by USP for a little over 6 years. Prior to joining USP, she was the Manager Compliance for the Pacific ANZ Banking Group and had worked for that organization for a period of almost 4 years. Prior to that she had worked for KPMG as their Risk and Compliance Manager and prior to that she had worked with the Fiji Revenue and Customs Authority as a tax auditor and team leader for fraud and tax evasion for approximately 7 years. She graduated from USP in 2001 with a BA in Accounting. She furthered her studies and graduated with a Postgraduate Certificate in Fraud Mitigation from LaTrobe University in 2006 and a MA in Commerce and Professional Accounting in 2013 from USP. She commenced employment at USP at the end of May 2017. She joined USP as their Director Assurance and Compliance, a second line oversight role. In that role she provides visibility to the Vice Chancellor as to the environment the University operates within to ensure that USP's operations, policies, procedures, records, financial data and other important investigations and functions have integrity, that USP investments and

assets are deployed and used in the way it is intended and that USP is protected from abuse, misuse and fraud, and to ensure that USP's organisational culture encourages efficient use of resources, and operational effectiveness. When she joined USP in May 2017, she did a quick review of USP's risk management and compliance environment to help her ascertain how well USP was managing its risks, how well it had visibility, how it managed its incidents, and the way it complied with its own policies and procedures. She picked up that USP did not have a Whistleblowing policy nor did it have a policy to report and look into fraud related matters. She worked with USP's HR team at the time and with other senior leaders to get these policies in place. By year end, the two policy documents were endorsed and in place. The policies would have had to be endorsed at Council level and so by October or November 2017, the Whistleblower Policy would have likely come into effect. They felt the need to put the policy in place at USP to ensure that USP had a good organisational culture and a key feature is that stakeholders feel free to report matters they would not ordinarily feel free to report through direct channels for fear of victimization. After the policy was endorsed at USP, they set out to do social awareness of the Policy in 2018 and their first stop was with Senior Management, *i.e.* the Chancellor, the Vice-Chancellor Prof. Rajesh Chandra, the Deputy Vice-Chancellors Deans Dr. Jokhan and Dr. Kendrayate and the Director Finance at the time. At the Senior Management meeting she stressed that she would not go to the other departments if Senior Management did not endorse what the policy was, what it entailed and what it stood for, and she left that day confident that she would do what was right and that she had made that known to the then Vice Chancellor. She then provided a verbal summary of investigation results and outcomes per **Prosecution Exhibit 19**. She indicated in open court that she faced resistance and direct interference from current and former senior office holders within USP. She was aware of Professor Pal Ahluwalia's Past Management decision report but she took care to note that a number of allegations in that Report had been investigated by her team as part of their business as usual operations. The Report related to people at the very top of the USP leadership structure – the Chair of Council, Mr. Winston Thompson, former Vice Chancellor and President Prof. Rajesh Chandra, the former interim Chair of Human Resources Mr. Dhiraj Bhartu, the Executive Director Strategic Partnership & Alumni Mr. Jaindra Karan, Dr. Angela Jokhan, and Ms. Shobna Karan, Payroll Manager.

47. The allegation against Mr. Thompson was that Mr. Thompson had authorized payment of money for professional development leave which is supposed to be provided, under the policy, to upskill themselves for their role as members of the senior management team but in this instance, the allegation was that the professional development leave allowance was approved by the Chair Mr. Thompson for Prof. Chandra to write a book about his experiences as the Vice Chancellor of USP but that was not permitted under the policy. Her understanding was that under the policy that payment is only permitted to allow members of the senior management team to up-skill themselves so that they could become better leaders of the university. The allegation in respect of Ms. Kiran had to do with bonuses that were paid out to her through a letter endorsed by Mr. Thompson that she signed off on without the consensus of his Staff Appeal Committee that looks into any appeals made to the Staff Review Committee which the Staff Review Committee had rejected. Another allegation in relation to Ms. Kiran had to do with back pay made out to and facilitated by Dr. Angela Jokhan outside university policy, procedure and agreements with the university.

48. After receiving the reports from Professor Ahluwalia on 6 March 2019, the Executive Committee had summonsed Ms. Traill to update them on their Whistleblowing Reports and Policy. She had not been appraised prior to that day of the fact that Professor Ahluwalia had prepared a report or that his report had been scheduled to be tabled. As she shared an update with the Executive Committee of Council she was questioned by certain members of Council as to whether she had reported to the police or not. She said that they were trying to determine at which point they would lodge their report and whether they would have a meeting with the Fiji Independent Commission against Corruption (FICAC) or the Fiji Police Force to determine whether a report should be lodged or not. This would be part of USP's business as usual processes. Their work was about ensuring that these incidents did not happen again and where improvement was needed, to ensure that that happened. That was their area, but whatever needed to be handled by law enforcement would get moved straight to law enforcement. After she conducted her update, she left for her office. She was then recalled by the Executive Committee of Council and was told that they had decided that the Report handed over by Professor Ahluwalia would be handed over to her and her team to investigate. Part of the Report was already the subject of her and her team's investigations. She picked up the Reports and took it back to her office and started work

on it. Mr. Thompson had wanted her to start interviewing Prof. Chandra and report to the Executive Committee. She had replied that they would only interview him after they had collected all the evidence and if they felt there was a case, they would then interview him but she asked Mr. Thompson to please allow the process to take its course without any interference by him.

49. On 16 April 2019, she had made an appointment with Mr. Tagicaki of FICAC. She went to FICAC and lodged her report there. She had been concerned about information and material that was under the control of Mr. Thompson that she was not permitted access to. She discussed the evidence she and her team had gathered with the FICAC officers. She discussed her concerns about high profile persons of interest and she was told in that meeting that FICAC would apply to have the investigations sanctioned and once sanctioned they would then apply for search warrants and uplift documents from the relevant departments within the University. FICAC did obtain search warrants and they uplifted documents from different departments and they also uplifted a copy of the Past Management decisions – a paper that Professor Ahluwalia had prepared and submitted to the Executive Committee of Council. After FICAC had taken documents from her office, the officers started liaising with her team and her and they started doing interviews and started taking statements from staff. Her office was their liaison point and they arranged access to persons to be interviewed and to the records that needed to be uplifted. They started their investigations and they were in constant communication. However, after the Council meeting in Vanuatu there was a change in terms of FICAC's activities on campus. FICAC officers met with them and they said that they had been given instructions to stop investigations. They indicated that they were disappointed but they had been given instructions to investigate Professor Ahluwalia about the leakage of his report because a complaint had been made to them about that leakage. She did see a letter from the FICAC commissioner. It was seen by her after it had been written. It had been delivered in July 2019 but they did not see it until the month of August 2019. She was shown **Prosecution Exhibit 22** and she confirmed that that was the letter that she saw. Before they had received a copy of this letter, they had tried to contact FICAC but they had just gone silent.
50. She had been present at the Executive Committee meeting of 17 April 2019. She had reported to the Committee on the work that they had been doing and she had discussed

with the Executive Committee about ensuring that they handled all internal processes and by ensuring that what needed to be referred to law enforcement be referred to law enforcement. Council resolved that the matters raised by Professor Ahluwalia would go to an independent body. Other than that, their business continued as normal. The independent body brought in by USP to investigate Professor Ahluwalia's complaint was BDO New Zealand. They came to USP to carry out work on Professor Ahluwalia's Past Management Decisions Report and they came up with suggestions to improve USP's work environment to ensure that USP processes were not abused and to ensure operational capacity was enhanced going forward. After the BDO Report was tabled, they were then able to move forward to disciplining staff who had breached USP policies and procedures. The staff disciplinary ordinances and processes kicked in and staff were terminated in instances of gross misconduct. The matter was referred to the Fiji Police Force around the time the FICAC investigators had decided that they were not going to proceed with investigations. Union leaders filed a complaint with the Police and the Police then paid her a visit so she informed them that FICAC investigations had prematurely stopped. She then gave them her full statement since USP had never attempted to stop the investigation process itself. It had been fully endorsed by the University right up to the Council level and it had been the decision of the FICAC commissioner to stop the investigations himself. When approached by the Police she wrote out her statement about all the investigations her team had carried out. She remembered telling Director CID that she no longer wanted FICAC to be involved in the investigations and that USP would give the Fiji Police Force its full support. She was also hopeful of being able to take legal action to recover lost revenue to individuals who had not been entitled to receive them in the first place. She provided them a statement about the investigations they had carried out and her office provided access to witnesses, assistance in uplifting documents they needed and facilitated access to the relevant papers that needed to be uplifted from the relevant departments.

51. Under cross-examination Ms. Traill confirmed that the Executive Council was a sub-committee of Council. It made decisions on behalf of Council, some of which would go back to Council for its endorsement. Major decisions that impacted the University would need to go back to Council. On 17 April 2019 when she came to the Executive Committee to report she had informed the Executive Committee that she had lodged a report with FICAC. Nine cases had been lodged with FICAC, and the Ahluwalia Report and other

allegations had been uplifted by FICAC. She confirmed that after the BDO Report was submitted, another process kicked in and a number of people were disciplined. She explained that their processes were separate and independent of the BDO Report. She testified that while she was aware of the Ahluwalia Report she had not helped him to prepare that Report. She explained that he had his own team of officers, his own Executive Officer, and other stakeholders from the HR office who had helped him put his report together. She agreed that they had been directed to keep it strictly confidential to ensure that due process of investigations was protected. On 6 March 2019 she had been very clear in her deliberations with the Executive Committee that she would be reporting to law enforcement. She had absolute discretion about the matter of reporting to law enforcement. She had not provided a full report to the Executive Committee on 17 April 2019 because FICAC had urged some caution about the amount of information that was disseminated about the reports made to them. When referred to **Prosecution Exhibit 22**, she confirmed that she was the senior USP staff member referred to in that letter. She testified that the cases that had been sent to FICAC were cases established to a *prima facie* level. She had not been aware that the Professor Ahluwalia report had been leaked to the media as she had been in the hospital at the time, but she later became aware of that fact. She confirmed that Council did not choose to challenge FICAC's conclusions.

52. **Prosecution Witness 18: Kuliniasi Saumi** testified next. He is a FICAC investigator who has been employed with FICAC for the past 15 years. He is currently Manager Investigations Central & Eastern. In 2019, he had held the position of Chief Investigations and Mr. Tagicaki had held the position of Manager Investigations. He recalled receiving a complaint from USP in 2019. A senior staff of the Audit & Compliance Unit, Ms. Doras Traill, had approached FICAC. She had come personally to see Mr. Tagicaki. He had been a part of that meeting alongside other officers. There had been a few allegations contained in a document that she had brought with her and she had given them a copy of that document. She went through the allegations, and they discussed the complaint, and she explained some of the difficulties she had been having at USP. They processed the complaint through their internal Whistleblowers process. Ms. Traill's complaint was processed up to FICAC's management and it was formally registered on 17 April 2019. It went through the normal process of investigations and analysis and on 24 April they received a formal directive to proceed with their investigations. The Deputy Commissioner,



Reshmi Aslam had given them the directive to conduct investigations but he received the file from Manager Investigations on the 24<sup>th</sup>. He called his team together and they conducted a plan of action and they then prepared search warrants and on the 25<sup>th</sup> his team and two other teams conducted Phase 1 of their investigations, the search and seizure. They proceeded to USP and executed the search warrants they had obtained on the office of the Vice Chancellor, the Finance department, HR, Secretariat, and the Audit & Compliance office. This process took several hours and after they had seized all these documents from within the University, they recorded the documents they seized via their search lists and they proceeded back to the FICAC office where they placed all the documents they had seized in safe custody.

53. Following Phase 1, they moved on to Phase 2 which involved a thorough analysis of all the documents seized and they recorded their relevant findings, and identified witnesses that they felt they could go to thereafter. It took a few weeks to complete Phase 2. During the same period they also made frequent visits to USP, meeting different people, interviewing them and getting comments from them about documents and collecting information about the documents they had commented on. There were a number of allegations listed in the document given to them and when they proceeded with their analysis, there was evidential material covering each issue. He remembered a particular issue they had initially focused on had been the abuse and mismanagement of allowances paid to relevant staff at the University. Substantial amounts of money had been paid and they focused on the process of payments to personnel and as they collected these documents, they could identify people in higher authority who were implicated. They were able to clearly identify persons who were involved, and there were facts and findings available on the material gathered that was incriminating. He remembers presenting these findings to the then Deputy Commissioner and they made recommendations for the way forward. They recommended that they proceed to the caution interview process and bring in those implicated to respond formally to the material they had gathered, the allegations, and their specific facts and findings. Upon receiving the then Deputy Commissioner's agreement, they then proceeded on with their work but a few days later while they were still finalizing statements, and making arrangements to get people to come in for their interviews, he was informed by Manager Investigations to call off the investigations. He was told this by Mr. Tagicaki who informed him that there were new developments within

USP and there was a decision made to cease investigations. He then had a personal meeting with the Commissioner who then explained to him why he had decided to stop the investigations.

54. Under cross-examination, he testified that he had asked the then Deputy Commissioner personally as to why the investigations had to cease, and during that discussion the then Deputy Commissioner had explained to Mr. Saumi that there was a new direction for USP. They had decided to conduct an audit from BDO into the mismanagement. After that discussion, they ceased their investigations. They received a request from Mr. Mahmood Khan to return all documents and the Commissioner approved that request. After that FICAC had nothing further to do with the matter.
55. **Prosecution Witness 19: Rusiate Tudravu** testified next. He is now a consultant but prior to that he served in the Fiji Police Force from 1982 to 2021. He rose through the ranks from Constable to Deputy Commissioner of Police and he was Acting Commissioner of Police from 2020 to 2021 whilst the current Commissioner was on study leave overseas. He was to administer section 129 of the **Constitution**, which is to administer the administration and operational running of the Fiji Police Force and from time to time receive directives and instructions from his line Minister if there was a need for it. He took up the acting appointment in August 2020 as near as he could recall. Mr. Qiliho was studying in London at the time. Mr. Qiliho returned in August 2021 and they undertook a handover and Mr. Qiliho then took over after his return. He confirmed attending a National Security meeting on 17 September 2020 in his capacity as Acting Commissioner of Police. The Commissioner of Police is a member of the National Security Council. The meeting was held at the Prime Minister's Office boardroom. Present during that meeting was the then Prime Minister Mr. Frank Bainimarama, PS PM's Office Mr. Yogesh Karan, former Minister for Defense & National Security Mr. Inia Seruiratu, former Minister for Infrastructure Mr. Jone Usumate, former Minister for Health Mr. Ifereimi Waqainabete, former Commander RFMF Mr. Viliame Naupoto, Padre Ilaitia Seruvatu, PS National Defense & Security Mr. Manasa Lesuma and two other ladies from the Ministry of Defense.

56. Mr. Tudravu testified that during that meeting he had briefed them on the posture and security landscape. He wanted to discuss with the Chair of the National Security Council the investigations in relation to USP. It was crucial, he felt, for the Council to know about the investigations based on the then current stand-off between the then Government and USP and other member countries, Since the Government had publicly stated their stance in respect of USP, he saw it fit to let the National Security Council know what was happening. He had been warned about possible issues arising because of students and the unions going forward and so he wanted to know what the stand of Government was in respect of the USP investigations. The investigations had been conducted by CID investigators at the time, he said. The information he gave to the National Security Council, he had received prior to arriving at the meeting via a verbal briefing from ACP CIIP Mr. Biu Matavou. He then gave his briefing at the National Security Council meeting. He raised with the National Security Council the fact that there was a Minute from the DPP's office to ACP Intelligence and Investigations, and a letter from the complainant wanting to know the outcome of the investigations. When he asked what he was to tell the DPP, he was informed by the Chair that he had already informed Tuks to stay away from the investigations. He interpreted that to mean that he was to stay away from the investigation. Tuks, he testified, is the current Commissioner of Police. That is the name close senior military officers call Mr. Qiliho up at the RFMF. It is the short form of Tukaituraga, Mr. Qiliho's middle name, they normally call him that, he said. When shown a copy of **Prosecution Exhibit 29**, he confirmed that that was an accurate recording of what was said in that meeting. Following the meeting, he called ACP Biu Matavou to stop investigations as that was what had been conveyed to him by the Chair of the National Security Council.
57. Under cross-examination, he testified that as Acting Commissioner of Police he was in charge of the administration and operations of the Fiji Police Force per section 129 of the **Constitution**. Administrative matters were discussed with the then Minister of Defense & National Security, Mr. Inia Seruiratu. The USP complaint was made in 2019 and the current Commissioner was present in office at the time. As Deputy Commissioner he did not deal with investigations. It was his understanding that the unions at USP had lodged a complaint with the Fiji Police Force. He confirmed that investigations had been afoot prior to his meeting with the National Security Council on 17 September 2020. He confirmed that if a file is closed within the Fiji Police Force, there is the procedure stipulated in the Force

Standing Orders that needs to be followed. Director CID had power to stop investigations and the closure of a file would occur following an analysis. There must be a Minute and in that Minute, there must be reasons given for the closure of the file. DCID will then direct the closure of the file, and the file will then be filed. As Acting Commissioner, he had a fair idea of what went on but he did not get into the *nitty gritty* detail of each individual file. The issues at USP had been ongoing and the stance of Government had been made known and he had wanted to know the position of the Government, especially the point of view of the Chairman of the National Security Council about the stance of Government toward their investigations. He confirmed that he had not been present when Mr. Bainimarama had had his conversation with the current Commissioner, Mr. Qiliho. He confirmed under cross-examination that Mr. Bainimarama had not said “*stop the investigations.*” He confirmed under cross-examination that he had interpreted Mr. Bainimarama’s response to mean that. He did what he did, he said, because he was aware that if he did not comply he would lose his acting appointment and he testified that that’s what happened to him later. He had disagreed with a position taken, and he lost his job. He understood from that conversation that the Chair had wanted the investigations stopped so he relayed what he was told to ACP Biu Matavou. He had learnt prior to the meeting that the USP investigations were afoot and when he went to the meeting he learnt that the Chair of the National Security Council had suggested to the Commissioner to stay away from the investigations. He interpreted what the Chair of the National Security Council had said to mean stop the investigations so he directed ACP Biu Matavou to stop the investigations. He does not know if the investigations did in fact stop thereafter because a few months later he was told to resign. He does not know what happened to the file thereafter.

58. **Prosecution Witness 20: Biu Matavou** then took the stand. He testified that he had joined the Fiji Police in 1982 and had spent 39 years in the Fiji Police Force prior to retiring. During his time in service, he served as an investigator for 12 years, was Commander of the Fiji Police Academy, Director Fiji Intelligence Bureau, and Deputy Police Commander Southern Division before his promotion to the position of Chief of Intelligence and Investigations (CIIP) in 2016. On 17 September 2020, Acting Commissioner of Police (A/COMPOL) Tudravu called him and told him that he, Tudravu, was heading over to brief the National Security Council on the USP case. He called for the file which was then brought to his office. He saw a letter from the DPP advising that the file was still ongoing

and recommending that 5 suspects be interviewed in respect of the USP case. By file he meant the Police Docket. He testified that the file had been brought to him by DCID, SPP Seru Neiko. After looking at the Police Docket, he gave it back to SSP Seru Neiko that same day. After that, at or before 10.00am, A/COMPOL came by his office on the way to the National Security Council meeting, and he briefed A/COMPOL on the status of that investigation. He told Mr. Tudravu that investigations were still ongoing and that there was 4-5 suspects to be interviewed in respect of the case. After that briefing, A/COMPOL went on to the National Security Meeting and at around 12.00pm that day, he received a call from A/COMPOL telling him that he, A/COMPOL, had been told to stop the investigations. When he asked A/COMPOL as to who had directed that the investigations be stopped, A/COMPOL replied, "Naba dua" and when he asked him who he meant by "Naba dua", A/COMPOL replied, "The Prime Minister, Voreqe Bainimarama." They discussed the matter for a while and he was very disappointed by the position taken by the National Security Council. He then called DCID and advised him of the decision made by the National Security Council.

59. Under cross-examination, he confirmed that files are filed away by DCID during Docket Inspections across the country due to insufficient evidence. Minutes have to be kept in the docket itself to indicate that the docket had been filed. DCID has to endorse the closing of the file. Once the docket is filed, it is kept for five years in the archives. All divisions have their own archive. DCID is not obliged to seek endorsement from a higher authority before filing away. The DPP also provides advice to DCID in cases of national interest, and DCID may file away based on a decision by the DPP for insufficient evidence such as in instances where the DPP has made the decision to file a *nolle prosequi* in court. When the USP case was first reported they had presented a power-point presentation to the current Commissioner of Police. He confirmed that he had written a letter to Mr. Finiasi: **see Prosecution Exhibit 2**. He had never met Mr. Finiasi. He said that in 2021 Surend Sami was CIIP. He thinks DCID in 2022 was Mesake Waqa. He is not sure what happened after he retired. He testified that "File away and update record" means "Stop investigations and close the file." According to the minutes contained in **Prosecution Exhibit 3**, the USP investigations were closed on 6 January 2022 as endorsed by DCID. He confirmed that the file remained open after 17 September 2020 and that it is his understanding that the file remained open until it was filed away on 6 January 2022. He confirmed that he did not

seek directives from the then Prime Minister nor any member of the National Security Council about the file after 17 September 2020 and he confirmed that he did not seek clarification from the current COMPOL after his return from overseas study leave.

60. **Prosecution Witness 21: Reshmi Dass** took the stand next. She testified that she is currently an Acting Assistant Superintendent of Police. She has served 25 years in the Fiji Police Force. She is currently Acting Deputy Director Economic Crime. In 2020, she was a senior investigator within the Major Fraud Unit, a unit that falls under Economic Crime. On 15 July 2020, she had a discussion with DCID. She had been called by DCID, SSP Seru Neiko as the Commissioner had wanted to talk to her about the USP investigations she was conducting. She was the investigating officer for that case. She then went to DCID's office, and DCID told her that the Commissioner, Mr. Sitiveni Qiliho, had wanted her to call him about the investigations she was conducting at USP. She asked DCID if she could use his phone to call the Commissioner of Police (COMPOL). SSP Seru Neiko then called COMPOL using his mobile phone and put the call on speaker and put his phone on the table between them. COMPOL answered and said, "Commissioner speaking" and he then asked her about the case from USP. He asked why investigations were still ongoing at USP in light of the fact that investigations had been stopped by FICAC due to the fact that it was an internal breach. He then told her to stop the investigations and he told her that it was "from the PM's office." She then discussed the matter with SSP Neiko regarding the next course of action, SSP Neiko then instructed her to go and update her Investigation Diary and her Notebook. She then wrote down the conversation between her and the Commissioner. She confirmed that **Prosecution Exhibit 12** was a true copy of her Notebook entry following that conversation. She confirmed that she had spoken to MMF Rajesh Kumar as he was her immediate supervisor. She testified that she had been shocked by the directive given by the Commissioner as they had received instructions from the DPP to continue on with investigations and to carry on with interviews. The investigations were not complete and they had to give feedback to the complainants at the end of every week. She testified that she did stop the investigations after that communication with the Commissioner.
61. Under cross-examination A/ASP Dass testified that she had received the file from SSP Rajesh Kumar to carry out investigations into Abuse of Office at USP on 15 February 2020.

She confirmed that she was the chief investigating officer for that matter. If she needed assistance, she would seek additional manpower from her supervisor. No specific team was appointed to look into the matter. She is aware that Ilima Finiasi was the complainant for the matter. She testified that they had to follow processes and procedures for obtaining witness statements. When the Report was lodged, they did not go directly to the Executive Committee. Their concern was about substantiating the allegations and they followed the ordinary processes and procedures for investigations. Mr. Winston Thompson was a person implicated so she had to first undertake her investigations and inquiries. She testified that she would not go directly to him without first undertaking her initial inquiry. Cases for CID HQ are initiated at Totogo Police Station and Report No. 303/07/19 was Mr. Finiasi's Report number. From Totogo Police Station, the file was handed over to CID. She is not sure what happened to the complaint between 8 July 2019 to 15 February 2020 but she confirmed that she received the file on 12 July 2019 and she started on her investigations. She first learnt that the file had been first referred to FICAC and then closed during her conversation with the Commissioner of Police. She was aware that BDO had prepared a comprehensive report into the allegations by Professor Ahluwalia. She had had a copy of that report. She testified that they had only focused on the Abuse of Office allegations. She testified that they were not privy to what USP was doing internally. She had commenced investigations up until 15 July 2020, and then she stopped her investigations, and she was then later directed to continue with her investigations. She confirmed that there had been no minute from DCID on 15 July 2020 directing that investigations must stop, the docket closed and be filed away. She confirmed interviewing people in October 2020 after she was directed to continue with investigations by SSP Loraini Seru. She confirmed that investigations were closed in 2022 after SSP Rajesh Kumar wrote to DCID on 4 January 2022 and after DCID wrote "File away and update record" on 6 January 2022. On 8 January 2022 the process to file the Police Docket away completed. She testified that whatever she had heard the Commissioner tell her, she noted down in her Notebook. She testified that she recalled being shocked by that conversation. She testified that it had been the first time in 25 years, she had spoken directly to COMPOL about an investigations. It was protocol that those discussions come through DCID. She did not file a report with anyone about the COMPOL's instructions. She confirmed that only DCID had authority to close a file. She confirmed that the Police Docket was not filed away on 15 July 2020. She confirmed that investigations had stopped but the Police Docket was not filed away following her

conversation with the Commissioner. She believed that COMPOL did not want her pursuing the investigations and she only recommenced investigations in October 2020 after SSP Loraini Seru had directed that the investigations continue. She confirmed that investigations into the USP matter re-started in January 2023 and are currently on-going. She stated that she did not have any other conversations with COMPOL about the matter after 15 July 2020.

62. **Prosecution Witness 22: ASP Rajesh Kumar** took the stand next. He testified that he joined the Fiji Police Force in 1989 and is currently an Assistant Superintendent of Police. He has been the Manager Major Fraud since 2018. In this capacity, he gives instructions regarding major fraud and economic crimes and he guides investigators on how to conduct investigations. He recalled a case referred to the Police from the University of the South Pacific and investigated by A/ASP Reshmi Dass. He gave instructions to A/ASP Reshmi Dass about the initial actions that needed to be taken regarding the case. He confirmed writing to the Deputy Director Economic Crime on 10 July 2020: *see Prosecution Exhibit 3*. He indicated that he had received the information contained in that Minute from A/ASP Reshmi Dass. He confirmed writing Minute No. 10 dated 4 January 2022. He confirmed that this was the brief given to him by A/ASP Reshmi Dass. He did not enquire into the verbal instruction given to her.
63. Under cross-examination, he confirmed that he had instructed Reshmi Dass to conduct investigations into allegations made in respect of activities at USP in February 2020. He testified that the complainant was Dularis Traill. He testified that the initial report had been made by Dularis Traill. He said that he did not know who Ilima Finiasi was. He confirmed that Ilima Finiasi had given a statement and that that statement was contained in the Bundle of Agreed Documents shown to him. When cross-examined regarding his Minute Number 10: *see Prosecution Exhibit 3*, he testified that the verbal directions given by COMPOL referred to therein were the verbal directions given by COMPOL to then Corporal Reshmi Dass. He testified that the CIIP he referred to in that minute was Biu Matavou. He was not CIIP at the time but he was the CIIP he was referring to at the time. He testified that the COMPOL he was referring to in that minute was Mr. Sitiveni Qiliho. He testified that he had not called Mr. Qiliho to verify whether he had given those instructions. He testified that it would have been a breach of their internal disciplinary processes for him to have



done so. He confirmed that the verbal instructions he was referring to were those instructions given to the Investigating Officer in mid-2020. He testified that they had tried to continue investigations but after the conversation with CIIP Matavou he closed the file. He confirmed that it was DCID who closed the file and that it was on DCID's authority that the file was closed.

64. **Prosecution Witness 23: Mesake Waqa** testified next. He joined the Fiji Police Force in 1989. He is now Director – Strategic Planning and Policy for the Fiji Police Force. He served as a crime man from 1993 – 2022. He has completed all the required training within the Fiji Police Force. He has also undertaken and completed Australian Federal Police training courses over the course of his career and he undertook and completed a General Management for Senior Executives course at the Administrative Staff College in India. He undertook and completed a Masters in Criminology from Macquarie University, Sydney, Australia from 2019 to 2020. Prior to his departure to Sydney, he handed over the reigns as DCID to A/DCID Seru Neiko in 2018. After he completed his studies in 2020, he returned to Fiji and he received a directive from A/COMPOL Tudravu to take over his duties as DCID. During the handover process, A/DCID Neiko briefed him regarding the USP case and indicated that COMPOL had directed the close of the investigations. He discussed the matter with A/COMPOL Tudravu and A/COMPOL Tudravu had asked him why they needed the investigations to be completed. He replied and told A/COMPOL Tudravu that they were almost at the end of their investigations; the ODPP had given their advice and suspects needed to be interviewed and they needed to complete those tasks and return the file to the DPP for final advice as to whether persons ought to be charged or not. After their discussions, at the later stages, he also discussed the case with ACP Biu Matavou, his immediate supervisor. ACP Biu Matavou told him that instructions had been given by the Prime Minister during the National Security Council for this case to be filed away. In January 2022, the file was produced in his office. It had been forwarded to him by then A/Deputy Director Economic Crime saying that directives had been given by COMPOL and ACP for the file to be closed. He recognized Minute Number 10: **Prosecution Exhibit 3**. He confirmed that he had written the directive for the file to be closed immediately below. He had examined and scrutinized the file prior to issuing his directive. He noted that it was an investigation into staff at USP and by reading through the statements together with the advice by the ODPP, he noted that there was *prima facie*

evidence that required suspects to be questioned. Based on the minute and the verbal instructions given to him by IP Seru Neiko, he decided to file away for three reasons:

- (i) it seemed to him that there was interference by Government whereby the COMPOL had been directed to close the investigations;
- (ii) to protect the safety of the investigations because if it went to some other office or officer, it could be misplaced or lost; and
- (iii) if there were a change in Government, the file could be easily accessed and retrieved and investigations continued as should have been the case.

65. Under cross-examination, he testified that in July 2020 and in September 2020, he had been in the country but he had not taken over as DCID. He took over from Seru Neiko in October 2020. During the handover, Seru Neiko briefed him about certain cases including the USP case. He confirmed that there had been no minute from COMPOL directing the close of the dockets. He confirmed that important directives are usually Minuted. He spoke to CIIP Biu Matavou in October 2020. CIIP Biu Matavou told him that instructions had been given by the National Security Council for investigations to be closed. CIIP Matavou had not told him who had given that directive. He was just told that it came from the National Security Council. He confirmed that he had not called for the docket. He discussed it with the supervisor when he took over in October 2020. He noted that investigations had stopped. From October onward, they still wanted suspects to be interviewed. Acting COMPOL Tudravu heard and so his conversation with A/COMPOL happened. From October 2020 to January 4, 2022 the file was with the investigating officer. By 4 January 2022, COMPOL was back in office. He received a minute from D/DEC – Minute 10. He forwarded the file for closing. He did not call COMPOL to confirm whether he had directed the close of the file. Seru Neiko had confirmed it, and ACP Matavou had mentioned it and it was a disciplinary offence to question directives. He confirmed that he did make a decision concerning the file on 6 January 2022. Even though it was his decision, the instructions had come from COMPOL via SSP Seru Neiko. He indicated that directives within the Fiji Police Force could be written, verbal, issued via Viber, or text, and whatever its form, it was still a directive from a senior officer. He testified that though no written minute had been given, the directive had still come from a senior officer and it should be that senior officer who should face the consequences of that order. He had received confirmation from SSP Neiko, CIIP and also A/COMPOL of COMPOL's directive. He did

not go to COMPOL because he did not see the need to do so. He trusted his officers. He did not go to USP. Ms. Traill had come to see him, however, and he explained to her that a decision had been made based on a directive from COMPOL. He was aware that FICAC had investigated the matter and had decided not to prosecute. He did not cross-check with FICAC as to why they had stopped their investigations. He confirmed that the case was not closed until 6 January 2022 by his order.

66. **Prosecution Witness 24: D/IP Suliasi Dulaki** took the stand next. He was Mr. Sitiveni Tukaituraga Qiliho's interviewing officer. He confirmed the Video Caution Interview Transcripts of his interview with Mr. Qiliho and he tendered those transcripts into evidence as **Prosecution Exhibit 30**. During the course of the interview, Mr. Qiliho confirmed that prior to his suspension, he used an official mobile phone 9906989 from November 2015 to the date of his suspension. He confirmed that he had been appointed Commissioner of Police by His Excellency, President Konrote on 4 March 2016. He confirmed signing his contract for the role of Commissioner of Police on 29 March 2016. He confirmed that Prime Minister Mr. Josaia Voreqe Bainimarama had signed the contract on behalf of the Government. He confirmed his appointment as Commissioner of Police on 16 September 2021 and he confirmed signing his Contract of Service to that position on 23 September 2021. Other than that, on the 8<sup>th</sup> February 2023 Mr. Qiliho exercised his constitutional right to remain silent.

67. His interview recommenced on 9 March 2023. He had indicated to the Police prior to his interview on 9<sup>th</sup> March 2023 that he wished to provide answers to the questions asked of him on 8<sup>th</sup> February 2023. I set out portions of that Interview below:

Ah that was when I called the Director CID at that time and I spoke to the lady who was doing the investigation ah just to stop and summarize the investigation ah so that: one, to brief the Prime Minister, and also ah so that we could see how we proceeded further because FICAC was doing a similar investigation and it was two investigating bodies doing the same investigation so that he could talk to FICAC about it.

D/IP Suliasi: So, did you, did you clarify with FICAC the nature of investigation that they were conducting at the time?

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| <p>Sitiveni Qiliho: No, I was waiting for that summary and I also spoke to the Chief Investigator and Intelligence at that time. This was during the period I was preparing to leave for overseas for studies. So that summary didn't come to me when I departed but I expected that discussion with the investigator and Director CID that that could through the process to the Chief Investigator and Intelligence and to me but since I'd left that if it could come to the Acting Commissioner of Police.</p> |
| <p>D/IP Suliassi: So when you return from your studies in the United Kingdom, did you at any time enquire again with the Chief Investigator Intelligence with regards to the case?</p>   |
| <p>Sitiveni Qiliho: No, I, I didn't enquire and was never, was never brought to my attention. I was never updated.</p>   |
| <p>D/IP Suliassi: So are you aware that there were instructions as per that statement that we have recorded there were, there were instructions given by yourself for the investigation to be closed, were you aware of that?</p>  |
| <p>Sitiveni Qiliho: No, I never give any instruction for the investigation to be closed but the investigation in Police terminology is closed when it's filed away. I said for it to be stopped and a summary to be done so that we could look at how we proceed it further with discussions so the investigations to me is still open.</p>  |
| <p>...</p>   |
| <p>D/IP Suliassi: Sir in relation to what you've stated that you speak with the lady in charge of the investigation at the time?</p>   |
| <p>Sitiveni Qiliho: Yes</p>  |
| <p>D/IP Suliassi: And can you confirm to us on whose phone or whose phone number did you call to speak with the Investigating Officer there?</p>   |
| <p>Sitiveni Qiliho: I, I, I cannot, I think I spoke to, through the Director CID at that time, I'm not sure, that's what I think.</p>  |
| <p>D/IP Suliassi: Who was the Director CID at that time sir?</p>   |
| <p>Sitiveni Qiliho: It was Seru Neiko.</p>   |
| <p>D/IP Suliassi: And according to Mr. Seru Neiko and the Investigation Officer who is, who was who was Inspector Reshmi Dass that your instruction to them was to ah to stop the investigation. Is that what was, is that correct?</p>  |

Sitiveni Qiliho: Yes to stop the investigation and to do a summary and by that, I expected that to be staffed up through and I told them to come through Chief Investigator Intelligence for his input before it came to me, not to file away or close the...just to stop it to do that summary.

D/IP Suliassi: But during the course of our investigation ah in 2022, the ah former Director CID, SSP Mesake Waqa he filed this investigation away upon a instruction received from the Chief Investigation Intelligence at that time Mr. Surend Sami whose, who was presented with the case, and he also stated to the Investigators that upon your instruction, for that case to be filed away what can you say about that?

Sitiveni Qiliho: When I left for London Surend Sami was not...

D/IP Suliassi: This was in 2022.

Sitiveni Qiliho: From 2022, if there is, it would have come in written form and I would have to give that instruction in writing.

D/IP Suliassi: Not in a verbal form?

Sitiveni Qiliho: No, that's important, that's an important decision to be made and it has to be given in writing with the proper staff.

D/IP Suliassi: Because according to the investigators those are the instruction received from the CIIP at that time when in late 2022 and again early no late 2021 and at early 2022, the case was filed away upon your instruction?

Sitiveni Qiliho: No, I never gave any instruction to file away.

: ...

D/IP Suliassi: Okay sir, we will be moving further with video and I will be also asking questions from the content of the ah, your minutes (1:47-32:27). Are you aware sir that a feedback came back from the Office of DPP for the further continuation of further enquiries in relation to that investigation of the USP at that time?

Sitiveni Qiliho: No

D/IP Suliassi: Were you aware that the people concerned or suspected to have committed the offence in relation to this case from USP or ask or being put into this advice letter to be interviewed?

Sitiveni Qiliho: No, I'm not aware.

D/IP Suliassi: Were you not briefed by any senior Police Officer in terms of the investigation is concerned?

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| Sitiveni Qiliho: No, maybe the DPP was conversing directly with the Director CID, not with me and also for that one year I was away maybe he was conversing with Acting Commissioner.   |
| D/IP Suliassi: During that time, when, when the ah I wish to put it to you that during that time when the advice came back from DPP, it was still in 2020 in June, June 23, 2020 and in the advice as I've read to you earlier during the first interview that was when the time that we were still in the office before going overseas for the training. Is that correct, sir?                             |
| Sitiveni Qiliho: Yes, but I, I, that letter was never shown to me, maybe it was a letter to Director CID.   |
| D/IP Suliassi: Was there any brief by Director CID or the Assistant Commissioner calling you?   |
| Sitiveni Qiliho: No.  |
| ....  |
| D/IP Suliassi: In terms of the channel of communication in the Fiji Police Force from the position of the Commissioner of Police down to the investigators would you....can you just briefly explain on the chain of communication in relation to that sir?   |
| Sitiveni Qiliho: Yes, the, all the major investigations, the investigations are handled at CID Headquarters. And if there's any briefing that comes to me it will come through the Chief Investigator and Intelligence who handles most of these things in his daily routine work. In most cases, I call in and say can I have an update so that I'm updated on what's going on, that's the process I know. |
| D/IP Suliassi: And during, for this investigations you stated earlier in your answers that you spoke with the Investigation Officer during, through the Director CID Mr. Seru Neiko. Do you maintain that?  |
| Sitiveni Qiliho: Yes, I wanted to know what was really happening because I haven't gotten detail brief so I asked him if she can explain to me what was going on because I haven't gotten any detailed brief through the Director CID or Chief Investigator.  |
| D/IP Suliassi: Before going through the Director CID did you enquire first with the Chief Investigating Intelligence?   |
| Sitiveni Qiliho: No, I knew Director CID would have a more hands on because he handles the investigators, that's why I called him.  |

D/IP Sulasi: Okay sir and you stated that for the case to be stopped and summarized and the investigation to be summarized. Wouldn't it be proper for the case, for the case to be summarized if the suspected are interviewed. In terms of the investigation process is concerned?

Sitiveni Qiliho: I wanted it stopped at that particular time with all those that had been interviewed at the particular time so that I could know too what was going on. And that to come through the Chief Investigator Intelligence and it came through that process and they recommend that those people be interviewed first I would naturally agree with it. But I was waiting for that process to come through me, it didn't come prior to my departure.

D/IP Sulasi: But in relation to what the Investigating Officer and what SSP Seru Neiko have stated that what you ah, it contradicts with what you are answering to the, this video recording interview. What can you say about that?

Sitiveni Qiliho: I wouldn't be able to, to say anything for their reasoning, for that. But I know what I said, that I asked them to stop and summarize, not to file away the file that means that, the investigation is still open. And if that summary comes up that is when we will give further directions based on the recommendations of the two key appointment holders, which is the Director CID and the Chief Investigator and Intelligence. And no way would I go against those two's decisions. They are the professionals in dealing with those and I didn't get that, that summary.

D/IP Sulasi: When you, when you came back from studies in the UK, did you ever enquire again with the Chief Investigations and Intelligence, or the Director CID on the progress of this investigation?

Sitiveni Qiliho: No, I didn't enquire with them and there was a seasoned Acting Police Commissioner who was there who I know would have handled it. It wasn't brought to my attention.

D/IP Sulasi: But this case was not filed away during the times of your absence. It was filed when you were here again as the Commissioner of Police in 2022. What can you say about that?

Sitiveni Qiliho: I never gave any directives to file that. If, if that was a recommendation it had to come to me in writing like the dockets that come through. It should have come through that process.

D/IP Sulasi: And sir, what, what, what was your interest into this matter, for this investigation in relation to the USP case against Winston Thompson and others. What is your interest into these investigations?

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| Sitiveni Qiliho: Like all cases, I, all major cases, this was a case that was widely reported nationally. Otherwise, I'm not related or friends with any of those people. I only know Mr. Winston Thompson as a very senior diplomat, not personally, I would know.   |
| D/IP Suliassi: When you come to know that the same case being investigated by police is also with FICAC, did you ever enquire with the Commissioner FICAC in relation to the status of, to the status of the investigation?   |
| Sitiveni Qiliho: That's why I asked for the summary so that I have a summary before we could meet with the Commissioner of FICAC.   |
| D/IP Suliassi: But when you came back did you make an attempt to ask for the summary again.   |
| Sitiveni Qiliho: It wasn't raised with me, and there were other issues that were ongoing, that I didn't get back to that. I would have, I assumed then that the Acting Commissioner has handled that, like the recording he raised that issue at the National Security Council, so he was well aware of, of that case but I didn't know it was discussed at that meeting until the recording as being going.  |
| D/IP Suliassi: Okay sir, in relation, okay you've stated that you did discuss with the senior government officials too in relation to this case, with Mr. Seruiratu?  |
| Sitiveni Qiliho: Yes, I can recall we had a brief discussion on this when with reports that were, that were coming in.  |
| D/IP Suliassi: From a position of the Commissioner of Police at what stage of the investigation should you interfere with the investigation process?  |
| Sitiveni Qiliho: I don't interfere with investigation processes. I ask for updates, and also because the professionals are there, the Director CID and the CII, they make the recommendations to me. At no stage have I gone in to interfere with any investigations. In this case, I only asked the investigation be stopped and summarized so that I could be updated and the discussions on or the recommendations of what to do, if they had recommended not to go to FICAC, or, or to continue, I would have gone with it. They, they, they know and I always go with their recommendations. |
| D/IP Suliassi: Sir, would you know the type of offence that is being reported in relation to this USP case?   |
| Sitiveni Qiliho: It was to do with finances.  |
| D/IP Suliassi: And any particular, what is the offence that, that, that, warrant that report to be reported to the Police?  |



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| Sitiveni Qiliho: I hadn't been briefed in detail, that's why I was asking for that summary so I could know.  |
| D/IP Sulasi: In relation to your conversation with SSP Seru Neiko and Madam Reshmi Dass?   |
| Sitiveni Qiliho: Yes.  |
| D/IP Sulasi: Did you ever enquire with them about the case during that telephone conversation?   |
| Sitiveni Qiliho: I told them, I told them to make that summary, to stop, make that summary so that I could know, to, to put it down in writing. From that then, I will be able to really know what was going on.   |
| D/IP Sulasi: ...   |
| Sitiveni Qiliho: I, I wouldn't know, the, the, all the cases that have been filed away have come through, like the dockets with recommendations from Director CID, through the Chief Investigations and Intelligence, then that comes to me. Some he does it on his own, the small similar cases most of the cases comes to them. In this case, I can't recall that ever come to me. |
| ...  |
| D/IP Sulasi: During the process of investigation, do you have any powers to call for a stop to any, in any investigation?  |
| Sitiveni Qiliho: In this case, I asked for that stop so that I could get a summary to be updated on a case that had become of national interest. I don't normally do it. But because I wasn't updated, I, I had to take this action.   |
| D/IP Sulasi: That means that this case was of national interest and you need to know some of the facts from that case?   |
| Sitiveni Qiliho: Yes, I needed to know if I was questioned, like I had to brief the Minister, or I had to be, I had to know what was going on.   |
| D/IP Sulasi: Do you know what was the interest of the Minister in relation to this case? What was his interest in this case?   |
| Sitiveni Qiliho: No, but I was, I was preparing myself if I needed to, to give a briefing that I knew what was going on.   |
| D/IP Sulasi: Can you please reconfirm whose direction or directive was for you to ask for the investigation progress of the investigation and also a brief?  |
| Sitiveni Qiliho: It wasn't a directive. I was asked for a brief by the Hon. Prime Minister at the time. He asked for a brief.  |

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| ...  |
| D/IP Sulasi: And because of the, I will refer, I will read to you some of the things that was stated by the former, the then Director CID SSP Seru Neiko, and he stated that <i>on the 15<sup>th</sup> of July 2020 I received a call from the Commissioner of Police Brigadier General Sitiveni Qiliho, CP was calling from his official number 9906989 to my official number 9905707</i> . Sir, can you please confirm your official number? |
| Sitiveni Qiliho: Yes, that's the right official number.  |
| D/IP Sulasi: Do you recall calling Director Seru Neiko at this time Director CID Seru Neiko?   |
| Sitiveni Qiliho: Yes.  |
| D/IP Sulasi: <i>During our conversation he asked as to why we were still conducting investigation into the USP matter when it is an internal administrative matter to be dealt with in USP?</i> Do you recall telling him that?  |
| Sitiveni Qiliho: No, I cannot recall telling him that, but during my discussions with, with the Chief Investigations & Intelligence, I told him that there were internal processes, that were still ongoing with USP that we could use if we were to continue the investigation, and I may have discussed it with Seru Neiko but I cannot recall.  |
| D/IP Sulasi: Can you confirm who was the Chief Investigation Intelligence at that time?  |
| Sitiveni Qiliho: I think it was still Biu Matavou at that time.  |
| D/IP Sulasi: And when you, when you told ACP Biu that this matter was internal administrative matters with USP and they need to deal with it, didn't you call for any meeting with USP?  |
| Sitiveni Qiliho: No, I didn't tell him that that has to be dealt with then, that was one of the options that they were still going through their internal processes. Their internal audits that we could use in the, in the investigations. I didn't tell them to stop because that was ongoing. No, I never gave such instruction.  |
| D/IP Sulasi: But during the time, did you went on to see, to clarify from USP in relation to that?   |
| Sitiveni Qiliho: No, it was like I said. It was ten days or less before my departure and I didn't get an opportunity to do that. The first thing I wanted to do was discuss with FICAC, because they were doing the same investigation. And from there, the recommendations that are to come from Director CID and the CII would determine which way we progressed.  |
| D/IP Sulasi: Where...  |
| Sitiveni Qiliho: If, if they recommended that then yes we were, we were going to do that.  |

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| D/IP Sulasi: So when did you leave for the UK?  |
| Sitiveni Qiliho: I left around the 30 <sup>th</sup> .   |
| D/IP Sulasi: 30 <sup>th</sup> of?   |
| Sitiveni Qiliho: Of July, I think.  |
| D/IP Sulasi: 30 <sup>th</sup> of July. And this was on the 15 <sup>th</sup> of July?  |
| Sitiveni Qiliho: Yes.   |
| D/IP Sulasi: It was like 15 days before...  |
| Sitiveni Qiliho: Yes  |
| D/IP Sulasi: ...you left.   |
| Sitiveni Qiliho: The phone call and a few, could have been, I'll have to check my passport. But I think it was around the 30 <sup>th</sup> . I was involved in a lot of administration and preparation for my...  |
| D/IP Sulasi: And then to continue with what SSP Seru Neiko said, <i>CP then asked for the investigation officer to be called to my office so that he could speak to her. The investigating officer IP Reshmi Dass came into the office and the phone was placed on speaker mode so that we can both hear the instructions from the Commissioner of Police. Commissioner of Police then asked IP Dass about one Ravinesh Shankar who is a USP staff that was brought in, that was brought in by the Investigation team. In response, IP Dass stated that Shankar was brought in for his statement to be recorded. The Commissioner of Police then directed that since FICAC has closed its investigation on the same matter as it is about USP's internal procedures we are to stop our investigation as it is from the Honourable Prime Minister.</i> That is what SSP Seru Neiko said in his statement in relation to your conversation on the 15 <sup>th</sup> of July 2020. What can you say about that? |
| Sitiveni Qiliho: No, I never said it was directive of the Prime Minister. All I would have said was that I, I required to brief the Honourable Prime Minister. So I needed all the information that I needed to be able to brief.   |
| D/IP Sulasi:                   And he stated that he put that, he put the phone in speaker mode.  |
| Sitiveni Qiliho: Hmmm.  |
| D/IP Sulasi: This is what Reshmi Dass also stated in her statement. In which she stated <i>on the 15<sup>th</sup> of July at around 1040hrs I was in my office at Major Fraud Unit when I was called by Acting SSP Seru Neiko Acting Director CID to call Commissioner of Police Brigadier General Sitiveni Qiliho at CID's office Acting SSP Seru Neiko rang through his phone and placed it on the table speaker</i>  |

*mode. As I said hello from the other side he Commissioner speaking and then he asked me about the USP case. He asked me if I brought, if I had brought someone from USP to record their statement last two weeks. I inform him that I brought one of the witness namely Ravinesh Shankar on 30/6/20 and that was the last time I met him. Commissioner of Police then stated one vehicle was seen moving around the house of the said witness every day. Over the phone he then instructed me to stop the investigation against Winston Thompson and others as FICAC has closed its, has closed the file since its USP internal process, it's from PM. After the conversation I again discuss the matter with then Acting SSP Seru Neiko who was fully aware of the conversation as the phone was on speaker mode. Sir that is what Inspector or Acting ASP Dass stated in relation to the phone call that happened on the 15<sup>th</sup> of July, 2020. What can you say about what she has stated?*

Sitiveni Qiliho: I cannot say anything about the statement. Those are their statements, I can't speak on their behalf. All I can say is what I said that I needed to brief the PM. I got a call from the Prime Minister and I needed to brief him. And if they could summarize the case and that's why I wanted to talk to Reshmi so she could explain to me everything that was going on.

D/IP Suliassi: Vinaka vakalevu sir. You being the Commissioner of Police do you issue instruction verbally?

Sitiveni Qiliho: In regards to, to investigations, it is all written. Dockets come in written proper form with recommendations along with them. Those are not done verbally.

D/IP Suliassi: But in this case it was done verbally as stated by the investigators and the witnesses that we've got the statement. What can you say?

Sitiveni Qiliho: I never did that verbally. I would have demanded that it be put in writing. All the dockets for investigation because I understand the importance of it, that it's well documented and also when its filed it has to have some documentary note in it. And verbal is not, it has to be documented.

D/IP Suliassi: Therefore, during the filing of this case, I put it to you that you, that you had issued those instructions, what can you say about that for the filing of the case?

Sitiveni Qiliho: I never issued those verbal instructions.

D/IP Suliassi: I also put it to you that this was a case of national interest and suspect was for the previous government and it was your intention to have this case to be filed away. What can you say about that?

Sitiveni Qiliho: That was never my intention. If I, as I have said before I asked for a summary and from that summary with the recommendations of the Director CID and the Chief Investigations and Intelligence, that would have guided the way we proceeded further.

D/IP Suliassi: I also put it to you that you had abuse the process being a public official holding the position of Commissioner of Police by instructing the stop and the filing away of the USP investigation. What can you say about that?

Sitiveni Qiliho: I never directed the filing away of the file. It was never my intention. And if I was made aware that the DPP's instruction were there, I wouldn't have stopped it in any way.

D/IP Suliassi: And in doing so, you have prevented the execution of the legal process and as such did an arbitrary that is prejudicial to the rights of the university. What can you say?

Sitiveni Qiliho: The file was never filed away by me. And it's still open for investigation. Professor Pal is back and the investigations can continue. I never filed away the investigation file.

....”

68. **Prosecution Witness 25: SSP Serupepeli Neiko** took the stand last. He joined the Fiji Police Force as a Special Constable in 1993 and as a recruit in 1994. He served at Totogo Police Station from 1995 until 1999, when he joined CID. He was then transferred to the Narcotics Bureau in November 2020. He spent 20 years at CID. In 2019, he was based at CID Headquarters, 53 Suva Street, Toorak. At CID Headquarters, he was appointed Acting DCID since the substantive post-holder, SSP Mesake Waqa, was abroad studying. He took over the role in late 2018, around December. As A/DCID, it was his duty to review investigation files and give directives on investigations, in addition to looking at policies and procedures governing investigations, and aligning them to the Force's Mission and Objectives. He recalled dealing with a matter relating to the University of the South Pacific. It was a complaint of mismanagement of funds lodged by a USP Union Representative Mr. Finiasi against senior executive members of the University of the South Pacific. After a complaint was received with CID, he directed the team to investigate through the office of the D/DEC since it revolved around *abuse of office* and mismanagement of funds. He recalled seeking advice from the ODPP. He confirmed writing a minute: **Prosecution Exhibit 1** to the DPP. He confirmed sending the Police Docket to the DPP's office along with his minute. After that the ODPP returned the Docket with a letter and recommended further investigations that could be attended to. He tendered as **Prosecution Exhibit 31**, a

letter written by Ms. Jayneeta Prasad of the Office of the Director of Public Prosecutions to the Director: Criminal Investigations Department. It is dated 23 June 2020 and was received by the CID HQ Registry that same day. The letter reads:

**“Re: State v. WINSTON THOMPSON and ORS  
CID HQ PEP 12/07/19  
Further Investigations**

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We refer to the above.

The matter was sent to our Office for advice.

Upon reading the file, we are of the view that the following need to be obtained by the Investigating Officer:

- 1] Obtain the personnel file of all suspects. This should contain their job description and terms of contract.
- 2] Obtain a statement from whoever gave the email exchange between Winston Thompson and Rajesh Chandra on PDL to Police.
- 3] Obtain the documents in relation to PDL for Rajesh Chandra. This includes calculation of per diem, ticket costs and the request for final payout approved by Winston Thompson.
- 4] Obtain statement from Ravinesh and the audio recording of SAC to confirm that appeals of Karan and Kiran were never heard.
- 5] Obtain statement from Ravinesh and the audio recording of SAC to confirm that appeals of Karan and Kiran were never heard.
- 6] Interview all suspects.
- 7] Obtain a colour copy of BDO report.
- 8] Provide a colour copy of Dulari’s statement and her audit report.”

69. Upon receipt of the letter, he issued a directive to D/DEC SP Lorraine Seru to direct necessary actions as per the contents of that correspondence and to maintain current approach to the investigations. DDEC then wrote a minute to MMF directing that the case be on the priority list over the next week and directing daily progress reports. He testified that on 15 July 2020, he received a phone call through his mobile phone from Brigadier General Sitiveni Qiliho, the Commissioner of Police. The conversation occurred in the

*Taukei* language. The Commissioner of Police called from his official mobile number 9906989 to his official number 9905707. The Commissioner of Police said, “*I don’t know why you’re still investigating the USP case because it’s an internal issue and I want to talk to the investigating officer.*”

70. After he spoke to Brigadier General Qiliho, the investigating officer Ms. Reshmi Dass was called into his office. IP Reshmi Dass had been in her office. When IP Reshmi Dass arrived, he then called the Commissioner of Police from his official mobile phone number. He then placed the call on speaker mode to allow both him and IP Reshmi Dass to hear the instructions from the Commissioner of Police. After he called the Commissioner of Police, the Commissioner of Police answered his mobile phone and he started conversing with the investigating officer. The Commissioner of Police started off by asking why a Shankar, who was a staff at the University of the South Pacific, had been brought in to CID HQ for questioning. The Commissioner of Police then instructed that they stop the investigations into the Report from USP as it was an internal matter. It was from the Honourable Prime Minister,<sup>4</sup> they were told. The conversation happened at around 10.40am on the morning of 15 July 2020. SSP Neiko and IP Reshmi Dass were seated opposite each other at an oval table in SSP Neiko’s office and were listening to the Commissioner as he issued his directives over the telephone. He testified that he could clearly hear the conversation over the speaker, and that it was clear to both of them.

71. The State then tendered its final exhibit, **Prosecution Exhibit 32**, being Vodafone Fiji call logs for mobile number 9906989. The call logs show that on 15 July 2020, at 10.39 am, mobile phone number 9906989 called mobile phone number 9905707. The call lasted 34 seconds. It also shows that mobile phone number 9905707 called mobile phone number 9906989 at 10.46am. The call lasted 111 seconds.

72. After the second conversation with the Commissioner of Police, SSP Neiko directed IP Dass to make the necessary entries into her Notebook and to make a note of it in her Investigation Diary. Soon after giving her that directive, the investigating officer left his office. He confirmed his own entries in his Notebook: *see Prosecution Exhibit 13*. He was

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<sup>4</sup> Inadmissible hearsay against the first Defendant.

then posted a few months later to his new positing as Director Narcotics Bureau in September 2020. He handed over the position of Director CID to the substantive post holder after his return from study leave. To his recollection, they did not pursue any investigations into the USP matter following those directives from the Commissioner of Police.

73. Under cross-examination, he testified that he had been unaware of FICAC's decision not to continue with investigations into allegations of financial mismanagement at USP when he had written his own memo seeking advice from the Office of the Director of Public Prosecutions. He indicated that verbal instructions from the Commissioner of Police was sufficient. He confirmed that while there was no written minute from the Commissioner of Police to stop investigations, he and Inspector Reshmi Dass had made a record of that conversation and the Commissioner's directives in their Notebooks. He confirmed that they did not make a note about the legality of those directives in either their Notebooks or in the Investigation Diary. He testified that he was not aware of any instance where ACP Biu Matavou had directed him to bring the file to his office and he was unaware of any instance where ACP Matavou had then telephoned him afterward to indicate that the National Security Council had directed that he stop investigations into the USP matter. He testified that if that had happened he would have made a note of that conversation and that directive in his Notebook. He confirmed that on 4 January 2022, Rajesh Kumar had sought filing, the formal way of seeking the close of the investigations and the filing away of the investigation docket. He confirmed that on 6 January 2022, DCID directed D/DEC to file away and update records and on 8 January 2022, D/DEC directed compliance accordingly. He confirmed that investigations were re-opened into the USP matter in January 2023. He denied hearing the Commissioner of Police telling IP Dass to stop investigations and prepare a report for submission to him during the second 111 second mobile phone call between them on 15 July 2020. He confirmed that the Commissioner of Police was in charge of the Fiji Police Force, its budget and its resources. He agreed that it made sense for a Commissioner of Police to be concerned about duplication of resources but a complaint had been lodged with the Fiji Police Force, and investigations were afoot and they had received recommendations from the Office of the Director of Public Prosecutions to continue with investigations. He confirmed that ACP CIIP Matavou's letter to the complainant dated 25 August 2020: *see Prosecution Exhibit 2* gave the impression that



investigations were still afoot but SSP Neiko testified that that was not true, that after the call on 15 July 2020, there were no investigations into the matter. He left CID in September 2020 and he is unaware of what Reshmi Dass did in respect of the investigations after September 2020. He confirmed that they made no efforts to verify the Commissioner's directives after the call on 15 July 2020. He stated that the Commissioner of Police was the highest ranking officer within the Fiji Police Force. It would have been an act of insubordination for him to have questioned the directive of the Commissioner of Police. He confirmed that Brigadier General Sitiveni Qiliho had left Fiji on overseas study leave in the United Kingdom in July 2020 and he confirmed that no report regarding the USP case had been presented to him between 15 July 2020 and 31 July 2020. He confirmed that he dealt with Brigadier General Sitiveni Qiliho frequently in his capacity as Director CID and he testified that as Commissioner of Police, Mr. Qiliho did have an open door policy for his officers, and that they showed him respect and he showed them respect.

74. That was the close of the prosecution case.

75. During the course of my ruling denying the Defendants their No Case to Answer application, I took judicial notice of several facts.

76. I continue to take judicial notice of the fact that the first Defendant, Mr. Josaia Voreqe Bainimarama is a "Fijian military leader who led a 2006 *coup*<sup>5</sup> that resulted in his becoming acting President (2006 – 07) and later acting prime minister (2007 – 14) of Fiji. He was sworn in officially as prime minister in September 2014 following his victory in the country's first elections since the *coup* and served until December 2022...From 1975 he pursued a career in the Fijian navy, rising to become commander (1988), captain (1994), and chief of staff (1998). On March 1, 1999, he was appointed commodore and commander of all Fiji's military forces...In March 2014 Bainimarama stepped down as the head of Fiji's military in preparation for his candidacy in the September elections. Bainimarama's Fiji First party won just over 59% of the vote and an outright parliamentary majority in the September 17 elections. He took office formally as prime minister on September 22":

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<sup>5</sup> See also [Qarase v. Bainimarama](#) [2009] FJCA 9; ABU0077.2008S (9 April 2009).

Tuimalealiifano, M, Chauhan, Y, McKenna A, Murray L & Tikkanen A. Frank Bainimarama, prime minister of Fiji. In The Editors of Encyclopedia Britannica, *Britannica History & Society*. Encyclopaedia Britannica, Inc. <https://www.britannica.com/biography/Frank-Bainimarama> .

77. Much as I disapprove of the first Defendant's actions in spear-heading the 2006 *coup d'état* and while I did and continue to have strong feelings about the first Defendant's disregard for the rule of law in deciding to abrogate the **1997 Constitution** in direct contravention of the decision of the Court of Appeal of 9 April 2009, I direct myself that the first Defendant is not on trial here for those acts. He cannot be<sup>6</sup> in any event, and so for these reasons my thoughts and feelings about those facts are irrelevant. I must dispassionately view these acts as a matter of history. Bad history that I pray is never repeated but history nonetheless. History which may, or may not provide important background for the facts of this case; but which in and of itself has no *direct* bearing on the charges currently before me.
78. As a lawyer and a judicial officer it is my sworn duty to ensure that the first Defendant, in conjunction with the second Defendant, were and are treated in an objective, even-handed manner in accordance with law from first call to judgment in respect of *these* charges and *this* trial. It is a duty I take very seriously. I remind myself and any who have an interest in these proceedings that two wrongs should not and do not make a right. I must be very careful to prevent this from becoming an unlawful<sup>7</sup> example of judicial overreach.
79. I continue to take judicial notice of the fact that a Rear Admiral in the Republic of Fiji Navy is equivalent in standing and rank to a Major General in the Fiji Infantry Regiment and that both are superior in rank and standing to a Brigadier General in the Fiji Infantry Regiment. Brigadier General is not an established rank within the Fiji Police Force.
80. Following my ruling that the Defendants' had a case to answer, each Defendant chose to testify and be subject to cross-examination.

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<sup>6</sup> See Chapter 10 of the **Constitution of the Republic of Fiji 2013**.

<sup>7</sup> *Ibid*.

### **C. THE DEFENCE CASE**

81. Prior to the opening of the Defence case, the State and the Defence tendered one more document by consent. It is Minute No. 9 – inserted alongside the other minutes at **Prosecution Exhibit 3**, which reads:

“MMF,

I return herewith CID HQ PEP 12/7/2019 for further tasking, please.

2. After a perusal of the draft minutes sent for onward submission to Director CID, it is crucial that the outlined tasking below are attended to first.

3. Direct the IO to:

- Record a detail statement from Lodhias Travel in respect of Allegation # 01, for the payment of \$9, 271.00 paid on 28/09/18 for Rajesh Chandra, (DPNK), (B-2)’s travel to Melbourne vide Inv. # 71414.
- IO to also uplift all relevant documents pertaining to this transaction from Lodhias Travel.
- IO to record a detail statement from VC Pal Ahluwhalia who according to Allegation 2 had suspended the use of Professional Development Policy in early, 2019. Find out what was the basis of this suspension?
- In respect of Allegation 3, statements to be recorded from the following:
  - i) (B-4)’s supervisor;
  - ii) the Vice-Chancellor; and
  - iii) all members of the Staff Appeal Committee.
- IO to also record a statement from USP’s cashier in respect of the refund paid for (B-4)’s bonus. Have all relevant documents obtained and details of mode of payment and by whom?
- In respect of Allegation 4, para. 21, who confirmed that (B-5)’s appeal application was not tabled nor discussed during the meeting. Have the AC members statements recorded as well.

3. Re-submit file upon completion of the outlined tasking.

5. Submitted, please.

Signed DDEC

15/10/2020”

82. **Defence Witness No. 1: Josaia Voreqe Bainimarama** testified that he is currently unemployed/retired. He understands the charge laid by the State against him. He maintains his not guilty plea. He has chosen to testify voluntarily in respect of this case. He celebrated his 69<sup>th</sup> birthday in April 2023. He lives with his wife and one of his grand-daughters at this time. He has six children, nineteen grandchildren and two great-grandchildren. In 2014, after the 2013 **Constitution**, he became leader of the Fiji First political party. He became Prime Minister of Fiji in 2014. He resigned from his previous position within the disciplined forces in 2014. He has a heart condition, and had a triple by-pass surgery last year. He has a pace-maker. He takes medication for his heart. He also suffers from sleep apnea and undertakes sleep apnea therapy every night and is a little hard of hearing. He was Prime Minister of Fiji in 2020. His primary obligation as Prime Minister of Fiji was to provide good governance under the 2013 **Constitution**, to protect the people of Fiji and to protect the nation.

83. His counsel put the State's allegation as contained in Count 1 of the Charge against him to him in open Court. Mr. Bainimarama denied the charge. He testified that he had never told Commissioner Qiliho to stop that investigation. He has never, in his term as Prime Minister, directed Commissioner Qiliho to stop any investigations. He testified that he had not been aware of the investigations contained in CID HQ PEP 12/07/19 at that time. He learnt of the file and the matter later. When his counsel asked him if he had suggested to Commissioner Qiliho to stay away from USP investigations, he said that he had. He testified that that remark had been made in the context of a bigger conversation, and that the conversation had happened in June and not between July and September 2020 as the State allege. He explained that Commissioner Qiliho and he had attended a brief at the Ministry of Health. It had been at the height of COVID and there had been a committee formed to stop the spread of COVID and to help the people of Fiji. The committee was made up of Doctors, the Permanent Secretary, the Minister of Health and the Commissioner of Police. There were major happenings around COVID 19, they were in the middle of establishing an emergency hospital, and there had been border closings. Police officers maintained road-blocks, and the intention was to ensure that people adhered to COVID protocols.

84. The first Defendant testified that he had made that comment, on that particular day in June, after a Conference. He had learnt that there had been a protest at the University of the South Pacific. He had learnt of it from the media. He did not know much about it and he had asked the Commissioner about it. Commissioner Qiliho told him that there had been a protest and they were concerned about the numbers which had increased from what had been approved. Commissioner Qiliho told him that there was an investigation into the matter that he had directed. The first Defendant suggested to Commissioner Qiliho to let the police handle the investigations, that he had more important things on his plate like COVID control. He never made any suggestion to Commissioner Qiliho for him to stop the investigations. He simply thought that Commissioner Qiliho had more important things on his plate than dealing with the University of the South Pacific investigations, to let his police officers deal with it as they were the technical experts on the ground and for the Commissioner Qiliho to simply focus on the bigger picture, COVID-19.
85. Learned counsel for the Defence then showed Mr. Bainimarama a media report dated 9 June 2020 titled "*Police to investigate breach of COVID-19 restrictions at USP protests.*" It is written by a Ms. Lena Reece and reads:

"The Fiji Police Force has started an investigation into the public gathering of staff and students at the University of the South Pacific.

Police have also confirmed that it will not hesitate to arrest people who are found to be breaching the COVID-19 restrictions during the ongoing protests at the institution.

This comes as the student association this afternoon threatened to boycott exams and classes if their demands weren't met.

Police Commissioner Brigadier General Sitiveni Qiliho today confirmed that he is looking into possible breaches by those who have been protesting at the Laucala campus.

*"We visited them yesterday and again today. We've spoken to key people there and those who are congregating there and we will be taking people in for breach of COVID-19 restrictions that are in place."*

The USP Students Association have today in a letter to the Council demanded the resignation of Pro-Chancellor Winston Thompson, Deputy Pro-Chancellor Aloma

Johansson and Chair Audit and Risk Committee Mahmood Kahn adding that they will not step back from participating in peaceful demonstrations.

Earlier today, some of the USP staff and students were gathered near the USP Library to show support to the now-suspended Professor Ahluwhalia. They were also told by Police that any continuation of protests would require a permit.”

86. Mr. Bainimarama confirmed that this was the media report he had read and had asked Commissioner Qiliho to brief him about. This was the investigations he had asked Commissioner Qiliho to stay away from and leave to his police officers to handle. He testified that he had not heard of the financial mismanagement investigation at this stage. He did not receive any feedback from Commissioner Qiliho about the investigations into the USP protests and so he assumed that the Police had continued on with their work. The media report was tendered by the first Defendant as **Defence Exhibit 1** with the consent of the State.

87. Mr. Bainimarama confirmed chairing a National Security Council meeting at his office boardroom on 17 September 2020. He admitted telling Prosecution Witness 19: Rusiate Tudravu that he had “suggested earlier to Tuks to stay after from that investigation.” By consent a longer extract of the transcript of the National Security Council meeting audio recording was tendered into evidence in Court as **Defence Exhibit 2**. The extended transcript reads:

|                     |  |
|---------------------|--|
|                     | <i>(Chatting)</i>  |
| Mr. Rusiate Tudravu | Sir, we...can we discuss later on this some of the investigation that are currently pending. Just wanted have clarification on the our stand that USP thing, it's...we discuss it later or tou sa veitalanoa ga. |
| Mr. Bainimarama     | Oh I suggested earlier to Tuks to stay away from that investigation.   |
| Mr. Rusiate Tudravu | The issue here now is...because they are saying that the audit is already been done now then the complainant is asking what we are doing because they  |

|                         |   |
|-------------------------|---|
|                         | know that the DPP has already directed us ah to if we can just interview those ah...that is our stand and then I came to talk with DPP...well DPP told me that's operational matter you need to do it because you will be answerable to that. I have had advised them the guidance that it was given and that his stand to me so I just want a clarification on...because we are holding everything up and they are pushing. They want feedback on...we are holding all the investigations. |
| Mr. Aiyaz Sayed-Khaiyum | Sir which complaint is this one?  |
| Mr. Rusiate Tudravu     | It's a USP ... the one against the umm board, board of directors, to Mr. Thompson   |
| Mr. Aiyaz Sayed-Khaiyum | Oh the complaint against Mr. Thompson. For doing what?  |
| Mr. Rusiate Tudravu     | The audit, the audit report that was out....  |
| Mr. Bainimarama         | Oi the audit report.  |
| Mr. Rusiate Tudravu     | They report to FICAC but FICAC said they cannot do anything because...  |
| Mr. Bainimarama         | The original, original....  |
| Mr. Rusiate Tudravu     | The audit came out again. So I just need to be clear on that so that I can advise our...  |
| Mr. Aiyaz Sayed Khaiyum | There is a BDO, there is a BDO report also. BDO New Zealand, there is not a criminal element to it. They are internal procedural issues that are administrative matters. It's not a criminal matter at all.   |
| Mr. Rusiate Tudravu     | That's the one, that's the one they have been talking about.  |
| Mr. Aiyaz Sayed Khaiyum | That's the one, I mean you should just send it back to I mean from my legal...  |
| Mr. Bainimarama         | Somebody needs to go and talk to DPP  |

|                         |  |
|-------------------------|--|
| Mr. Aiyaz Sayed Khaiyum | Well if its tactically, if it's an operational issue then he leaves it, leaves it to you. The DPP can't tell you what to do, if the file has gone to DPP.  |
| Mr. Rusiate Tudravu     | He has directed if we can interview.   |
| Mr. Aiyaz Sayed Khaiyum | Oh okay, okay, okay.   |
| Mr. Rusiate Tudravu     | Yeah and then I was guided ah...because of the stand of the government, so I told the investigators just hold on for a while, and then the complainant have to come back to us what are we doing and they call in DPP and then DPP said no its under Commissioner is...I have already given my guidance in respect to what has to be done. |
| Mr. Aiyaz Sayed Khaiyum | PM, can we see the complaint?  |
| Mr. Bainimarama         | Yes, yes.  |
| Mr. Aiyaz Sayed-Khaiyum | Can I please see the complaint?  |
| Mr. Bainimarama         | Mmh.   |
| Mr. Aiyaz Sayed-Khaiyum | In fact PM I was going to raise an issue I have a draft I didn't want to bring it with me ah...is whether we want to send a latter as we have discussed. Given what's already happened at USP to send a letter to USP to say...we will stop our grant funding.   |
| Mr. Bainimarama         | You know there is another investigation that's on now...it's on the papers today...was in the papers yesterday, there's an allegation against ...  |
| Mr. Aiyaz Sayed-Khaiyum | Vice Chancellor Pal  |
| ...                     | ...  |
| ...                     | ...  |
| ...                     | ...  |
| ...                     | ...  |
| Mr. Bainimarama         | Pal...there are new allegations coming up by the auditor. The auditor was interviewed in the last couple of days on TV, I think. He came on TV but has come  |



|                         |  |
|-------------------------|--|
|                         | up with the new list of allegation about 35, 38 or 30 some...he came and briefed me about it and ah...we I have told him to work on those allegations, if those allegations come out and they are true about Vice Chancellor Pal that allegation needed to be sorted out otherwise we will withdraw our, our grant...we are we putting up the bulk of the guard of 23 million dollars...   |
| Mr. Aiyaz Sayed-Khaiyum | 30 ... 34 PM   |
| Mr. Bainimarama         | 34 sorry   |
| Mr. Aiyaz Sayed-Khaiyum | We give 34, the next highest is 2 million  |
| Mr. Bainimarama         | Where did I get the 24 million from?   |
| Mr. Rusiate Tudravu     | Can I just see the ah..., can I just get the IO and will just come and see your good self-next week. So that we can just have and we'll try and get things sorted out from our side because the ball is in our court now because DPP has already given his directives that they be interviewed and he had already stated that to the that they be interviewed and he had already stated that to the complainant. Now the complainant is pushing us, what are we doing? |
| Mr. Bainimarama         | Okay we need to find out exactly what the complainant's complaining about. What was your comment about the...the grant?  |
| Mr. Aiyaz Sayed-Khaiyum | I was gonna raise it in other business but to say, we want to rewrite the letter the letter now to them.   |
| Mr. Bainimarama         | Yeah.  |

88. Mr. Bainimarama testified that when he had first heard Prosecution Witness 19: Rusiate Tudravu reference the "USP thing" during the National Security Council meeting, he had presumed that he was talking about the saga that Commissioner Qiliho and he had spoken of during their June COVID-19 Committee meeting, the protest. Mr. Bainimarama confirmed that he had not directed Acting Commissioner Tudravu to stop investigations.

89. Mr. Bainimarama testified that he did not know what investigations Mr. Tudravu was talking about. Mr. Tudravu said that he had it under control and that DPP was involved, so it seemed to Mr. Bainimarama that everything was under control on Mr. Tudravu's side. He testified that Mr. Tudravu had not brought the investigating officer over to discuss the matter as he had indicated he would that day. Mr. Bainimarama testified that what Mr. Tudravu said was not correct. His testimony on this point was as follows: "He said he thought I told him to stop investigations. His opinion is different from the reality on the ground. I never said that. I did not and if he says I did then that's an embarrassment for a Commissioner of Police to come to court and lie."
90. He testified that he knew Commissioner Qiliho. They had parted company in 2014 when Mr. Bainimarama left the military to stand for elections. Later on, Commissioner Qiliho became Commissioner of Police in 2015. Both worked under the Constitution. Both looked after the country per their individual Constitutional responsibilities. Mr. Bainimarama testified that the Commissioner of Police did not report to him. He said: "If anyone knows Mr. Qiliho, they will know that he is independent and very disciplined." He testified that he had never at any stage informed Commissioner Qiliho to stop police investigations.
91. Under cross-examination, Mr. Bainimarama confirmed that he served 39 years with the Fiji Military Forces. He came up through the ranks and became Commander in 1999. He served as Commander from 1999 to 2014. In 2014, the elections were won by the Fiji First party and he became Prime Minister. He confirmed that National Security Meetings were held at the Prime Minister's office. The Commissioner of Police or the Acting Commissioner of Police would bring matters of national importance to their attention at these meetings. He confirmed that he had been present at the National Security Council in September 2020 and that Mr. Tudravu had also been present. He confirmed that he had been referred to a USP investigation and he testified that when Mr. Tudravu had raised this, he had thought Mr. Tudravu was referring to the USP protests. Mr. Bainimarama testified that it seemed clear to him now that when Mr. Tudravu had brought up the USP investigations on 17 September 2020, it was his intention to get clarity on the Doras Traill complaint. He, however, had thought that Mr. Tudravu had been referring to the

investigations regarding the protest at USP. He had not known then of the investigations into the complaints raised by Professor Aluwhalia and he testified that the transcript will reflect that when that was clarified he had very little to say after that. Once it became clear that there were two separate investigations, the conversation continued on and he had not felt it necessary in light of that to clarify his original statement.

**92. Defence Witness 2: Sitiveni Tukaituraga Qiliho** testified next. He testified that he understood the charge against him and he strongly maintained his not guilty plea. He wished to voluntarily give evidence. He was born on 30 December 1969 and will turn 54 in December of 2023. He attended primary school in Suva and then attended Xavier College in Ba. He completed his final two years of secondary studies in New Zealand. He enlisted in the Republic of Fiji Military Forces on 5 February 1988 at 18 years old immediately after completing his secondary school studies. He did his Officer Cadet training and was commissioned a 2<sup>nd</sup> Lieutenant in the Fiji Army as a 19 year old in 1989. He has attended various military courses and trainings in Fiji and abroad. He attained a Masters of Science Degree in Defence and Strategic Studies from Madras University in India, and more recently, he attended the Royal College of Defence Studies in England where he attained a Postgraduate Certificate in Strategy for Global Leaders from London University. He has undertaken ten tours of duty in various hotspots in the Middle East and one in Timor-Leste. In total he has spent over nine years abroad holding various command appointments culminating in his command of the Republic of Fiji Military Forces Battalion in Egypt and commanding the first deployment of Fijian troops of over five hundred and thirty five personnel to the Syrian Golan Heights. He is married with four children who range in age from seventeen to thirty years old. He rose up the ranks with various command and staff appointments and attained the rank of Brigadier-General just before he went across to become Acting Commissioner of Police in November 2015. The Commander of the Fiji Military Forces at that time was Rear Admiral Naupoto. He confirmed being the Commissioner of Police in 2020. He was appointed by the President of the Republic of Fiji through the recommendation of the Constitutional Offices Commission as stipulated in the **Constitution of Fiji**.

93. Mr. Qiliho testified that in that role his key roles and responsibilities was the organization and administration of the Fiji Police Force, deployment and control of operations, equal application of the law, and protection of life and property in Fiji. In 2020, the COVID pandemic was something that was new to the world and Fiji. He was a part of a Government team made up of the Hon. Prime Minister, the Minister for Health and experts from the Ministry of Health and the United Nations. They met on a daily basis. They took their cue from there and they implemented measures within the Fiji Police Force and they had their own briefing bubbles that they limited themselves to. They stopped briefings in bigger groups as infection rates went up due to the Fiji Police Force being at the forefront assisting the Ministry of Health in implementing measures needed to protect and mitigate against COVID. There were police check-points nation-wide, quarantine areas and they had set up electronic command centers and were speeding up the beefing up of their technological capacities. He testified that it was a new threat, one that we did not understand fully at the time.

94. Mr. Qiliho testified that as Commissioner of Police he did not get involved in the actual investigation itself. That, he testified, is left entirely to the professionals headed by Director Criminal Investigations Division and the line Assistant Commissioner of Police; and it was left to the Criminal Investigations Division and to the Divisions to play their parts. His role within that cycle or process of investigation was to assist them with resources, including IT resources that was within his power to deploy to help them with their investigations. In that process there would be briefings or he would call for briefings and in those briefings there would be his Deputy, Assistant Commissioners of Police, the Director Criminal Investigations Division, and the Director Legal. They might co-opt the Director in charge of Operations and Administration for additional support as and when needed. In some instances, he would direct the Director Legal to seek advice from the Solicitor General, and sometimes advice would be sought from the Director of Public Prosecutions. If there was a specialist not based at the Criminal Investigations Department but in some other Department or Division, he would assign that specialist to an investigation and if the investigation is particularly complex, he might ask for a taskforce to be formed. As Commissioner, he would direct allocation of vehicles, facilitate funding and even organize

refreshments as part of the support offered by his office as part of those briefings. He was not involved in the technicalities of the actual investigations itself.

95. The Director Criminal Investigations at the time was Serupepeli Neiko. The Deputy Director Economic Crime at the time was Loraini Seru. She came under the direct command and control of Director Criminal Investigations Division and their line Assistant Commissioner of Police who was Chief of Investigations and Intelligence at the time was Biu Matavou, Mr. Qiliho said. The Deputy Director Economic Crime reported to Seru Neiko as Director CID and he would, in turn, report to Biu Matavou – that was the direct chain of command but this did not stop her from addressing issues to the Chief of Investigations and Intelligence directly nor did it stop her from coming directly up to him. He had an open door policy for Directors right down to his Constables and they utilized this very well and would walk in at any time to brief him in respect of any issue or investigations in consultation with his Personal Staff Officer. As Commissioner of Police he did receive complaints directly via phone calls from members of the public regarding police conduct or police investigations. His phone was an official phone and the number was widely circulated via social media and through the media. He also received complaints via the Prime Minister's office if they had received a complaint from a member of the public, and as Commissioner he would provide briefs back to the Prime Minister's office about actions taken and resolutions on the complaints received via their office. He would re-direct complaints against police officers to the Director Internal Affairs for his investigation, or he might re-direct the complaint to the Divisional Commanding Officer of a Division or to whichever section head in charge of the officer or investigations complained of or that it was likely to impact to get a brief on what was happening. He asked for briefs because some of those reports might ultimately end up in the media and he needed to be on top of any queries that might come from the media regarding some of those reports. Mr. Qiliho testified that the process for closing a file is clearly stipulated in the Force Standing Orders. The file closure is initiated by the Director Criminal Investigations Division. Mr. Qiliho testified that he had never directed any stopping or filing away of investigations. The docket might be sent to him for his endorsement of closure or for his concurrence on any action that needed to be done. The term to stop and close an investigation file in Police terminology is "File away." First, the docket would come to him for his information and the Director Criminal Investigation Division would be responsible

for the filing away of each docket; that is the filing away and archiving of the Docket. He was uncertain as to how long a file needed to be archived before destruction.

96. In respect of the specific allegation against him, Mr. Qiliho testified that he was appointed by the President of the Republic of Fiji under the Constitutional Officers Commission and in that capacity is a Constitutional office holder and not a person employed under or by the Public Services Commission. Second, Mr. Qiliho testified that he had never directed Serupepeli Neiko and Reshmi Dass to stop and file away the investigation. His language when he called for briefings was to “just stop what you are doing and give me a brief.” He always used that and Serupepeli Neiko and the previous Director CID were aware and understood him to mean to just stop what they were doing and to give him a brief in detail. He always either said, “just stop what you’re doing and give me an update” or “just drop what you’re doing and give me a brief or an update”, Mr. Qiliho testified. His officers understood this and it was never taken to mean to stop an investigation. He expected, and his officers knew he expected the investigation cycle to run its course after that. Mr. Qiliho had never, in the course of his employment as Commissioner of Police ever since coming over from the Republic of Fiji Military Forces in November 2015, directed the stop of an investigation. When he said that, he simply meant for them to stop what they were doing at that point and give him a brief. Briefs usually took 30 minutes and he would have quarterly briefs, monthly briefs and weekly briefs for complex cases. These briefs never meant, and the directive to stop and provide him a brief never meant that the investigations stopped in its tracks, it just meant that the investigations stopped at that point and that after the briefing the investigation continued.
97. When he called Serupepeli Neiko and then spoke to Reshmi Dass on 15 July 2020, Mr. Qiliho had been unaware of the investigations that made up CID/HQ PEP 12/07/2019. The only investigations he had been aware of that had been ongoing in regards to the University of the South Pacific at that point was in regards to a possible breach of COVID restrictions. He had not been aware of any other investigations into affairs at USP at that point. He had been aware that there had been another investigation into affairs at the University of the South Pacific that had been conducted by FICAC and that there had been a BDO report requested by USP, but he had not been aware of a similar investigation being undertaken

by the Fiji Police Force until he had spoken with Serupepeli Neiko during that conversation on 15 July 2020. It was not until he had spoken with Seru Neiko that he learnt that there were ongoing investigations into the affairs at USP in respect of financial mismanagement issues. Prior to 15 July 2020, he had never received the file docket, he had never received a minute, he was being briefed per usual on a quarterly basis at CID HQ on outstanding investigations and he was briefed on outstanding cases and not once was this case brought up to his attention. He had clear directions to the Force that any files that went out of the Fiji Police Force, including those files that went to the Director of Public Prosecutions, he had to be informed and that was adhered to and his Deputy Rusiate Tudravu had put out a directive to that effect. However, it was only when he was being questioned in respect of the allegations against him that he found out that the file had been sent to the Director of Public Prosecutions. It had never been brought to his knowledge or attention and even when the file had been sent back from the Office of the Director of Public Prosecution it was never brought to his attention because by then he had gone to London for his studies.

98. On the morning of 15 July 2020, Mr. Qiliho received a call. He cannot recall whether it was from the Prime Minister or from the Prime Minister's office but he received a call asking him if there was an investigation into USP because there was a complaint from a member of the public that he was being harassed with frequent patrols around his residence by Police vehicles and that he was under police surveillance. The previous evening, he had received a phone call from a member of the public claiming to work for USP along the same lines, that his home was frequently visited by Police vehicles and he was feeling harassed for being under police surveillance. He had given the caller the Director Internal Affairs' number but when he got the phone call on the 15<sup>th</sup>, that is when he called Seru Neiko to enquire to see if he was one of the guys implicated in the likely breach of COVID restrictions with that gathering at USP and Seru Neiko did not know anything about it but then he told Mr. Qiliho that there was some investigation into likely mismanagement at USP. It was a short conversation but when Mr. Neiko told Mr. Qiliho that there was an investigation into likely mismanagement at USP, Mr. Qiliho replied that it had been widely reported in the media that FICAC had been doing an investigation into something along those lines and also an accounting firm BDO and Mr. Neiko had said that he did not know anything further about it and that he would get the investigating officer to give him a call.

99. The investigating officer then called Mr. Qiliho and identified herself as Reshmi Dass and Mr. Qiliho asked her the same questions as he had when he picked up the phone and had called Mr. Neiko. He had said to Mr. Neiko, "Please stop what you're doing and give me a brief as to what is happening. This is the complaint that has come from the Prime Minister's office and I had received a call from a member of the public so please just stop what you're doing and give me a brief about what is happening." He said the same thing to Reshmi Dass and she told Mr. Qiliho that she had brought in someone earlier to be interviewed over an allegation of financial mismanagement at USP and Mr. Qiliho asked her to tell him more and to provide a written brief which was to be routed to her superiors the Director CID and Chief Investigations and Intelligence to see how they could assist her with it because from what she had explained it was a complex case with complex issues which involved governments of the South Pacific including Australia and New Zealand if that was the case and he was already looking at getting his senior team together virtually because of the COVID restrictions in place so that they could see what was the best course of action for them to take whether it be going to the DPP for his advice or whether it be going to the Solicitor General or if they needed to go to the Ministry of Foreign Affairs and Reshmi Dass had told Mr. Qiliho that she did not have her file with her; that she had sent it to her superior earlier in the week and Mr. Qiliho said he was calling her in the middle of the month and she said that she only knew a little bit about the file because it was still in the early stages and it had been submitted to her superiors earlier in the month. She told Mr. Qiliho she would be able to submit the written brief once she received the file back and Mr. Qiliho said that he understood that very well. He testified that the conversation was very brief. It took about 112 seconds per the call records.

100. Mr. Qiliho totally disagreed with the conclusions reached by Mr. Neiko and Ms. Dass about the conversation they had had that day. He testified that Seru Neiko and Ms. Reshmi Dass had been part of briefings he had had in his Conference room and that language that he used to "*just stop or drop what you are doing and give me a brief*" has never resulted in a stoppage or complete stoppage or filing away of investigations from when Mr. Qiliho started in 2015 until now. He only learnt of the stoppage when he was brought in for questioning and through this court process, otherwise he was never briefed before he left or even after he had returned from his studies in London in 2021 and even when the file was filed away in 2022 it was never sent up his way for his information or



his clarification or validation of that so-called direction. He testified that he has never verbally directed the stoppage or filing away of a file in this manner and he understands full well the importance of capturing decisions of this nature in writing; that is why the investigation file docket is normally passed through as part of the investigation process and when they had talked in July 2020, she had passed the file over to her superiors and that was part of the investigation process; that is part of the investigation process going on. So it did not stop; his call on the 15<sup>th</sup> did not stop that. It was with her superiors and as he heard in Court, it came back around at the end of August with directions from Deputy Director of Economic Crime to do video interviews and that is part of the investigation process. Even his request to her to stop and provide him a brief was part of the investigation pattern and it was his sole intention judging by that brief conversation that it was a complex investigation that needed a taskforce team and that was what he was planning to do; to discuss with his senior officers but it never came to him. He left 15 days later for his studies in London and before he had left he had spoken to Biu Matavou about it to expect that write up routed through Seru Neiko as Director CID and he also verbally briefed the Acting Commissioner of Police to expect that note as the file was still not with the investigating officer at that moment in time. From that time until he came back from studies, Mr. Qiliho did not receive any minute or any brief about the investigations contained in CID/HQ PEP 12/07/2019 and he learnt about those investigations when he was being questioned and during this Court process.

101. Mr. Qiliho testified that he had received a call from the Prime Minister or from the Prime Minister's office regarding a complaint from a member of the public claiming that he was being harassed by the Police. This led him to calling Mr. Neiko to find out if this had anything to do with the investigations into COVID breaches at USP. At no point was he directed to stop those investigations and at no point from the time he came across to become Commissioner of Police in November 2015 to the date he had been suspended had any Minister or person directed him to stop or file away any investigations. His responsibilities as an independent Constitutional office holder is clearly defined in the Constitution. Mr. Qiliho was firm in tone when he said, "I do not take directives from anyone. I am independent. I take advice from the DPP. I solicit advice from the Solicitor General if required but I don't take any directions from anyone. I'm independent as clearly stipulated in the Constitution." He confirmed that he took advice from the DPP, the

Solicitor General and also from senior members of the Force. He left Fiji at the end of July 2020 and was away for one year. He returned at the end of August 2021, spent 14 days in quarantine and returned immediately to work after that as they were still dealing with COVID at that time and were gradually scaling back on COVID restrictions and police operations around that that were still on-going. From the time he returned back to office until 8 January 2022, no one from CID came to him to get his endorsement or advice or approval for the filing away of CID/HQ PEP 12/07/2019. Mr. Qiliho testified that he was in office when he returned and that when he returned he had briefings with various Divisions, Units and sub-units within Headquarters, including CID Headquarters and never was this investigation brought to his attention, or the actions that were going on on that particular investigations that they were doing. He had handed over to Acting Commissioner Tudravu before he left. Tudravu was a seasoned police officer and Mr. Qiliho had been confident that Acting Commissioner Tudravu would do whatever was needed to support the investigation on the ground as was the practice. He only learnt that CID had filed away this particular investigations when he was brought in for questioning at CID HQ when he learnt that this investigation had been filed away and of the allegation that he had directed its filing away.

102. Mr. Sharma asked Mr. Qiliho the following question: "Sir, when the prosecution witnesses gave evidence all of them parroted one idea, from Neiko to Dass to Rajesh and to Waqa. They all said this when I put it to them that 'if you thought that any directive from the Commissioner was not lawful or you did not wish to obey him why didn't you take it up or complain at the relevant time or make a minute of it', all of them said that it would be insubordination. Can you give us your position on what these people said, that it was insubordination to disobey a verbal instruction from you like this"? In reply, Mr. Qiliho leaned forward and said, "Let me clarify this Madam. That is not insubordination. They have every right to disobey an unlawful order, command or directive. And they have avenues to bring that up through their superiors. They could even bring that up directly with me that what I've said is wrong, that is not the right course of action to take, or through their Assistant Commissioner of Police Biu Matavou, who was Chief of Investigations and Intelligence. I was away for one year Madam. They could have brought it up with the Acting Commissioner of Police. There was the Director Internal Affairs. And if it was really abuse of office as alleged against me, there was anonymous ways to report it to

FICAC. They could have done that but none of this ever transpired Ma'am." Mr. Qiliho testified that it was his view that these allegations were part of a bigger conspiracy. He testified, "When the Coalition Government, our Government was sworn into office, one of the first statements that came out from the Hon. Prime Minister was that he could not work with me and the second was by the Minister for Home Affairs who called me into his office and asked me to resign for no reason and I told him, "No, I have not done anything wrong, I will not resign." He subsequently found himself brought in for interview for this allegation, followed by a complaint to the Constitutional Offices Commission that led to his suspension, followed by his charge in Court.

103. Mr. Qiliho said that according to the evidence, Reshmi Dass had sent the file up to her superior on 7 July 2020. He called on 15 July 2020. He recalled from the evidence that on 17 September 2020, Seru Neiko had taken the file up to Biu Matavou so that he could brief Acting Commissioner Tudravu before he attended the National Security Meeting and it was clear to him and worth noting that there was nothing in the file or in the briefing that he, Commissioner Qiliho, had directed a stop of the investigations. If anything, Biu Matavou had stated in Court that he had written to the complainant in August to indicate that investigations were still on-going. Mr. Qiliho observed that if one looked at the chronology of events, then the process was still on-going, the file was not with the investigating officer but the investigations were still on-going and never was the file brought up, nor was it minuted there that he had stopped the investigation. Acting Commissioner Tudravu testified in open Court that he had given a directive to stop and file away the investigation after the National Security Council meeting to Assistant Commissioner of Police Biu Matavou and Assistant Commissioner of Police Biu Matavou had then directed Seru Neiko to stop and file away the investigations. Mr. Qiliho was surprised to see that no minutes were produced in Court to this effect but it was clear to him from the evidence that if anyone had directed the stopping and filing away of CID/HQ PEP 12/07/2019, it was them. He had never given such a directive. He was never briefed and they did not seek clarification from him about his directive if that was how they took it. He was in office. He received briefs about investigations and files on major cases that have gone through filing away was normally routed to him for his information and none of that happened here in respect of this file. From the time Reshmi Dass started her investigations until the time Mesake Waqa filed the file away, he was not briefed about the

case. He learnt briefly about the details of it during his interview at CID and then more fully during the course of the trial but other than that he was left blinded completely about the investigations in respect of CID/HQ PEP 12/07/2019. He was aware of the investigations into possible COVID violations at USP as reported in the media in June 2020. He was in the country then and he had been part of the Government team that was getting daily briefings at the Ministry of Health headquarters from the various experts, fronting the media with Dr. Tudravu and Dr. Alisha Khan and sometimes the Minister of Health, telling people about the restrictions on COVID and the measures that are being taken, and he was fully aware and thought that that was the only investigations going on at USP. He was very passionate about these investigations because COVID was the big issue and COVID was the main issue that the country was dealing with and it was his responsibility on his part as Commissioner of Police to see what adherence was being carried out and to see that it was followed. They sent Police Officers to talk to the leaders of that gathering so that they were made aware of the protocols and measures that were in place and they conducted investigations into that so that they did not get a recurrence of that gathering in numbers.

104. Under cross-examination, Mr. Qiliho confirmed that he had been employed with the Fiji Military Forces prior to becoming Acting Commissioner of Police in November 2015. In 2014, he had held the rank of Colonel with the Fiji Military Forces. Mr. Bainimarama had been Commander of the Fiji Military Forces in 2014 before he had resigned to enter the electoral race. He had known Mr. Bainimarama as the Commander Navy before. Mr. Qiliho was in the Army. He knew Mr. Bainimarama as the Commander of the Republic of Fiji Military Forces but he spent over nine years, close to ten years away on various missions around the world and if one added on his studies around the world, half his military career was spent overseas so he had never worked directly under Mr. Bainimarama. The name Tuks came about when he first joined the military. Everyone referred to each other by their surnames. Qiliho was a unique Nadroga name which was hard to pronounce by a lot of people in the military especially the instructors and Tukaituraga was a bit long so Tuks was the name everyone knew him by in military circles. He was part of the Republic of Fiji Military Forces at the time, which he accepted was a disciplined service. He recalled what Mr. Neiko and Ms. Dass said in Court and he totally

disagreed with what was said. He recalled making the phone call on 15 July 2020 to Mr. Neiko and Mr. Neiko said that he did not know the details about the investigations and that he would get the Investigating Officer to call him which he did a few moments later. He recalled Ms. Dass' testimony. He disagreed with Ms. Dass' summation of the call. It was a brief call. Less than 2 minutes. He had mentioned briefly to Mr. Neiko during their call and he had stated it again to Reshmi Dass during their call that if it was an investigation into financial mismanagement that it was widely reported in the media that FICAC had done their investigations and had closed their investigations and there was an accounting firm BDO that was doing an internal audit as well into a possible mismanagement of funds. He testified that he did not stop the investigations. He wanted a written brief so that they could support it. If it involved financial mismanagement and if it was similar to the investigations that FICAC had been doing at USP with the Council than that involved foreign governments, and was complex. He needed his senior officers to sit down and look at ways to support the investigations and if there was any intention, it was to support the investigations, never to stop it. He told Reshmi Dass to brief him and continue with the investigations. He opened by saying "Just stop what you're doing and give me a brief on the investigations" and he ended the conversation with Reshmi Dass by saying as he always did, "Thank you, please continue with what you were doing." At the end of the conversation he said, "Thank you, I will wait for your brief. Please continue with what you were doing." That was not brought out in the evidence and questioning here, Mr. Qiliho said. To put that brief in writing once she received the file back would have taken thirty minutes in writing maximum. If this was a taskforce team and this had happened, they would have continued to do their investigations as normal. He would have expected the team leader to come and brief him with Director CID and in this case the file was with her superiors going through the usual investigation cycle and he was willing to wait for the file to go through the usual cycle, come back to her and for her to type up her brief and send it up to him through the line Assistant Commissioner. He denied ever telling her to stop the investigations. In Police terminology "stop the investigations" means "stop and file away" and that did not happen after his telephone call with them. He never uttered that. He said, "Just stop what you're doing and give me a brief" or "Drop what you're doing and give me a brief." They had heard him use this phrase often. They knew exactly what he meant. The phone call on 15 July 2020 was the first time he knew that the Fiji Police Force was investigating allegations of financial mismanagement at USP and it was also the last time he learnt anything of it

until he was taken in for questioning at CID HQ some months ago. He was not certain whether the complaint had come to him directly from the Prime Minister himself or from the Prime Minister's office. But he said that it came to him via one of these two avenues. The Prime Minister would sometimes Viber him a complaint from a concerned member of the public or it would come from his office and Commissioner Qiliho would ensure he sent a report back on action taken or resolutions reached through the staff at the PM's office. When referred to **Prosecution Exhibit 30: Mr. Qiliho's Record of Interview – Disc 3, Part 2 - Page 2 of 7**, as follows:

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| IP Suliasi: During the process of investigation, do you have any powers to call for a stop to any, in any investigation?   |
| Sitiveni Qiliho: In this case, I asked for that stop so that I could get a summary to be updated on a case that had become of national interest. I don't normally do it. But because I wasn't updated, I, I had to take this action. |
| D/IP Suliasi: That means that this case was of national interest and you need to know some of the facts from that case?  |
| Sitiveni Qiliho: Yes, I needed to know if I was questioned, like I had to brief the Minister, or I had to be, I had to know what was going on.   |
| D/IP Suliasi: Do you know what was the interest of the Minister in relation to this case? What was his interest in this case?  |
| Sitiveni Qiliho: No, but I was, I was preparing myself if I needed to, to give a briefing that I knew what was going on.   |
| D/IP Suliasi: Can you please reconfirm whose direction or directive was for you to ask for the investigation progress of the investigation and also a brief?   |
| Sitiveni Qiliho: It wasn't a directive. I was asked for a brief by the Hon. Prime Minister at the time. He asked for a brief.  |

Mr. Qiliho testified that he was under oath now and he could not remember if the request had come from the Hon. Prime Minister or from his Office. The question had been, "Are you conducting investigations into USP because the person had alleged that he was under surveillance and was feeling harassed"? He received a lot of queries on a daily basis. If he did not get a request or a complaint on a daily basis, he breathed easy but it was rare. At

that time the allegation was new to him and he was answering with what he could think about because he was never briefed on the file or the investigation that they had started but he had to be more careful now because he was under oath.

105. The statement of staying away from investigations happened during COVID Mr. Qiliho said. They were having daily briefings and it was in regards to likely possible breaches at USP. That was what Mr. Bainimarama had told him. He had worked with Mr. Bainimarama in the past and he knew exactly what he meant. It was a passing comment but he understood what he meant, "That I was to focus on the bigger picture which was the main battle that was being fought at that time which was against the COVID pandemic and let the police officers who are expert in their field deal with that. That's a minor skirmish that they had to deal with. I had to focus on the main battle that was going on. That's my interpretation, that's how I took it. That was the only investigations I knew at that time, in June, when that passing comment was made to me because that was the only investigations I knew was happening at USP". When he called Mr. Neiko and Ms. Dass on 15 July 2020, it was in regards to a complaint made by an employee at USP who was fearful because he felt he was under constant surveillance and he felt fearful because of that and he thought that it was linked to the investigations of possible COVID breaches at USP and he thought, "Oh this must be one of the key players". That was what he thought and when he called Mr. Neiko that was when he learnt that there was another investigations that was lodged and it was at the early stages and "looking at it now, they probably just had not had the time to brief me about it at the time because it was with Reshmi Dass and it was only in early July that she had submitted it to her superiors."

106. The following cross-examination sets out clearly the State's position as clearly and cogently put by the learned Acting Director of Public Prosecutions Mr. Toganivalu to Commissioner Qiliho as second Defendant and his position as set out in his replies:

**“Mr. Toganivalu:** Mr. Qiliho, you have just stated in court under oath that when the inquiry was brought to your attention about some surveillance being done at USP, do you recall saying that?

**Mr. Qiliho:** Not at USP but at the person's place and he had complained to me and I had given him the number to lodge a formal complaint with internal affairs

and also to inform the Prime Minister's office or the Prime Minister himself, I can't recall.

**Mr. Toganivalu:** He complained to you about?

**Mr. Qiliho:** He had, a person had called me, I'm not sure if it was the same person but it was a very similar complaint.

**Mr. Toganivalu:** And what did he tell you?

**Mr. Qiliho:** He told me that he was feeling harassed that, that his residence was frequently patrolled by police vehicles and he feels he is under surveillance and along similar lines was the message that came from the Prime Minister's office.

**Mr. Toganivalu:** And that was one of the three issues you raised with Reshmi Dass when you spoke to her on the 15<sup>th</sup> of July 2020?

**Mr. Qiliho:** Yes, it was a very brief conversation and that's what I told her and like I said, I told Seru Neiko and I told Reshmi Dass the same thing that I received that complaint and when they said that they were investigating a matter into financial mismanagement, I said that FICAC was investigating a similar thing and FICAC had stopped its investigation and BDO was doing an internal audit into similar allegations. That was during the course of that conversation.

**Mr. Toganivalu:** So would it be fair to say that you could not have had that thought that it was about the USP protests?

**Mr. Qiliho:** I had that thought, when I called initially to speak to Neiko I thought it had to do with investigations we were doing into possible breaches into COVID protocols that we were investigating at USP. During that conversation then I found out that we were investigating possible financial mismanagement as well so that was the second investigation and that was the first time I knew about it.

**Mr. Toganivalu:** And then the third issue was what Reshmi Dass said which was to stop the investigations as it was from the PM's office.

**Mr. Qiliho:** I never received such a directive from the PM's office, first of all Madam and I never gave such a directive. Only at the start of the conversation I said "just stop what you're doing and give me a brief." That doesn't mean stop the investigations. It's just "stop what you're doing and give me a brief" meaning where are you up to in your investigations, give me your most up to date brief and she couldn't because she didn't have the file with her. The file docket had been submitted to her superiors and they were analyzing that to give her directions which



came back at the end of August when I was not in office for them to do video recorded interviews. That's the normal process. That's the normal investigation process. She did that on the 7<sup>th</sup> or around the 7<sup>th</sup> on to her superior Rajesh and so it would have gone the day earlier or two days earlier and I gave the call on the 15<sup>th</sup> so the file was not with her when I called and we agreed that when she got the file back she would give up that written brief.

**Mr. Toganivalu:** Is it possible that the first Accused had told you to stay away from that investigation and you can't recall that?

**Mr. Qiliho:** There was one investigation that we knew were ongoing into USP and that was for possible breaches of COVID restrictions and that's what I stated before and I'll re-state it again, I knew exactly what it meant. That I had to focus on the bigger picture and let the officers deal with that investigation into the possible breaches. I did not know until the phone call on the 15<sup>th</sup> – we had had these discussions in June, we are doing this phone conversation on the 15<sup>th</sup> of July. This conversation transpired a month or so before in June ... so we were talking about a totally different investigation at that time, the possible breaches of COVID protocols...”

107. Mr. Qiliho testified that COVID violations were investigated by CID at their Headquarters. That is why he called Director CID. He knew that was happening. It was reported at Totogo Police Station but it was investigated out of CID. It was the major event happening in the country, the COVID pandemic and they were fighting hard to control that and to protect the people of Fiji from that and that was why it was an important investigation that was sooner or later going to be handled by CID HQ because it was in regards to an important event that was happening in the country, and the laws regarding that were being gazetted as things proceeded. The team at CID were handling that because the team at CID were operating in their own bubbles with the restrictions that they had in place, the team was put together at CID to handle the issues relating to COVID-19 and its processes. He was not aware of any other investigations into affairs at USP. In June 2020, all he was aware of was the investigations into possible breaches of COVID protocols at USP. He was aware that FICAC had been investigating matters of financial mismanagement at USP because it was widely reported in the media but he only learnt that the Fiji Police Force was conducting its own investigations into financial mismanagement

at USP similar to the two bodies he had mentioned during his conversation with Mr. Neiko on 15<sup>th</sup> July 2020. Per the Force Standing Orders each major decision made in respect of those investigations is recorded on the docket for obvious reasons. As per the Force Standing Orders, the docket must contain all important decisions and the decision they allege he had directed should have been contained in the docket itself. It was an important decision. It should be captured there. In this case, Commissioner Qiliho testified that he had not made any such decisions and that is why it was not captured there. It was only when DCID Mesake Waqa directed the filing away that the decision was captured. He said all major decisions should be captured in the file. They said it was stopped, it has to be captured there; there has to be a reason noted in the docket. Mr. Qiliho agreed that Mr. Neiko and Ms. Dass had captured portions of their conversations in their notebooks but he disagreed with their assertion that he had directed the stoppage of the file. He reiterated that he had not directed that the file be stopped and filed away. He disputed Rajesh Kumar's assertion in his minute that he as Commissioner of Police had directed that the file be filed away. He disputed telling Mr. Neiko and Ms. Dass to stop investigations and it was his position that Mr. Neiko and Ms. Dass had twisted his words and taken them out of context.

108. Under re-examination, he confirmed that when he rang Mr. Neiko on 15<sup>th</sup> July 2020 he had not been aware of the investigations related to CID/HQ PEP 12/07/2019 and he only learnt of it for the first time during that conversation. He testified that Mr. Neiko had been unaware of the surveillance and that was why Mr. Neiko said he would get the investigating officer to call him which he did shortly afterward. Ms. Dass had told him that she was unaware of the FICAC and BDO investigations when he mentioned it to her during their conversation. He confirmed that the conversation about staying away from investigations happened in June and they related to investigations into possible breaches of COVID protocols at USP.

109. That was the close of the Defence case.

110. Having had the benefit of all the evidence now before me, I adjourned for judgment which I deliver now.

#### **D. PRESUMPTION OF INNOCENCE & BURDEN AND STANDARD OF PROOF**

111. The burden and standard of proof at judgment is significantly higher than it is at the no case to answer stage. That is reflective of the principled nature, democratic utility and inherent fairness of providing for and ensuring trials in Courts, conducted in accordance with law and due process. Every piece of evidence is subject to rules of admissibility, and every testimony and each piece of admitted evidence weighed against each other and assessed in accordance with legal principles and against legal tests established by statute and common law.

112. Pursuant to section 14 (2) (a) of the **Constitution**, there is this guarantee:  
*“Every person charged with an offence has the right to be presumed innocent until proven guilty.”*

113. Pursuant to section 57 (1) of the **Crimes Act 2009**, *“the prosecution bears the legal burden of proving every element of an offence relevant to the guilt of the person charged”* and pursuant to section 58 (1) of the **Crimes Act 2009**, the *“legal burden on the prosecution must be discharged beyond reasonable doubt.”*

114. It bears repeating:  
*“But while the prosecutor must prove the guilt of the [accused], there is no such burden laid on the [accused] to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the [court] of his innocence.*  
*Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the [accused's] guilt subject to what I have already said as to the defence of insanity<sup>8</sup> and subject to any statutory exception... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the [accused] is part of the common law... and no attempt to whittle it down can be entertained... ”* per Viscount Sankey L.C in **Woolmington v. DPP** [1935] A.C 462

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<sup>8</sup> Which does not apply here.

115. A reasonable doubt is one which a reasonable person is prepared to entertain: **R v. Wilson** (1986) 22 A Crim. R 130 at 133 per King C.J and should not be an unreal or fanciful doubt: **R v. Pahuja** (1987) 30 A Crim R. 118 at 134. As Lord Denning observed in **Miller v. Minister of Pensions** [1947] 2 All ER 372,

*“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, “Of course it is possible but not in the least probable,” the case is proved beyond reasonable doubt; nothing short will suffice.”*

116. In **Brown & Isaac v. The State (Trinidad and Tobago)** [2003] UKPC 10, Lord Hoffman, with whom Lord Scott of Foscote, Lord Roger of Earlsferry, Lord Waler of Gestingthorpe and Sir Denis Henry concurred, observed as follows in paragraphs 25 and 26 of his opinion: -

*“The judge gave the jury a full direction on the standard of proof. He said that the degree of proof required was “an onerous one.” He said that before the jury could convict they had to be “convinced” that he was guilty. He said that they must be “satisfied so they feel sure, certain in [their] minds.” After all this he said that if after consideration of all the evidence they entertained a reasonable doubt – “I do not mean a fanciful doubt”- they were under a duty to acquit.”*

#### **E. ELEMENTS OF COUNT 1**

117. In **R v Rogerson** [1992] HCA 25; (1992) 174 CLR 268; (1992) 60 A Crim R. 429 (17 June 1992), the High Court of Australia per Brennan and Toohey JJ held at [9]:

*“... The gravamen of the offence of an attempt to pervert the course of justice is an interference with the due exercise of jurisdiction by courts and other competent judicial authorities. As the courts exercise their necessary and salutary jurisdiction*

*to hear and determine charges of offences against the criminal law only when their jurisdiction is invoked, an act which has the tendency to deflect the police from invoking that jurisdiction when it is their duty to do so is an act which tends to pervert the course of justice.”*

118. The course of justice can be perverted in a variety of circumstances: Waters v R [2011] NZCA 267 (10 June 2011) at [13]. As Brennan and Toohy JJ. explained in R v. Rogerson, supra:

*“Those ways comprehend, in our opinion, erosion of the integrity of the court or competent judicial authority, hindering of access to it, deflecting applications that would be made to it, denying it knowledge of the relevant law or of the true circumstances of the case, and impeding the free exercise of its jurisdiction and powers including the powers of executing its decisions.”*

Emphasis added

119. In R v. Rogerson, supra, Mason C.J held at [2] of his reasons that:  
*“An attempt to pervert the course of justice consists in “the doing of some act which has a tendency and is intended to pervert the administration of public justice”, to repeat the words of Pollock B. in Reg. v. Vreones (3) (1891) 1 QB, at p 369.”*

120. Mason C.J was careful to note at [4] and [5] of his judgment that  
*“4...police investigations do not themselves form part of the course of justice. The course of justice begins with the filing or issue of process invoking the jurisdiction of a court or judicial tribunal or the taking of a step that marks the commencement of criminal proceedings...*  
*5. In this respect it is important to note that the expression “the course of justice” is synonymous with the expression “the administration of justice”. In no relevant sense do the police administer justice, notwithstanding that they investigate crime, institute prosecutions (where appropriate), and assist in bringing prosecutions. As Lord Blackburn pointed out in Coomber v. Justice of Berks (1883) 9 App Case 61, at p 67 “the administration of*

*justice both civil and criminal, and the preservation of order and prevention of crime by means of what is now called police” are separate functions and not one single function.”*

121. However, as Mason C.J went on to hold at [7] – [9] of his judgment:
- “7. It is well established at common law and under cognate statutory provisions that the offence of attempting or conspiring to pervert the course of justice at a time when no curial proceedings are on foot can be committed: Reg. v. Murphy (1985) 158 CLR, at p 609; Vreones; Sharpe; Kane; Reg. v. Spezzano (1977) 76 DLR (3d) 160; Reg. v. Thomas. That is because action taken before curial or tribunal proceedings commence may have a tendency to frustrate or deflect a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may be possibly instituted, even though the possibility of instituting that prosecution or disciplinary proceeding has not been considered by the police or the relevant law enforcement agency: Reg. v. Spezzano (1977) 76 DLR (3d), at p 163....*
122. I extrapolate the following principles from that decision:
- (i) An attempt to pervert the course of justice consists in “the doing of some act which has a tendency and is intended to pervert the administration of public justice.”
  - (ii) An act which has a tendency to frustrate or deflect the police from prosecuting a criminal offence or instituting disciplinary proceedings before a judicial tribunal, or from adducing evidence of the true facts, is an act which tends to pervert the course of justice and, if done with intent to achieve that result, constitutes an attempt to pervert the course of justice. It does not matter that no curial proceedings are currently on foot. It is enough to prove that the accused contemplated that a prosecution before a judicial tribunal may possibly be instituted.
  - (iii) It is not necessary for the Sate to prove that a prosecution for a particular or identifiable offence was in contemplation by either the accused or by investigating officers. It is enough if there is evidence that an investigation into the relevant transaction or transactions could lead to a prosecution for

some offence. Then it will be a question of determining whether, in the light of that and any other material evidence, the act or acts done by the accused had a tendency to pervert the course of justice and was or were intended to have that effect.

123. Applied to Count 1 of the State's Charge, the elements that the State must prove beyond reasonable doubt are as follows:

- (i) Mr. Josaia Voreqe Bainimarama
- (ii) suggested to Commissioner of Police Sitiveni Tukaituraga Qiliho to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2020
- (iii) which act had the tendency to deflect the police from invoking the jurisdiction of the court
- (iv) with intent to deflect the police from invoking the jurisdiction of the court
- (v) in circumstances where an investigation into CID/HQ PEP 12/07/2019 could lead to a prosecution for some offence, and
- (vi) in circumstances where Mr. Bainimarama was aware, or ought to have been aware, that an investigation into that matter could potentially lead to a prosecution for some offence: *see* section 23, section 21 and section 20 of the Crimes Act 2009.

**F. JUDGMENT OF THE COURT IN RESPECT OF JOSAI VOREQE BAINIMARAMA ON THE CHARGE OF ATTEMPT TO PERVERT THE COURSE OF JUSTICE**

124. It is not disputed by the Defence that the first Defendant **Josaia Voreqe Bainimarama** while Prime Minister of this nation had suggested to Commissioner Qiliho, the second Defendant to stay away from a certain police investigation into matters arising out of USP.

125. The question that needs to be determined is what police investigations was Mr. Bainimarama talking about when he made that remark to Commissioner Qiliho. The State assert that Mr. Bainimarama could only have been talking about CID/PEP 12/07/19

because that was what **Prosecution Witness 19: Rusiate Tudravu** was talking about when he raised the “USP thing” that elicited Mr. Bainimarama’s reference to the conversation he had had with Commissioner Qiliho earlier.

126. I cannot agree.

127. Per **Defence Exhibit 1** which was tendered without objection from the State and per **Defence Exhibit 2** which was admitted by consent, and per **Prosecution Exhibits 1, 2, 3, 12, 13, 14, and 31**, there were at least three investigations emanating out of activities at the University of the South Pacific.

128. The first investigations was the investigations into complaints of financial mismanagement brought to the Fiji Police Force’s attention by **Prosecution Witness 15: Ato’ese Morgan Tuimaleali’ifano** and **Prosecution Witness 16: Ilima Jone Finiasi** and **Prosecution Witness 17: Ms. Doras Traill**; *see* **Prosecution Exhibit 14**. The product of this investigation was ultimately contained in Police Docket No. CID/HQ PEP 12/7/19.

129. The second investigations is referenced in **Defence Exhibit 1**. The State did not dispute that these investigations were on-going. The position taken by the learned Acting Director was that these were not the investigations Mr. Bainimarama was talking about when he told Commissioner Qiliho to stay away from the investigations. I will come to that later but for now it is enough to note that per **Defence Exhibit 1**, there was a second investigation afoot arising from activities within the University of the South Pacific, namely protests organized by some USP staff and student near the USP Library on 9 June 2020 and possible ancillary breaches of COVID-19 restrictions those protests and others like it were likely to engender.

130. In addition, during the course of the National Security Council meeting as is recorded in **Defence Exhibit 2**, Mr. Bainimarama references a third investigations arising from activities within the University of the South Pacific as follows:



|                 |   |
|-----------------|---|
| Mr. Bainimarama | You know there is another investigation that's on now...it's on the papers today...was in the papers yesterday, there's an allegation against ... |
|-----------------|---|

131. It is not immediately clear what the nature of the investigations were and which agency or body was spear-heading the investigations but what is clear is that talk of investigations into the "USP thing" had sparked some confusion and then a completely different train of thought on the part of at least two key participants, the Hon. Prime Minister Mr. Bainimarama and the Hon. Attorney-General Mr. Aiyaz Sayed-Khaiyum and had Mr. Bainimarama circling back and thinking about a third investigation arising out of USP. A salutary point to me, and hopefully others engaged in briefing exercises to be specific and accurate in communication; particularly high level communication involving matters of national importance, and especially national security.

132. I am grateful to both the State and the Defence for agreeing together to provide the Court with an expanded transcript of the meeting of that day. I set the contents of the expanded Transcript now marked as **Defence Exhibit 2** for detailed consideration:

|                     |  |
|---------------------|--|
|                     | <i>(Chatting)</i>  |
| Mr. Rusiate Tudravu | Sir, we...can we discuss later on this some of the investigation that are currently pending. Just wanted have clarification on the our stand that USP thing, it's...we discuss it later or tou sa veitalanoa ga.   |
| Mr. Bainimarama     | Oh I suggested earlier to Tuks to stay away from that investigation.   |
| Mr. Rusiate Tudravu | The issue here now is...because they are saying that the audit is already been done now then the complainant is asking what we are doing because they know that the DPP has already directed us ah to if we can just interview those ah...that is our stand and then I came to talk with DPP...well DPP told me that's operational matter you need to do it because you will |

|                         |  |
|-------------------------|--|
|                         | be answerable to that. I have had advised them the guidance that it was given and that his stand to me so I just want a clarification on...because we are holding everything up and they are pushing. They want feedback on...we are holding all the investigations. |
| Mr. Aiyaz Sayed-Khaiyum | Sir which complaint is this one?   |
| Mr. Rusiate Tudravu     | It's a USP ... the one against the umm board, board of directors, to Mr. Thompson  |
| Mr. Aiyaz Sayed-Khaiyum | Oh the complaint against Mr. Thompson. For doing what?   |
| Mr. Rusiate Tudravu     | The audit, the audit report that was out....   |
| Mr. Bainimarama         | Oi the audit report.   |
| Mr. Rusiate Tudravu     | They report to FICAC but FICAC said they cannot do anything because...   |
| Mr. Bainimarama         | The original, original....   |
| Mr. Rusiate Tudravu     | The audit came out again. So I just need to be clear on that so that I can advise our...   |
| Mr. Aiyaz Sayed Khaiyum | There is a BDO, there is a BDO report also. BDO New Zealand, there is not a criminal element to it. They are internal procedural issues that are administrative matters. It's not a criminal matter at all.  |
| Mr. Rusiate Tudravu     | That's the one, that's the one they have been talking about.   |
| Mr. Aiyaz Sayed Khaiyum | That's the one, I mean you should just send it back to I mean from my legal...   |
| Mr. Bainimarama         | Somebody needs to go and talk to DPP   |
| Mr. Aiyaz Sayed Khaiyum | Well if it's tactically, if it's an operational issue then he leaves it, leaves it to you. The DPP can't tell you what to do, if the file has gone to DPP.   |
| Mr. Rusiate Tudravu     | He has directed if we can interview.   |
| Mr. Aiyaz Sayed Khaiyum | Oh okay, okay, okay.   |

|                         |  |
|-------------------------|--|
| Mr. Rusiate Tudravu     | Yeah and then I was guided ah...because of the stand of the government, so I told the investigators just hold on for a while, and then the complainant have to come back to us what are we doing and they call in DPP and then DPP said no its under Commissioner is...I have already given my guidance in respect to what has to be done.   |
| Mr. Aiyaz Sayed Khaiyum | PM, can we see the complaint?  |
| Mr. Bainimarama         | Yes, yes.  |
| Mr. Aiyaz Sayed-Khaiyum | Can I please see the complaint?  |
| Mr. Bainimarama         | Mmh.   |
| Mr. Aiyaz Sayed-Khaiyum | In fact PM I was going to raise an issue I have a draft I didn't want to bring it with me ah...is whether we want to send a latter as we have discussed. Given what's already happened at USP to send a letter to USP to say...we will stop our grant funding.   |
| Mr. Bainimarama         | You know there is another investigation that's on now...it's on the papers today...was in the papers yesterday, there's an allegation against ...  |
| Mr. Aiyaz Sayed-Khaiyum | Vice Chancellor Pal  |
| ...                     | ...  |
| ...                     | ...  |
| ...                     | ...  |
| ...                     | ...  |
| Mr. Bainimarama         | Pal...there are new allegations coming up by the auditor. The auditor was interviewed in the last couple of days on TV, I think. He came on TV but has come up with the new list of allegation about 35, 38 or 30 some...he came and briefed me about it and ah...we I have told him to work on those allegations, if those allegations come out and they are true about Vice Chancellor Pal that allegation needed to be sorted out |

|                         |  |
|-------------------------|--|
|                         | otherwise we will withdraw our, our grant...we are we putting up the bulk of the guard of 23 million dollars...  |
| Mr. Aiyaz Sayed-Khaiyum | 30 ... 34 PM   |
| Mr. Bainimarama         | 34 sorry   |
| Mr. Aiyaz Sayed-Khaiyum | We give 34, the next highest is 2 million  |
| Mr. Bainimarama         | Where did I get the 24 million from?   |
| Mr. Rusiate Tudravu     | Can I just see the ah..., can I just get the IO and will just come and see your good self-next week. So that we can just have and we'll try and get things sorted out from our side because the ball is in our court now because DPP has already given his directives that they be interviewed and he had already stated that to the that they be interviewed and he had already stated that to the complainant. Now the complainant is pushing us, what are we doing? |
| Mr. Bainimarama         | Okay we need to find out exactly what the complainant's complaining about. What was your comment about the...the grant?  |
| Mr. Aiyaz Sayed-Khaiyum | I was gonna raise it in other business but to say, we want to rewrite the letter the letter now to them.   |
| Mr. Bainimarama         | Yeah.  |

133. The first Defendant though not required to, came to Court and he testified and his testimony constituted evidence that I can permissibly have regard to. Moreover, the second Defendant, though he did not have to, testified as well and his evidence on oath, unlike his out of court utterances during his Interview with the Police: *see Prosecution Exhibit 30*, is evidence that I can have regard to in respect of both Counts as opposed to just the Count against him.

134. **Defence Witness 1: Josaia Bainimarama and Defence Witness 2: Sitiveni Qiliho** testified in open court and they presented as cogent and credible witnesses who were unshaken under cross-examination on this point. They said that the conversation that Mr.

Bainimarama spoke of during the National Security Council meeting happened in June 2020 and not over the course of July and September 2020 as alleged. Fortunately, the circumstances and sensible position taken by Mr. Sharma and Ms. Fatima and their clients mean that I can rely on the following proviso at section 182 (3) (a) of the **Criminal Procedure Act 2009** without issue:

“182 (3) Variance between the charge and the evidence produced in support of it with respect to:

(a) the date or time at which the alleged offence was committed; or

(b) ...

is not material and the charge need not be amended for such variation.”<sup>9</sup>

135. There being no relevant and admissible evidence to the contrary, I accept that the conversation that Mr. Bainimarama mentions during the National Security meeting of 17 September 2020 took place in June 2020. After considering **Defence Exhibit 2** in totality weighed against the evidence in totality and accepting as I do **Defence Witness 1’s and Defence Witness 2’s** testimonies on this point, I find that the conversation occurred because of the events depicted in **Defence Exhibit No. 1** and not CID/HQ PEP 12/07/2019 as asserted.

136. **Defence Exhibit 1** opens with the line, “*The Fiji Police Force have started an investigation into the public gathering of staff and students at the University of the South Pacific.*” And it continues on to say, “*Police have also confirmed that it will not hesitate to arrest people who are found to be breaching the COVID-19 restrictions during the ongoing protests at the institution.*”

137. Any reasonable, educated adult in Fiji and certainly a man of the first Defendant’s age, education and leadership experience not just at the helm of the Republic of Fiji Military Forces but at the helm of this nation’s leadership from 2006 to 2014 and then from 2014 to 2022, would be aware that investigations and arrests could ultimately result in the filing of criminal charges.

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<sup>9</sup> cf **Nausara v. State** [2023] FJCA 135; AAU108.2018 (27 July 2023)

138. It is clear from **Defence Exhibit 2**, and the manner in which he testified that Mr. Bainimarama had a clear grasp of how the Fiji Police Force worked, the interrelationship with the Fiji Police Force and the Office of the Director of Public Prosecutions and that in his time as Prime Minister he was a leader who made it a point to be on top of the pressing issues facing our nation state during his time in leadership. I find that Mr. Bainimarama by dint of experience and position would have been aware that an investigation into the matters contained in **Defence Exhibit 1** could result in the Fiji Police Force ultimately invoking the jurisdiction of the Court by the laying of charges. But here is the rub, the State specifically charged Mr. Bainimarama with doing an act namely to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019; not investigations into a possible breach of COVID protocols arising from past and possible protests at the University of the South Pacific.
139. I am not satisfied beyond reasonable doubt that Mr. Bainimarama had told Commissioner Qiliho to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019. There was no evidence to establish beyond reasonable doubt that Mr. Bainimarama was aware of the investigations into CID/HQ PEP 12/07/2019 at the time he made this comment. Reshmi Dass started investigating CID/HQ PEP 12/07/2019 on 12<sup>th</sup> July 2019: *see Prosecution Exhibit 14*. However, her investigations did not start to gain momentum until June 2020. While Mr. Bainimarama was clearly on top of pressing national matters, I cannot expect him to be omniscient. There being no evidence that he knew anything about CID/HQ PEP 12/07/2019 prior to his conversation with Commissioner Qiliho in June 2020, I find that the State has not proven this element beyond reasonable doubt.
140. Moreover, during my *No Case to Answer Ruling* I found that there was relevant and admissible evidence capable of implicating Mr. Bainimarama in respect of the second element; namely, the tendency to deflect the police from invoking the jurisdiction of the court. I no longer hold that view having had the benefit of reading through **Defence Exhibit 2**. This is a document agreed to by both the State and the Defence. What initially presented as potentially terse and dismissive in its abridged form per **Prosecution Exhibit 29** coloured through the lens of Prosecution Witness 19: Rusiate Tudravu's testimony about what a terrible environment he worked under in 2020 and in the 16 years before that is now

revealed through the defence case presentation in accordance with due process to be nothing more than a misunderstanding easily cleared up once some light was shone on it. Mr. Tudravu clearly came to court with an axe to grind following his dismissal from the Fiji Police Force due to an unrelated event. During his cross-examination he admitted on oath and in open court that he did what he did because he was afraid of losing his acting appointment as Commissioner; and yet nothing in the expanded transcript; nothing in the evidence and nothing in his own testimony pointed to a single moment when Mr. Bainimarama or indeed anyone else had directed him to come out of that meeting and direct the stop of the investigations into CID/HQ PEP 12/07/2019 as he did.

141. I put that to one side.

142. All that needs to be said is that I am not satisfied beyond reasonable doubt that Mr. Bainimarama's act had a tendency to deflect the police from invoking the jurisdiction of the court. Mr. Qiliho testified that Mr. Bainimarama had made that comment to him and as the recipient of the comment he understood Mr. Bainimarama to mean to leave those investigations alone – to entrust it to the Police officers under him and to focus his energies as Commissioner of Police on winning the war against COVID-19. The first Defendant testified that he had made that comment, on that particular day in June, after a Conference. He had learnt that there had been a protest at the University of the South Pacific. He had learnt of it from the media. He did not know much about it and he had asked the Commissioner about it. Commissioner Qiliho told him that there had been a protest and they were concerned about the numbers which had increased from what had been approved. Commissioner Qiliho told him that there was an investigation into the matter that he had directed. The first Defendant suggested to Commissioner Qiliho to let the police handle the investigations, that he had more important things on his plate like COVID control. He never made any suggestion to Commissioner Qiliho for him to stop the investigations. He simply thought that Commissioner Qiliho had more important things on his plate than dealing with the University of the South Pacific investigations, to let his police officers deal with it as they were the technical experts on the ground and for Commissioner Qiliho to simply focus on the bigger picture, COVID-19. He testified that that was the only conversation he had had with Commissioner Qiliho about the investigations highlighted in that media report

and he assumed, having not heard anything further on the matter, that the police had continued on with their investigations. He remained unshaken in cross-examination about the comment he had made, its context and his intent.

143. While I am satisfied beyond reasonable doubt on the evidence that investigations into CID/HQ PEP 12/07/2019 could potentially lead to a prosecution for some offence based the evidence adduced in Court during this trial, I find that I am not satisfied beyond reasonable doubt:

- (i) that Mr. Bainimarama had suggested to Commissioner of Police Sitiveni Tukaituraga Qiliho to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019;
- (ii) that his comment consisted of an act which had a tendency to pervert the administration of justice because suggesting to the Commissioner to personally stay away from investigation, to leave it to his officers to undertake that task while he focused on the bigger picture is not an act capable of constituting an attempt to pervert the course of justice; *and*
- (iii) that Mr. Bainimarama intended to pervert the administration of public justice thereby.

144. That being so, I find the **first Defendant: Josaia Voreqe Bainimarama** not guilty, and I acquit him of **Count 1: Attempted to Pervert the Course of Justice** contrary to section 190 (e) of the **Crimes Act 2009** as charged.

#### **G. ELEMENTS OF COUNT 2**

145. In **Fiji Independent Commission against Corruption v. Vasu** [2021] FJCA 53; AAU0004.2020 (23 February 2021) the Court of Appeal per Prematilaka J.A held that the offence of *Abuse of Office* contrary to section 139 of the **Crimes Act 2009** is an offence consisting of both physical and fault elements. The physical elements constitute one conduct and four circumstances. Three circumstances require a fault element; but one does not in my view. Pursuant to section 23 (2) of the **Crimes Act 2009**, recklessness would therefore be the default fault element for each of the three circumstance that require it, and



per the proviso of section 21 (4) of the **Crimes Act 2009**, the State is at liberty to establish intention or knowledge in lieu of recklessness for each of these circumstances. Pursuant to section 23 (1) of the **Crimes Act 2009**, intention is the default fault element that attaches to the conduct noted therein.

146. Section 139 of the **Crimes Act 2009** provides:

*“A person commits an indictable offence which is triable summarily if, being employed in the civil service, the person does or directs to be done, in abuse of the authority of his office, any arbitrary act, prejudicial to the rights of another.”*

147. Being employed in the civil service is a circumstance but it is not one that requires a corresponding fault element. One is either employed in the civil service or one is not. It is convenient at this point to address an argument raised by Mr. Sharma in relation to this element. Mr. Sharma argues that pursuant to section 163 of the **Constitution**, Mr. Qiliho as Commissioner of Police, an office continued in existence pursuant to section 129 (2) of the **Constitution**, is not a person employed in the civil service. This argument is predicated on the assumption that section 20 of the **Public Service (Amendment) Act 2 of 2016** amended section 163 of the **Constitution**.

148. First, section 4 of the **Crimes Act 2009**, the Act that created the crime for which the second Defendant stands accused of committing, defines a “*person employed in the civil service*” to mean “*any person holding any of the following offices or performing the duties of that office, (whether as a deputy or otherwise), namely: -*

*(g) all persons belonging to a disciplined service in Fiji.”*

149. Chapter 6 of the **Constitution** deals with **State Services**. Part A of Chapter 6 deals with the Public Service. Pursuant to section 124 of the **Constitution**:

*“124. A person or authority exercising power to appoint a person to public office (other than an office for which Chapter 5 makes provision)<sup>10</sup> must not appoint a person who is not a citizen except with the approval of the Prime Minister.”*

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<sup>10</sup> The Judiciary & Independent Judicial & Legal Institutions.

150. Part B of Chapter 6 deals with Disciplined Forces. The first disciplined force dealt with under that part is the Fiji Police Force: *see* s. 129 of the **Constitution**. The other two disciplined forces in Fiji are the Fiji Corrections Service: *see* s. 130 of the **Constitution**, and the **Republic of Fiji Military Forces**: *see* s. 131 of the **Constitution**.
151. Pursuant to these provisions, the Commissioner of Police as head of the Fiji Police Force is a person belonging to a disciplined service in Fiji. The Commissioner of Police is, by necessary implication, a person employed in the civil service.
152. Section 163 of the **Constitution** provides a definition for the term “public service” as follows:  
“*public service*” means the service of the State in a civil capacity but does not include (a) service in the judicial branch, (b) service in the office of a member of a commission; or (c) service in an office created by, or continued in existence under this Constitution.”
153. Each of the services mentioned in the definition for “public service” at section 163 of the **Constitution** *is a service of the State* provided to the people of Fiji. All the definition for “*public service*” seeks to do is demarcate one type of service from another. So when referring to the term “public service” within the body of the **Constitution**, it is to be read as something separate and distinct from service to the State as a member of the judiciary, or service to the state as a member of a commission, or service to the state as a constitutional office holder. There is after all the doctrine of the separation of powers and the need for independence of key offices within the Executive branch itself to consider.
154. Public office and public officer means something slightly different and is broader in its ambit per section 163 of the **Constitution** and judicial officer is more limited in its scope per section 163 of the **Constitution**. The holders of the office of Magistrate or Judge are both judicial officers *and* public officers *but* their service in the judicial branch is not deemed a public service. A constitutional office holder and the office of a member of a commission are public offices but service in the office of a member of a commission is not deemed to be judicial service nor public service. Within the constitutional context, the reason for this provision should be self-evident. On a very practical administrative level, the people and authorities involved need to know which body or authority has ultimate

power to appoint, suspend and terminate. As the opening line to section 163 of the **Constitution** provides: “*In this Constitution, unless the contrary intention appears –*“, clearly signaling the intent that the interpretations provided in that section be read in the light of the **Constitution** and the **Constitution** alone.

155. Mr. Sharma argued that section 20 of the **Public Service (Amendment) Act 2 of 2016** amended section 163 of the **Constitution**. The section provides:

*“20. – (1) The Principal Act is amended by deleting all references to the provisions of the Constitution adopted under the Fiji Constitution Amendment Act 1997, and unless the context otherwise requires, such references must be construed as references to the Constitution adopted under the Constitution of the Republic of Fiji (Promulgation) Act 2013.”*<sup>11</sup>

*(2) The Principle Act, all State documents of any nature whatsoever and all written laws, including any Act, Proclamation, Promulgation, Decree and subsidiary legislation (including the titles of any written law) are consequently amended by deleting “public service” and substituting “civil service” wherever it appears, unless the context otherwise requires.”*

156. If that argument is upheld as being correct in law then the section 163 provision would now read:

*“civil service” means the service of the State in a civil capacity but does not include (a) service in the judicial branch, (b) service in the office of a member of a commission; or (c) service in an office created by, or continued in existence under this Constitution.”*

157. This is a very clever argument because, if accepted, then provided I were to accept the application of section 163 of the **Constitution** to every law in Fiji, which I do not without express provision to that effect or a pronouncement to that effect by a higher court; then by virtue of the doctrine of constitutional supremacy the “amended” constitutional

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<sup>11</sup> Simply put, insofar as its sensible and logical, any references to the 1997 Constitution or any of its provision within the **Public Service Act** must now be read and understood to be a reference to the 2013 Constitution and its provisions.

interpretation would supersede section 4 of the **Crimes Act 2009**, neatly immunizing Mr. Qiliho as Commissioner of Police, all members of the Judicial branch, all members of a Constitutional commission, and all constitutional office holders from *Abuse of Office* charges.

158. Fortunately for me, at least, as I grapple with this interesting and novel argument, it is by very reason of the doctrine of constitutional supremacy that this argument fails. Parliament cannot amend the **Constitution of the Republic of Fiji** by statute. There is only one way to amend our nation's supreme law and that is by the strict application of sections 159 and 160 of the **Constitution**. I reject Mr. Sharma's argument on this point. Section 20 of the **Public Service (Amendment) Act 2 of 2010** has no bearing on section 169 of the **Constitution**, and even if it did, it would not have an adverse bearing on section 4 of the **Crimes Act 2009** and its application to section 139 of the same Act. There is no constitutional conflict to resolve and that being the case, I simply look to section 4 of the **Crimes Act 2009** for the appropriate definition to be applied to the words and phrases contained in section 139 of the **Crimes Act 2009**.

159. In the same way, section 169 of the **Constitution** is the appropriate key for words and phrases in the Constitution, section 4 of the **Crimes Act 2009** is the appropriate key for the words and phrases contained in that Act. In closing, Mr. Sharma argues that section 20 of the **Public Service (Amendment) Act 2 of 2016** did not amend section 4 of the **Crimes Act 2009**. I do not agree. I think that is all that needs to be said on the point.

160. Moving on, in order to find the second Defendant guilty of Count 2 of the State's Charge, I must first be satisfied beyond reasonable doubt that:

- (i) Sitiveni Tukaituraga Qiliho
- (ii) Whilst employed in the civil service
- (iii) Intentionally
- (iv) Directed an act
- (v) That was (a) arbitrary in nature, (b) an abuse of the authority of his office, and (c) prejudicial to the rights of another

- (vi) Intending, or knowing, or being reckless as to (a) the acts arbitrariness, (b) the fact that it was an abuse of the authority of his office, and (c) its prejudicial effect on the rights of another.

**F. JUDGMENT IN RESPECT OF SITIVENI TUKAITURAGA QILIHO ON THE CHARGE OF ABUSE OF OFFICE**

161. It is important to establish a chronology based on the evidence adduced at trial.

***CHRONOLOGY***

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| 1969          | Sitiveni Tukaituraga Qiliho – Year of Birth  |
| 1988          | Sitiveni Tukaituraga Qiliho joined the Republic of Fiji Military Forces  |
| 1989          | Mesake Waqa joins the Fiji Police Force.<br><br>Sitiveni Tukaituraga Qiliho is commissioned a 2 <sup>nd</sup> Lieutenant with the RFMF.        |
| 2014          | Colonel in the Republic of Fiji Military Forces  |
| 2015          | Promoted to Brigadier General<br>10 November – Presidential Appointment as Acting Commissioner of Police                                       |
| 29 March 2016 | Sitiveni Tukaituraga Qiliho Contract as Commissioner of Police.  |
| 2017          | May Dulari Doras Turagabeci Trail joined USP as Director Assurance and Compliance.<br><br>Oct-Nov – USP Whistleblower Policy came into effect. |
| 2018          | Mesake Waqa is promoted to Senior Superintendent of Police in the post of Director CID   |



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|  | <p>16 &amp; 17 May – 88<sup>th</sup> Meeting of the USP Council held at the Conference Room, Holiday Inn, Port Vila, Vanuatu.</p> <p>23 May – Notification of Acting Appointing of Deputy Commissioner Tudravu to Acting Commissioner of Police.</p> <p>1 July – Letter from Rashmi Aslam, Acting Deputy Commissioner FICAC to The Chairperson of Council indicating that they would no longer be investigating the complaints raised by Ms. Traill.</p> <p>8 July - Ato'ese Morgan Tuimaleali'ifano and Ilima Finiasi lodge complaint at Totogo Police Station.</p> <p>12 July – IP Reshmi Dass is instructed by D/DDE to have a meeting with Doras Trail of USP in respect of a case reported by them. Met with Doras Traill and other staff at USP boardroom.</p> <p>18 July – FPF Team executes search warrant at USP</p> <p>21 August – BDO Investigations Report</p> <p>29 &amp; 30 August – USP Council Special Meeting at the Convention Center Tanoa International Hotel, Nadi</p> <p>13 December - Recorded Statement of Doras Trail and asked her to start compiling original documents for investigations.</p> |
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| 2020 | <p>14 February – IP Dass received instructions from ASP Rajesh to carry out investigations into the alleged case of Abuse of Office.</p> <p>15 February – Read through documents in file.</p> <p>06 May – Completed the Statement of Doras Trail and advised her to make arrangements for witness statements.</p> <p>15 May – Statements of Ato’ese Morgan Tuimaleali’ifano and Ilima Finiasi.</p> <p>8 June – Handed over file to SP Loraini Seru to be sent to ODPP.</p> <p>9 June – FBC News article “ <i>Police to Investigate breach of COVID – 19 restrictions at USP protests</i>” written by Lena Reece published.</p> <p>17 June – D/CID Neiko forwards CID/HQ PEP 12/7/19 to ODPP for advice: <b>Prosecution Exhibit 1.</b></p> <p>18 June - Police Docket CID/HQ PEP 12/7/19 was received by the Office of the Director of Public Prosecutions for advice.</p> <p>19 June 2020 – Special Meeting of the USP Council held at the Video Conference Room 1, Japan- Pacific ICT Center, Laucala Campus, Suva, Fiji from 10.00am – 4.00pm.</p> |
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|  | <p>23 June – Police Docket CID/HQ PEP 12/7/19 was returned by the ODPP to CID/HQ for further investigations.</p> <p>27 June 2020 – Received file from MMF to complete pending tasks as raised by Ms. Prasad of ODPP.</p> <p>28 June – Rang Doras Trail to make arrangements for witness statements.<br/> Recorded Statement of Veronica Yuen accountant of USP<br/> Recorded Statement of Petra Sigavata Head of Section and Secretary to Council of USP<br/> Requested Sgt 3201 Avinesh to record the statement of Salaseini Malo Associate Manager Regional Campuses of USP.<br/> At the Office recorded the Statement of Ravinesh Shankar Management Talent Acquisition &amp; Management of USP.</p> <p>July – SSP Mesake Waqa returns from study leave but does not resume office as DCID.</p> <p>1 July – Recorded Statement of Maciu Raikoti, Assistant Accountant of USP.</p> <p>3 July – Recorded Statement of Sweetika Ranjini Kumar Assistant Manager OD/L of USP.</p> <p>6 July – Handed over file to A/ASP Rajesh (MMF) for onward submission after completion of the issues raised by ODPP.</p> |
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|  | <p>10 July – MMF Rajesh Kumar sends CID/HQ PEP 12/7/19 to D/DEC.</p> <p>14 July – Commissioner Qiliho receives a phone call from a member of the public who said he worked for USP complaining of police harassment. Commissioner Qiliho gives the person Director Ethical Standard’s number and re-directs him to that section of the Force.</p> <p>15 July – Commissioner Qiliho receives a forwarded complaint from either the Prime Minister or the Prime Minister’s office to the effect that a member of the public working at USP feared he was being subjected to police harassment due to heavy police surveillance.</p> <p>Commissioner Qiliho then called D/CID Seru Neiko to see if he knew anything about this case.</p> <p>D/CID Seru Neiko called CP Qiliho back in the presence of then IP Reshmi Dass.</p> <p>IP Dass received a call from Doras Traill who asked if the Police were doing surveillance on Ravinesh Shankar’s house as he had raised this with VCP &amp; HE that 3 vehicles from CID are doing surveillance on his house. Informed her that they were not doing surveillance on his house.</p> <p>30 July - Commissioner Qiliho leaves for study leave abroad.</p> <p>August – Deputy Commissioner Tudravu takes up Acting Commissioner appointment.</p> |
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18 August – Ilima Finiasi wrote to Acting Commissioner of Police.

25 August – ACP Matavou responded to Ilima Finiasi indicating that the DPP had advised on further investigations which were being worked on. Copy sent to D/DEC for the file.

31 August – D/DEC returns CID/HQ PEP 12/7/19 to MMF.

September – Minutes of the Special Meeting of the USP Council held at the Video Conference Room 1, Japan-Pacific ICT Center, Laucala Campus, Suva from 10.00am – 4.00pm.

September – SSP Neiko said that he took over as Director Narcotics Bureau. He handed over DCID to substantive post hold SSP Mesake Waqa.

17 September – A/COMPOL Tudravu calls ACP Biu Matavou to brief him on CID/HQ PEP 12/7/19. ACP Biu Matavou asked DCID Seru Neiko to bring him file. He briefs A/COMPOL Tudravu. He then hears from A/COMPOL Tudravu that the Prime Minister has directed the stop of these investigations. He is disappointed but he calls DCID Seru Neiko to communicate those directives to him.

[SSP Seru Neiko testified that he was not aware of any instance where ACP Matavou had directed him to bring CID/HQ PEP 12/7/19 to his office and he was unaware of

any instance where ACP Matavou had directed him to stop investigation into the USP matter.]

A/COMPOL Tudravu attends National Security Meeting at PM's boardroom.

October – DCID Mesake Waqa says he resumes his role as DCID after returning back from study leave. SSP Neiko briefs him during their hand-over that COMPOL had directed the close of the USP case. ACP CIIP Biu Matavou and he spoke and ACP Matavou told him that instructions had been given by the National Security Council for investigations to be closed. Acting COMPOL Tudravu heard about his briefing with SSP Neiko and they spoke and Acting COMPOL Tudravu asked him why he needed investigations to be completed and he had explained to him the steps they were taking.

15 October – D/DEC returns CID/HQ PEP 12/7/19 to MMF.

16 October – IP Dass received the file from admin to complete the issues raised by SP Loraini Seru (DDEC)

17 October – Rang Doras Trail to make arrangement for witnesses statements.

19 October – Recorded Statement of VCP Professor Davindra Pal Singh Ahluwalia

20 October – Recorded Statement of Kolinio Boila, Executive Director Finance of USP.

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|      | <p>Executed search warrant for payments done for the purchase of ticket for former VCP Rajesh Chandra, uplifted documents and recorded statement of Vinod Mistri, Director of Lodhias Travel Services.</p> <p>Requested Osea Tunidau to record Statement of Anita Datt Cashier at USP.</p> <p>At 1<sup>st</sup> Floor Caines Janif Building, Victoria Parade recorded Statement of Fay Yee Chartered Accountant and Lay Member of Council at USP.</p> <p>21 October 2020 – Recorded Statement of Krishna Sami Raghunwaiya Senior Lecturer and Secretary General at USP.</p> <p>27 October at 12.37pm, PowerPoint presentation for the Economic Crime Unit presentation to Director CID highlighting the USP case against Winston Thompson and others.</p> <p>01<sup>st</sup> December at 10.58pm, PowerPoint presentation for the Economic Crime Unit presentation to Director CID highlighting the USP case against Winston Thompson and others.</p> |
| 2021 | <p>26 February – Brig.-Gen. Qiliho’s Presidential Appointment as Commissioner of Police.</p> <p>August 2021 – Commissioner Qiliho returned and he and Acting Commissioner Tudravu undertook a handover.</p>   |

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|      | <p>23 September – Contract for employment as Commissioner of Police between the Prime Minister of the Republic of Fiji and Sitiveni Tukaituraga Qiliho.</p>   |
| 2022 | <p>4 January - IP Dass handed over the file to A/SP Rajesh Kumar (A/DDEC) upon his verbal instruction.</p> <p>4 January – A/SP Rajesh Kumar A/DDEC forwards CID/HQ PEP 12/07/19 to D/CID Mesake Waqa for filing away as directed by CIIP during the presentation of serious cases at CID/HQ and submitted due to verbal instructions by COMPOL not to carry out any further investigations.</p> <p>6 January – DCID Mesake Waqa directed that DDEC file away and update record for CID/HQ PEP 12/07/19</p> <p>8 January – A/DDEC sends case to MMF to say that it has been filed.</p> |
| 2023 | <p>26 January – Brig-Gen Sitiveni Qiliho’s Presidential Suspension as Commissioner of Police</p> <p>31 January – CID HQ PEP 12/07/19 sent to DCID for further directions by D/DEC SP R. Taoka.<br/>Returned to D/DEC by Director CID to finalize case and open separate investigations into how the Docket came to be filed away.</p> <p>1 February – DDEC returns CID/HQ PEP 12/07/19 to MMF for continuation and finalization of investigations.</p> <p>8 February – Mr. Qiliho is formally arrested at CID HQ in the presence of his lawyer and is interviewed under caution.</p>  |

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|  | <p>9 March – Mr. Qiliho is formally arrested and is interviewed under caution &amp; is formally charged for <i>Abuse of Office</i>.</p> <p>July 2023 – Director Narcotics Bureau Senior Superintendent of Police Serupepeli Neiko confirmed that he had not made note of his conversation with Commissioner Qiliho except for an entry in his Notebook. SSP Neiko confirms that he had not lodged a report against Commissioner Qiliho.</p> <p>The Investigating Officer Sunia Maniana uplifted two PowerPoint presentations highlighting the USP case against Winston Thompson and Others prepared by A/ASP Reshmi Dass for the Economic Crime Unit presentation to Director CID.</p> |
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65. It is an uncontroverted fact that the second Defendant was employed as Commissioner of Police on 29<sup>th</sup> March 2016 for a period of 05 years, and thereafter from 21<sup>st</sup> September 2021 for a period of 05 years. It is an uncontroverted fact that he held and performed the duties of that office from 15 November 2015 until his suspension on 26 January 2023. It is an uncontroverted fact that he held the office of, and performed the duties of Commissioner of Police on 15 July 2020, the day this alleged offence is said to have happened. Pursuant to Part 6 of the **Constitution**, the Fiji Police Force is a disciplined service provided by the State, for all that it is not a public service. As a member of the Fiji Police Force he is, and was at the relevant time, a person belonging to a disciplined service, and by virtue of section 4 of the **Crimes Act 2009** is, and more importantly was at the time “a person employed in the civil service.” This element is proved beyond reasonable doubt.

66. I now pause to consider whether the evidence in its totality proves the second element of *Abuse of Office* beyond reasonable doubt. According to **Prosecution Witness 25: SSP**

**Serupepeli Neiko and Prosecution Witness 21: A/ASP Reshmi Dass**, Commissioner Qiliho had directed them to:

- (i) “stop the investigations” *per PW21’s* evidence;
- (ii) “stop the investigations against Winston Thompson and others as FICAC has closed the file as it’s USP’s internal process” *per Prosecution Exhibit 12 & 14*;
- (iii) “stop the investigations into the Report from USP as its an internal matter” *per PW25’s* evidence; and
- (iv) “close the USP investigations file since FICAC has revealed that it was administrative issues within USP” *per Prosecution Exhibit 13*.

162. The following questions and answers are contained in **Prosecution Exhibit 30**:

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| D/IP Sulasi: During the process of investigation, do you have any powers to call for a stop to any, in any investigation?  |
| Sitiveni Qiliho: In this case, I asked for that stop so that I could get a summary to be updated on a case that had become of national interest. I don’t normally do it. But because I wasn’t updated, I, I had to take this action. |
| D/IP Sulasi: That means that this case was of national interest and you need to know some of the facts from that case?   |
| Sitiveni Qiliho: Yes, I needed to know if I was questioned, like I had to brief the Minister, or I had to be, I had to know what was going on.   |
| D/IP Sulasi: Do you know what was the interest of the Minister in relation to this case? What was his interest in this case?   |
| Sitiveni Qiliho: No, but I was, I was preparing myself if I needed to, to give a briefing that I knew what was going on.   |

163. Mr. Qiliho testified that he had never directed Serupepeli Neiko and Reshmi Dass to stop and file away the investigation. His language when he called for briefings was to “*just stop what you are doing and give me a brief.*” He always used that and Serupepeli Neiko and the previous Director CID were aware and understood him to mean to just stop



what they were doing and to give him a brief in detail. He always either said, “*just stop what you’re doing or give me an update*” or “*just drop what you’re doing and give me a brief or an update*”, Mr. Qiliho testified. His officers understood this and it was never taken to mean to stop an investigation. He expected, and his officers knew he expected the investigation cycle to run its course after that. Mr. Qiliho had never, in the course of his employment as Commissioner of Police ever since coming over from the Republic of Fiji Military Forces in November 2015, directed the stop of an ongoing investigation. When he said that, he simply meant for them to stop what they were doing at that point and give him a brief. Briefs usually took 30 minutes and he would have quarterly briefs, monthly briefs and weekly briefs for complex cases. These briefs never meant, and the directive to stop and provide him a brief never meant that the investigations stopped in its tracks, it just meant that the investigations stopped at that point and that after the briefing the investigation continued.

164. Mr. Qiliho totally disagreed with the conclusions reached by Mr. Neiko and Ms. Dass about the conversation they had had that day. He testified that Seru Neiko and Ms. Reshmi Dass had been part of briefings he had had in his Conference room and that language that he used to “just stop or drop what you are doing and give me a brief” has never resulted in a stoppage or complete stoppage or filing away of investigations from when Mr. Qiliho started in 2015 until now. He only learnt of the stoppage when he was brought in for questioning and through this court process, otherwise he was never briefed before he left or even after he had returned from his studies in London in 2021 and even when the file was filed away in 2022, it was never sent up his way for his information or his clarification or validation of that so-called direction. He testified that he has never verbally directed the stoppage or filing away of a file in this manner and he understands full well the importance of capturing decisions of this nature in writing. The following questions and answers ensued under cross-examination:

**“Mr. Toganivalu:** Mr. Qiliho, you have just stated in court under oath that when the inquiry was brought to your attention about some surveillance being done at USP, do you recall saying that?

**Mr. Qiliho:** Not at USP but at the person’s place and he had complained to me and I had given him the number to lodge a formal complaint with internal affairs

and also to inform the Prime Minister's office or the Prime Minister himself, I can't recall.

**Mr. Toganivalu:** He complained to you about?

**Mr. Qiliho:** He had, a person had called me, I'm not sure if it was the same person but it was a very similar complaint.

**Mr. Toganivalu:** And what did he tell you?

**Mr. Qiliho:** He told me that he was feeling harassed that, that his residence was frequently by police vehicles and he feels he is under surveillance and along similar lines was the message that came from the Prime Minister's office.

**Mr. Toganivalu:** And that was one of the three issues you raised with Reshmi Dass when you spoke to her on the 15<sup>th</sup> of July 2020?

**Mr. Qiliho:** Yes, it was a very brief conversation and that's what I told her and like I said, I told Seru Neiko and I told Reshmi Dass the same thing that I received that complaint and when they said that they were investigating a matter into financial mismanagement, I said that FICAC was investigating a similar thing and FICAC had stopped its investigation and BDO was doing an internal audit into similar allegations. That was during the course of that conversation.

**Mr. Toganivalu:** So would it be fair to say that you could not have had that thought that it was about the USP protests?

**Mr. Qiliho:** I had that thought, when I called initially to speak to Neiko, I thought it had to do with investigations we were doing into possible breaches into COVID protocols that we were investigating at USP. During that conversation then I found out that we were investigating possible financial mismanagement as well so that was the second investigation and that was the first time I knew about it.

**Mr. Toganivalu:** And then the third issue was what Reshmi Dass said which was to stop the investigations as it was from the PM's office.

**Mr. Qiliho:** I never received such a directive from the PM's office, first of all Madam and I never gave such a directive. Only at the start of the conversation I said "*just stop what you're doing and give me a brief.*" That doesn't mean stop the investigations. It's just "*stop what you're doing and give me a brief*" meaning where are you up to in your investigations, give me your most up to date brief and she couldn't because she didn't have the file with her. The file docket had been submitted to her superiors and they were analyzing that to give her directions which

came back at the end of August when I was not in office for them to do video recorded interviews. That's the normal process. That's the normal investigation process. She did that on the 7<sup>th</sup> or around the 7<sup>th</sup> on to her superior Rajesh and so it would have gone the day earlier or two days earlier and I gave the call on the 15<sup>th</sup> so the file was not with her when I called and we agreed that when she got the file back she would give up that written brief.

**Mr. Toganivalu:** Is it possible that the first Accused had told you to stay away from that investigation and you can't recall that?

**Mr. Qiliho:** There was one investigation that we knew were ongoing into USP and that was for possible breaches of COVID restrictions and that's what I stated before and I'll re-state it again, I knew exactly what it meant. That I had to focus on the bigger picture and let the officers deal with that investigation into the possible breaches. I did not know until the phone call on the 15<sup>th</sup> – we had had these discussions in June, we are doing this phone conversation on the 15<sup>th</sup> of July. This conversation transpired a month or so before in June ... so we were talking about a totally different investigation at that time, the possible breaches of COVID protocols..."

165. He disputed telling Mr. Neiko and Ms. Dass to halt their investigations and he remained unshaken under the steady, unrelenting barrage of **Mr. Toganivalu's** ordered and implacable cross-examination on this point.

166. Having had the benefit of each position clearly delineated and tested, it is now clear that Mr. Qiliho does not deny using the word "*stop*", that he had directed then IP Reshmi Dass to stop what she was doing in order to provide him a brief – a position consistent with that taken by him during the course of his Interview under Caution. He provides context for those words under oath in open court. According to him, he directed IP Reshmi to "*stop what she was doing and provide him a brief.*"

167. It is clear to me based on the variance in the recorded and remembered: (i) "*stop the investigations*"; (ii) "*stop the investigations against Winston Thompson and others as FICAC has closed the file as it's USP's internal process*"; (iii) "*stop the investigations into the Report from USP as its an internal matter*" and (iv) "*COMPOL directed that we*

*are to close the USP investigations file since FICAC has revealed that it was administrative issues within USP” that these officers were simply putting down in writing what they individually understood Commissioner Qiliho to have said. They made these notations, not simultaneous to the conversation but after having discussed it with each other, and in IP Reshmi Dass’ case with another person - SP Rajesh Kumar. With each successive conversation they moved further away from a pure recollection of the brief conversation they had had with Commissioner Qiliho. They wrote down what they understood to be his intent and this view was, unfortunately coloured and potentially tainted by the subsequent conversations they had had with each other, another and possibly others. It was not a verbatim recording.*

168. I note with some concern the following variances and weaknesses in the evidence adduced by the State. Former Deputy Commissioner Rusiate Tudravu testified that he had understood from the first Defendant’s comment during the National Security Council meeting of 17 September 2020: *see Prosecution Exhibit 29* that the first Defendant wanted him and the entire Fiji Police Force to stop investigations into the complaints that grounded CID/HQ PEP 12/7/19. Yet, when examined in context: *see Defence Exhibit 2* which was tendered by consent, it is clear that there was nothing to logically ground that conclusion. No such directive was issued and clearly some confusion as to what investigations were afoot existed, and by his own words – he left his audience and future audiences like me under the impression that the investigations would continue after the meeting. The first Defendant himself had directed him to find out what Ilima Finiasi’s concerns might be about before he moved on to another issue. It is not very adult or sensible to draw fanciful inferences. If in doubt, one should ask for clarification. Assumptions, as they say, can make donkeys out of people.

169. Retired Assistant Commissioner of Police Bui Matavou testified that they had undertaken a briefing with Commissioner Qiliho as soon as or very soon after CID/HQ PEP 12/7/19 had been opened. However, he also testified that it was SSP Serupepeli Neiko who had brought CID/HQ PEP 12/7/19 to his office on 17 September 2020, and that it had been SSP Serupepeli Neiko that he had called after former Acting Commissioner Tudravu had told him that the Prime Minister had directed that they cease investigations re CID/HQ PEP 12/7/19. Yet SSP Serupepeli Neiko has no recollection of this. He makes no notations

and I am reasonably confident from the polite but firm way he answered these questions that as far as he was concerned that never happened. So now either his superior is mistaken or he was.

170. Then SSP Mesake Waqa testifies that he took office as DCID in October 2020 and not July or August or September, neatly putting him out of the running as the Director CID that former ACP Biu Matavou might have spoken to on 17 September 2020 prior to briefing Acting Commissioner Tudravu. However, SSP Serupepeli Neiko gave me to understand that it was not he who ACP Biu Matavou had dealt with that day; that he had taken up his position as Director Narcotics Bureau that month and that he had handed over the DCID post to its original position holder SSP Mesake Waqa prior to his taking up his new appointment. There too is the fact that SSP Mesake Waqa says that he spoke to ACP Biu Matavou and Acting Commissioner Tudravu who had told him that he should close CID/HQ PEP 12/7/19 based on directives they had received from the other and another - fictitious directives as it turned out; in October in ACP Matavou's case and prior to October in ACP Tudravu's case. I note the month of September falls before October.

171. I note that despite SSP Neiko's view that the investigations had stopped after 15 July 2020 and A/ASP Reshmi Dass's assertion that it had, the vast preponderance of the evidence does not support these assertions. It is not disputed, *see Prosecution Exhibit 14* that then IP Reshmi Dass had sent the file up to her superiors on 6 July 2020. In the meantime, the Acting Commissioner received a letter of concern from Ilima Finiasi regarding the Docket which ACP Matavou attended to on his behalf on 25 August 2020. In his response to Mr. Finiasi, ACP Matavou advises Mr. Finiasi that the investigation team at the CID Headquarters are currently working on the areas that the DPP had highlighted. He was the Assistant Commissioner of Police in charge of Investigations and Intelligence. That letter was sent to the CID HQ registry that day and forwarded to D/DEC who had had custody of CID/HQ PEP 12/7/19 at the time. On 31 August 2020 per Minute (8): *see Prosecution Exhibit 3*, D/DEC sends the file to MMF returning the file to him for his necessary attention please and directing him to direct the I/O to prepare for the video recorded interviews of the suspects. It is clear CID/HQ PEP 12/7/19 went from MMF to D/DEC at some point between 31 August 2020 and 15 October 2020 or they had had a conversation or were working together on a draft brief to D/CID because by Minute (9),

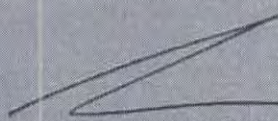
D/DEC re-sends the Docket to MMF and references a draft brief and more investigations she wanted undertaken outside of the ones directed by the ODPP and separate from her directive to the Investigating Officer to prepare for video recorded interviews. The file then goes back to then Inspector Reshmi Dass who then works on the file at her level in October 2020: *see Prosecution Exhibit 14*. It is clear from the evidence adduced by the State that on 27 October at 12.37pm, IP Dass or a member of CID had prepared a PowerPoint for the Economic Crime Unit presentation to Director CID highlighting the USP case against Winston Thompson and others; and had done so again on 01<sup>st</sup> December at 10.58pm. I note that not much happened in respect of the file in 2021 but I take judicial notice of the fact that Fiji was hit with a second wave of COVID-19 illnesses and deaths and had to take stringent measures to combat this between April 2021 and October 2021. The evidence shows that, quite inexplicably, on 4 January 2022 **Prosecution Witness 22: ASP Rajesh Kumar** calls for the Docket from then IP Reshmi Dass and sends it to DCID Mesake Waqa for closing. When giving evidence he used the telephone conversation between Commissioner Qiliho and then IP Dass some one and a half years prior to ground that decision. I am concerned too about the claims by these senior police officers that to do less than they did was insubordination. Insubordination in the workplace is an employee's intentional refusal to obey an employer's *lawful* and *reasonable* orders. When **Prosecution Witness 18: Kulianiasi Saumi** an investigator with FICAC was faced with a directive from a superior officer that he did not agree with, he went over to that superior officer and had a conversation with him about it. According to **PW-23: SSP Serupepeli Neiko**, Commissioner Qiliho had an open door policy; and was a man who respected his officers and who had the respect of those under him. There is absolutely no evidence to suggest that Commissioner Qiliho was a man who ruled the Fiji Police Force in a tyrannical manner.

172. To the contrary, I find the second Defendant to be competent and across the Constitutional, legislative, administrative and operational principles, policies and practices that grounds the institution he heads. From his answers, he is clearly a principled man. He testified in a clear, cogent and forthright manner that I found compelling. He is credible and worthy of belief. I accept his testimony and his account to be true. I am not satisfied beyond reasonable doubt that the second Defendant did the arbitrary act alleged by the State.

173. I find that the investigations into CID/HQ PEP 12/7/19 did not stop until A/ASP Rajesh Kumar called for the file on 4 January 2020 and until DCID SSP Mesake Waqa directed its filing without cause on 6 January 2020. That should not and cannot be laid at Commissioner Qiliho's feet. I accept that he had issued no directives for the stoppage of these investigations, that he had not been briefed about them, and that these acts occurred without his knowledge or concurrence. I accept that if there had been any intention behind his conversation with his officers on 15 July 2020, they had been noble ones. To address the concern of a citizen who felt harassed by the State; to understand better key investigations that he had just been made aware of; to assist his officers on the ground and to ensure that diplomatic and high level communications and interactions were appropriately addressed. I am not satisfied beyond reasonable doubt that the second Defendant had intentionally directed an act that was arbitrary in nature, in abuse of the authority of his office or prejudicial to the rights of another. That being so, the last element falls by the wayside.

174. I find the **second Defendant: Sitiveni Tukaituraga Qiliho** not guilty and I acquit him of the offence of *Abuse of Office* contrary to section 139 of the **Crimes Act 2009** as charged.

175. **28 days to appeal to the High Court.**

  
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**Seini Puamau**  
**RESIDENT MAGISTRATE**



**Dated at Suva** this 12<sup>th</sup> day of October 2023.