

**IN THE MAGISTRATES' COURT**  
**AT BA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 394/2021*

**BETWEEN:**    **STATE**

**PROSECUTION**

**AND:**            **SIMELI NAREZIA**

**ACCUSED**

**Counsel:**                      Sergeant 4971 Veni Vunaki for Police Prosecution  
   Mr. S. Ravu for the Accused

**Date of Hearing:**            12 October 2024  
**Date of Ruling:**            21 November 2024

**VOIR DIRE RULING**

**Introduction**

1. Mr. Simeli Naresia ("the Accused") was charged and produced in Court on 18 August 2021 for 1 count of Arson contrary to section 362(a) of the Crimes Act 2009.
2. Given that the offence was an indictable offence, the matter was transferred to the High Court on 20 August 2021 after this Court's predecessor granted bail to the Accused.
3. On 20 December 2021, an Information was filed in the High Court charging the Accused for 1 count of Attempt to Commit Arson contrary to section 363(a) of the Crimes Act 2009. The particulars of the offence are:

**Statement of Offence**

**Arson:** *Contrary to Section 363(a) of the Crimes Act 2009.*

**Particulars of Offence**

***Simeli Naresia on the 13<sup>th</sup> day of August, 2021 at Tauvegavega, Ba in the Western Division, attempted to unlawfully set fire to the Tauvegavega Police Post.***

4. On 23 December 2021, the Accused pleaded Not Guilty to the above charge and the matter was remitted under extended jurisdiction to the Magistrates' Court.
5. The Accused took his plea again before this Court's predecessor on 7 June 2022 and he maintained his Not Guilty plea. Voir Dire Grounds were filed by the Accused's counsel on 8 February 2023 with the following grounds, which has been copied *verbatim*:
  - i. The Accused is challenging the voluntariness of his caution interview in its entirety.
  - ii. Challenging the answers in relation to the issue of voluntariness in the caution interview that he was forced to admit by the Interviewing Officer and witnessing officers.

- iii. The Accused was arrested by Police Officers on 16/8/22. The Accused states that the Police Officers sitting with him at the backseat kept threatening and intimidating him on their way to the Ba Police Station.
  - iv. The Accused further states that the Police Officers seated on his right side punched his face on the right side of his face when the Accused questioned him on why he was being arrested,
  - v. The Police Officers in the vehicle threatened the Accused stating that if he does not tell them the truth then they will take him to Wailailai and not the Police Station and assault him further.
  - vi. The Accused, out of fear for his life, informed the Police Officers that he will agree to anything they say if they take him to the Police Station and not assault him.
  - vii. He admitted to the allegations involuntarily as such answers in the caution interview are not given voluntarily.
  - viii. The Interviewing Officer said "Just admit and say yes so that it can make our job easy". The Interviewing Officer also promised the Accused that if he just signs in the caution interview, he will be released early.
  - ix. There were other Police Officers present that were walking in and out of the place the Accused was being interviewed and they kept coming and intimidating the Accused to admit to the allegations.
  - x. The Accused was not given a chance to read his caution interview but just forced to sign the caution interview in the end.
  - xi. He was forced to sign the record of interview without being explained or being given a chance to read the caution interview.
  - xii. He was not allowed to read the interview but was just ordered/forced at the end to sign at the places he pointed at.
  - xiii. He was not explained and was not aware regarding the contents on the record of interview.
6. At the time of the hearing, Prosecution called 3 witnesses and thereafter closed its case. The Accused then gave evidence in the matter.
  7. Prosecution informed the Court that they would rely on the Court record whereas the counsel for the Accused filed submissions on 17 October 2024. The Court would like to extend its appreciation to the counsel of the Accused for filing comprehensive and detailed submissions which has assisted the Court. Having considered the submissions and the evidence presented by Prosecution, I now pronounce my Ruling.

### **The Law**

8. In the case of **State v Hazelman**; Criminal Case No. HAC 255 of 2019 (19 February 2021) His Lordship Justice Rajasinghe succinctly discussed the applicable test regarding the admissibility of a caution interview of an accused person in evidence at Trial. After referring to the test discussed in **Shiu Charan v R** (F.C.A. Crim. App. 46/83) and **Fraser v State** Criminal Appeal No. AAU 0024 of 2010 (30 November 2012) His Lordship stated:

*8. The test enunciated in Shiu Charan (supra) and Fraser (supra) constitutes two components. The first component is the test of oppression. The Court is required to satisfy the caution interview was recorded without any form of force, threats, intimidation, or inducement by an offer of any advantage. The second component is that, even though the Court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation, or inducement, it is still required to satisfy that no general grounds of unfairness existed before or during the recording of the caution interview.*

*9. The Prosecution has the onus to prove beyond a reasonable doubt that the accused's caution interview was recorded voluntarily and fairly.*

9. Thus, when determining admissibility of a caution interview, the Court needs to look at:
- i. whether the caution interview was recorded without any form of force, threats, intimidation, or inducement by an offer of any advantage; and
  - ii. even though the Court is satisfied that the statement was given voluntarily without any form of threat, force, intimidation or inducement, it is still required to satisfy that no general grounds of unfairness existed before or during the recording of the caution interview.

### **Analysis of Evidence**

10. Considering the evidence led by Prosecution through its witness, Inspector Kamal testified that he was part of the raid team that went to Tauvegavega on 16 August 2021 at about 5:21am for the Accused namely Simell Naresia. Inspector Kamal was the driver of the rental vehicle and with him were PC Timoci, Corporal Kolonio and PC Savenaca. The Accused was arrested and informed of his rights under the Judges Rules No. 2 by PC Timoci and then he was escorted to Ba Police Station. Inspector Kamal testified that they returned to the Station at 5:49am.
11. During cross-examination, Inspector Kamal agreed that PC Timoci was part of the Investigation Team and that he – Inspector Kamal had tasked PC Timoci with interviewing the Accused. When it was suggested that the Police Force Standing Order did not allow for an officer who was part of the investigation team to conduct an interview, Inspector Kamal replied that DC Timoci was only part of the raid team.
12. PC Timoci testified that he was part of the raid team that had gone on 16 August 2021 to arrest the Accused from Tauvegavega and escorted him to Ba Police Station. PC Timoci stated that he informed the Accused of the reason of his arrest and then brought him to the vehicle then escorted him to Ba Police Station. At the Ba Police Station, the Accused was given time to rest before his interview commenced.
13. PC Timoci stated that he was the interviewing officer and that there was a witnessing officer namely Corporal Jone Kolonio. The interview commenced at 6am at the Crime Office at the Ba Police Station and that the Accused had been given his rights from Q&A7-11. At 8:28am, the interview was suspended for the Accused to have his breakfast and to be taken for medical by PC Malakai. The Accused then returned and then his interview recommenced from 10am. PC Timoci stated that during the interview the Accused did not wish to exercise his rights, that there was no force or false promises made to the Accused and that the Accused admitted to the offence for which he was been interviewed on his own free will, with no threats, promises or ill-treatment.
14. During cross examination, PC Timoci agreed that he had been part of the arrest team in the matter and that he had interviewed the Accused as well. When questioned that the Force Standing Order did not allow for a person part of the investigation team to be part of the interview, PC Timoci stated that there were no other Police officers in the Station to conduct the interview, so he agreed to conduct the interview.
15. Further, when questioned that the Force Standing Order required the interviewing officer to refer an accused to the senior most officer at the Station to take down a statement whether the admissions were voluntary or not, PC Timoci stated that he had not done this.



16. Moreover, when questioned regarding the Accused being medically examined, PC Timoci agreed that the medical examination had not been done at the commencement of the interview but that the Accused asked to be medically examined mid-interview.
17. Corporal Jone Kolonio was Prosecution's third witness and he had testified that on 16 August 2021, he had been instructed to arrest the Accused who was living near the Tauvegavega Police Post. Corporal Kolonio stated that he, Inspector Kamal, PC Timoci and PC Savenaca left to go to Tauvegavega and upon finding the Accused's house, PC Timoci cautioned the Accused in itaukei and explained why they were taking him. Upon reaching Ba Police Station, Corporal Kolonio had been instructed to be the witnessing officer of the Accused's Caution Interview. He further confirmed that there was no assault or ill-treatment done to the Accused on the way to the Station.
18. During cross-examination, Corporal Kolonio agreed that a person being part of the investigation team could not be allowed to be an interviewing or witnessing officer as stated under the Force Standing Order. He explained that PC Timoci was the interviewing officer and he had been instructed to be the witnessing officer. When questioned on whose directives the Accused was referred to the Hospital for medical examination, Corporal Kolonio stated that it was not a directive but it was something they had just done because they wanted to cover the Accused's rights.
19. In the Full Court decision of the Court of Appeal case of Temo & Anor v State Criminal Appeal No. AAU 117 of 2016 (26 May 2022) Dayaratne JA stated:

*[24] It is also important to note that police officer Jone who had recorded the confession of the second appellant has been part of the investigation team. Learned counsel for the appellants submitted that according to the Fiji Police Standing Orders an officer involved in the investigation of a crime is not expected to record a cautioned interview of a suspect. It is necessary to understand the rationale behind that. An officer who has been involved in the investigations becomes aware of what persons who had witnessed the incident have said. As such there is a likelihood that such information may be included in the confession of a suspect if an investigating officer were to record the confession.*

*[25] The Standing Orders will have the same effect as 'judges' rules' and it is well recognized that they do not have the force of law and hence their noncompliance by itself would not render a particular act or conduct illegal or incapable of being acted upon. Nevertheless, it is important to bear in mind that their compliance is most desirable since they play a crucial role in determining fairness and breaches of them are generally not condoned. The second appellant has also stated that both he and the first appellant were in the same room when the confessions were recorded. This too is not an acceptable practice and smacks of procedural unfairness.*

20. The Court acknowledges that the Police Force Standing Orders are not rules of law but they are guides to the Police Force to ensure fairness and that any breach to any such order should not be accepted lightly (vide State v Hazelman; Criminal Case No. HAC 255 of 2019 (19 February 2021)).
21. Nevertheless, the Court notes that Inspector Kamal had initially agreed that DC Timoci had been part of the Investigation Team and was the Interviewing Officer of the Accused. However, when it was suggested that the Force Standing Order did not allow for this, Inspector Kamal responded that DC Timoci was merely part of the raid team. Prosecution

- failed to clarify with Inspector Kamal whether there was a difference between these 2 teams.
22. When the same suggestion was made to PC Timoci, he had stated that as there were no other Police Officers at the Station, he had agreed to interview the Accused. It is important to highlight that Inspector Kamal, who was the Investigating Officer in this matter, never stated this as being the reason that PC Timoci was selected to interview the Accused.
  23. Further, PC Timoci and Corporal Kolonio agreed that the Accused had not been referred to a senior most officer at the Police Station as per the Force Standing Orders after the Accused's admissions to allow the senior most officer to record a statement whether the Accused's admissions were voluntary or not. In Hazelman [supra] His Lordship Justice Rajasinghe found that by not referring the Accused to the senior most officer at the Police Station after the Accused's confession denied the Accused to raise any complaint about any improper conduct of the Interviewing and Witnessing Officer.
  24. Moreover, the Court notes the inconsistency between PC Timoci's and Corporal Kolonio's evidence regarding the Accused being taken for a medical examination. It is noted from the Caution Interview that the Accused was taken for medical examination after almost an hour and 30 minutes into his interview. PC Timoci testified that the Accused had asked to be taken mid-interview whereas Corporal Kolonio stated that the Accused had been taken for a medical examination to cover his rights.
  25. Upon perusing the Accused's Caution Interview, there is no recording in the interview to show that the Accused had asked to be taken for a medical examination which is as per PC Timoci's evidence. There is also nothing in the Caution Interview to reflect why the Police Officers thought it fit to take the Accused for a medical examination especially if they wanted to protect his rights, which is as per Corporal Kolonio's evidence.
  26. The Accused in his evidence stated that he was assaulted on his way to the Ba Police station and that he had received a punch on his face and a punch on his ribs and that he had been taken for medical examination during his Caution Interview. However, for reasons unbeknownst to the Court, the same was never relied upon by Prosecution and no explanation was proffered by Prosecution regarding this.
  27. Given the inconsistency between PC Timoci's evidence and Corporal Kolonio's evidence, had the Accused been referred to the most senior officer at the Station after his admission then perhaps the Court would not have any doubts as to why the Accused was taken for a medical examination during his interview. Considering the cases of Temo and Hazelman [supra] there is a reasonable doubt in the Court's mind whether the Accused was taken for the medical examination because of the assault he had sustained enroute to the Ba Police Station or whether the Police just wanted to ensure that the Accused's rights were safeguarded whilst in Police custody. This in turn raises a reasonable doubt in the Court's mind whether procedural fairness was afforded to the Accused during the time of his Caution Interview.
  28. Consequently, given the above circumstances, Prosecution has failed to prove beyond a reasonable doubt that no general grounds of unfairness existed during the Accused's Caution Interview conducted between 16 August 2021 and 17 August 2021.

#### Determination

29. I am satisfied that Prosecution failed to prove beyond a reasonable doubt that no general grounds of unfairness existed during the recording of the caution interview.

30. I accordingly hold the Caution Interview of the Accused dated 16 August 2021 to be inadmissible in evidence.



N. Mishra  
Resident Magistrate

