

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 104 of 2017
[Nasinu Magistrates' Court Criminal Case No. 329 of 2017]

BETWEEN : STATE

AND : PENI VUKICI

Counsel : Ms L Bogitini for the State
Ms L Ratidara for the Accused

Date of Hearing : 17- 18 September 2018

Date of Ruling : 18 September 2018

RULING

- [1] The Accused seeks to exclude his record of caution interview from being admitted into evidence. His sole ground for objection is that the interviewing officer had induced him to confess by telling him to agree to the allegations to make it easy and that if he did not agree to the allegations the interview will be longer.
- [2] The basic rule of admissibility of an admission made to a person in authority is that it must be made voluntarily, that is, it was not obtained through violence, fear of prejudice, oppression, threats and promises or other improper inducements (*Ibrahim v R* [1914] ALL ER 874 at 877). The onus is on the prosecution to prove lack of violence, fear, oppression, threats, promises or other improper inducements and the standard of proof is beyond reasonable doubt (*R v Sartori* (1961) Crim LR 397).

- [3] The prosecution led evidence from two witnesses. The first witness was the interviewing officer, DC Vakalevei. This officer has been in the Fiji Police Force for 18 years. The interview was conducted on 9 February 2017. The Accused elected to give his interview in i-Taukei language. His rights were accorded to him. The interview commenced at 9.25am and was concluded on the same day. The duration of the interview was about 8 hours. There were two breaks. One break was at 11.17am for 8 minutes to allow the Accused to consult and speak with a legal aid lawyer. The next break was at 2.34pm for lunch. The Accused skipped lunch. The interview reconvened at 3 pm and was concluded at 5.08 pm. The record of interview was made by typing the questions and answers on a computer. The typed record was printed and signed by the Accused and the witnessing officer. DC Vakalevei did not sign the record of interview. He said that the computer template used to record the interview did not have a space for his signature. The Accused was released after the interview was concluded.
- [4] The second witness was WDC Koto. She was the witnessing officer. She typed the record of interview and also translated the record of interview from i-Taukei to English language.
- [5] The defence called the Accused to give evidence. His evidence is that the police officers who interviewed him told him to admit the allegations to make it easier for the court. The Accused said he would not have admitted the allegations if the police officers had not told him to admit the allegations to make it easier for the court.
- [6] Both police officers have denied any form of inducements to make the Accused admit the allegations. Unfortunately, this Court will have to make an assessment of the credibility of the Accused when the substantive trial is pending.
- [7] I have observed the demeanour of both the Accused and the two police officers when they gave evidence. I am mindful that the police officers are trained witnesses. The Accused on the other hand is an elderly civilian with no previous criminal history. There is an air of truth about his evidence that he only confessed because the police

officers had told him to admit the allegations to make it easier for the court. The law is that even the most gentle threat or slight inducement will taint a confession (*Smith* (1959) 43 Cr App R 121).

- [8] Taking all these matters into account, I feel unsure that the police officers had not induced the Accused to confess by telling him to admit the allegations to make it easier for the court. The benefit of doubt is given to the Accused. His record of interview is held inadmissible.



.....
Hon. Mr Justice Daniel Goundar

Solicitors:

Office of Legal Aid Commission for the Accused
Office of the Director of Public Prosecutions for the State