IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO.AAU 172 of 2017
[In the High Court at Lautoka Case No. HAC 140 of 2015]

BETWEEN	:	**ADI CUVU GAVIDI ATAMA**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Ms. S. Kunatuba for the Appellant**
	:	**Mr. L. J. Burney for the Respondent**
Date of Hearing	:	**11 December 2020**
Date of Ruling	:	**15 December 2020**

RULING

[1] The appellant had been charged in the High Court of Suva on two counts of sedition contrary to section 67(1)(a) of the Crimes Act, 2009 committed with 13 others on 04 November 2014 at Sigatoka in the Western Division.

[2] The two charges read as follows.

'***COUNT SEVEN***

Statement of Offence

***SEDITION**: Contrary to Section 67 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

***ADI CUVU GAVIDI ATAMA,** on the 4th day of November, 2014, at Sigatoka in the Western Division, did sign a document headed "NADROGA-NAVOSA*

*SOVEREIGN CHRISTIAN **STATE** -Provisional Institutions of Self-Government" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji.*

COUNT EIGHT

Statement of Offence

***SEDITION**: Contrary to Section 67 (1) (a) of the Crimes Act 2009*

Particulars of Offence

***ADI CUVU GAVIDI ATAMA,** on the 4th day of November, 2014, at Sigatoka in the Western Division, did an act with a seditious intention, namely took an oath to serve as a Cabinet Minister for the entity "NADROGA-NAVOSA SOVEREIGN CHRISTIAN STATE" with a seditious intention of bringing into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.*

[3] After the summing-up on 02 November 2017, the assessors had unanimously opined that the appellant was guilty as charged. The High Court judge had agreed with the assessors and found the appellant guilty and convicted her on 09 November 2017. The appellant was sentenced to 02 years, 03 months and 11 days of imprisonment on 29 November 2017 without a non-parole period.

[4] The prosecution case could be summarized as follows. Napolioni Batimala (PW2) had testified that on 04 November 2014 he was present at Cuvu village where some people were appointed as Ministers. According to the witness names were read out and those appointed took an oath on the Holy Bible. The witness knew those who were appointed as Ministers on the day and was able to identify the appellant, Adi Cuvu Gavidi among those persons in court. His evidence mainly relates to the event of the day in issue. The prosecution had relied on the contents of the document headed ***"Nadroga-Navosa Sovereign Christian State Provisional Institutions of Self-Government"*** marked PE28 to prove the seventh count. The state had also led in evidence the record of interview of the appellant in support of its case which according to the prosecution was made voluntarily. The appellant in her cautioned interview had stated that on 4 November 2014 she was chosen as "Minister for Family Affairs" and that she had repeated the oath statement and she had admitted signing a list of names after it was explained to her.

[5] The appellant's version of events could be gathered from the judgment of the trial judge in a summary form in paragraphs 43- 52.

> *43. The 4th accused in her evidence informed the court that on 4th November, 2014 at Cuvu village she saw her name written on a piece of paper and she had signed beside her name on one page only. The piece of paper was on a table in front of her father at the time of the signing. The accused believed that she was signing on an administration to manage natural resources document within the context of the Vanua of Nadroga-Navosa which was a Tribal Kingdom. According to her, she was simply signing in the context of Nadroga Navosa Province under chiefly leadership.*
>
> *44. The first time she saw the document (prosecution exhibit no. 28) in its entirety was on 14th January, 2015 when she was caution interviewed by the Police. The document she had signed was totally different from the one shown to her during the caution interview.*
>
> *45. The accused denied having any knowledge of the contents of the document headed "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" and maintained that she only signed a single page and not a document.*
>
> *46. The ministerial appointment was to do with the administration and management of "The Kalevu Resource Trust" and on the day in question it was a prayer of commitment and a confession of her faith to God being called to serve the Vanua.*
>
> *47. In cross examination by **State** Counsel, the 4th accused stated that she did not freely accept the ministerial appointment that was offered to her. According to the accused, the word "Minister" meant a "Pastor" or "Talatala" which was what her father had told her.*
>
> *48. The accused was present at Nasama village on 10th October, 2014 and she knew that Nadroga-Navosa Province had been declared independent which was a sudden turn of events for her.*
>
> *49. On 4th November, 2014 at Cuvu village all the names were called according to the list. After the name of the accused was called she made her way forward.*
>
> *50. The accused confirmed that she had given truthful answers in her record of interview dated 14th January, 2015 which was conducted about ten weeks after the swearing in ceremony.*
>
> *51. The accused agreed that she repeated the oath statement recited by Mereoni Kirwin in English language as per her answer to question 39 in her record of interview. She stated that it was an oath to serve in the Matanitu*

Vanua of Nadroga-Navosa which was recited after she had been called to serve as the "Minister for Family Affairs".

*52. The accused agreed that she was shown the document "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" during the record of interview by the police and that she had flipped through the document. When referred to page 8 of the document the accused was able to recognize her signature and her father's signature as well.*

[6] A timely notice of appeal and an application for leave to appeal against conviction and sentence had been filed by Law Solutions on 21 December 2017. Amended grounds of appeal had been tendered by the same solicitors on 11 July 2018 and the appellant's written submissions had been filed on 09 August 2018. The state had responded by way of its written submissions on 16 October 2020.

[7] In terms of section 21(1) (b) (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. The test for leave to appeal is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144; AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds.

[8] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal timely preferred against sentence to be considered arguable**

there must be a reasonable prospect of its success in appeal. The aforesaid guidelines are as follows.

> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration.*

[9] ***Grounds of appeal***

CONVICTION

*1. **THAT** the Learned Trial Judge erred in facts and in law when he misdirected himself in assessing that the Prosecution proved its case beyond reasonable doubt against the Appellant. There was no evidence that the sedition intention of the Appellant had been proven beyond reasonable doubt by the prosecution. We submit that mens rea is an essential element of the offence of Sedition which the Prosecution has failed to prove on both counts (Count 7 & Count 8)*

*2. **THAT** the Learned trial Judge failed to consider that there were no evidence provided by the Prosecution that the Appellant did an act with the seditious intention in accordance to the meaning of seditious intention defined in the relevant sections of the Crimes Decree There was no evidence that there were "discontent or disaffection amongst the inhabitants of Fiji" due to the Appellant's **supposedly** signing the document (Prosecution Exhibit 28).*

*3. **THAT** the Learned Trial Judge erred in law and facts when he convicted the Appellant on the basis that the Prosecution has proven beyond reasonable doubt that the Appellant had the **actus rea** and the **mens rea** of the offence on both counts, the critical elements of the offence .*

*4. **THAT** the Learned Trial Judge erred in facts and in law when he misdirected himself in assessing that the Prosecution proved its case beyond reasonable doubt against the Appellant that there was discontent or disaffection amongst the inhabitants of Fiji due the Appellant taking an **oath** for the entity.*

*5. **THAT** the learned Trial Judge erred in facts and law when he did not give proper weight to the evidence produced in the Appellant's Caution Interview and oral evidence given under oath wherein she clearly expressed her intention that **she was not against the current lawful government.***

*6. **THAT** the Honourable Trial Judge erred in facts and law when he did not give proper weight to the facts that the Prosecution witness Inspector Jitoko when cross examined confirmed to the Court:*

a) *that the Appellant told him I quote; "**that it was the first time she had ever seen the document "Nadroga Navosa Sovereign Christian State Provisional Institution of Self Government"** (Prosecution Exhibit 28).*

b) *Inspector Jitoko (Prosecution witness) also confirmed that there was no evidence that the Appellant nor any of the accused persons prior to coming to the meeting of November 4th 2014 had in her/their possession document referred to as Prosecution Exhibit 28.*

7. ***THAT*** *the Honourable Trial Judge erred in facts and law when he did not weigh the evidence of the Appellant when she stated under oath during her oral evidence and in her Caution Interview with the Police the following facts.*

- *That she signed only 1 page of a piece of paper she saw her name is written on. Her name was beside that of her father the late Ratu Osea Gavidi and his signature was also on the page.*
- *The Appellant (4th accused in the High Court Trial) denied having any knowledge of the document (P Exhibit 28). She was not aware of its preparation nor its contents. She definitely was not the author.*
- *The Appellant only saw the document on the 14th January, 2015 when she was cautioned interviewed by the Police. It was given to her then.*
- *After the caution interview she did not retain a copy of the document P28 as it was taken back by the Police Officer who interviewed her.*
- ***The Appellant did not read the document or know the contents of the document. She was not the author of the document Prosecution Exhibit 28***
- ***When Mereoni Kirwin did the presentation at the Ulunivuaka Bure she was going to and fro from the kitchen to the Bure serving draunimoli (lemon leaves tea) to the delegates. She was unaware of the contents of the presentation.***

Moreover there were no evidence to the contrary produced in Court by the Prosecution to rebut the above facts.

8. ***THAT*** *the Learned Trial Judge erred in fact and law and prejudices the Appellant (4th accused's in the High Court trial) when he directed the assessors to treat under caution the statement made by the late Ratu Osea Gavidi as confirmed by Police Inspector Jitoko (6th Prosecution witness) under oath I quote" **that he had cautioned interviewed the late Ratu Osea Gavidi wherein he stated that he was setting up a Tribal Government."***
(Paragraphs 120 & 121 of the Summing Up refers.) There was no direction to the assessors as to what constitute a Tribal Government (Matanitu Vanua) as compared to Nadroga/Navosa Sovereign Christian State Provisional Institute of Self Government (PE 28)

9. ***THAT*** *the Trial Judge did not give proper direction to the assessors as to how to treat the role of the late Ratu Osea Gavidi, the Appellant's late father and the recognised leader of the "Matanitu Vanua of Nadroga Navosa." His name appeared in the Appellant's Caution Interview and 10 questions in her Caution Interview and responding replies were totally directed at the late Ratu Osea Gavidi . We maintain that this did not allow the Appellant a fair trial.*

10. ***THAT*** *the Learned Trial Judge erred in law and facts when he could not distinguish between the involvement of the Appellant from the extensive and deep rooted efforts and the role of her father the late Ratu Osea Gavidi in the whole saga. There was therefore no direction from the Learned Trial Judge to the assessors on how to treat the issue resulting in what we submit is a miscarriage of justice for the Appellant.*

11. ***THAT*** *the Trial Judge erred in facts and law when he did not direct the assessors how to treat the evidence submitted to the Court by the Appellant (Defence Exhibits1&2).These evidences (Defence Exhibits 1 & 2) of the Appellant we submit were neither evaluated properly by the Trial Judge nor the assessors and result in a miscarriage of justice. The reasons of the Appellant's involvement were in the contents of these Defence Exhibits.*

12. ***THAT*** *the Learned Trial Judge erred in law and facts when he continued to harp on the supposed* ***Highlighted Heading*** *of the* ***SUPPOSED*** *first Cabinet meeting of the proposed new government, when what transpired was practically a* ***VILLAGE MEETING****. The inability of the Prosecution to bring in Ms Mereoni Kirwin to be questioned on the matter is a direct erosion of the Appellant's rights and the trial continued with superficial and flimsy evidence. The Appellant we submit was exposed to severe erosion of a fair trial.*

13. ***THAT*** *the Learned Trial Judge erred in law and facts when he took into account the assumption without any evidence that the Appellant was* ***lying*** *despite the fact that this was refuted by the Appellant. There was also no direction to the assessors on how to treat the incident which happened while the Appellant was on the stand and under oath and was being cross examined by the Prosecution.*

14. ***THAT*** *the Learned Trial Judge erred in law and facts when he assumed that the Appellant's hesitation in answering the questions asked by the Prosecution during cross examination was because she was* ***LYING*** *and had to think of her answers. No consideration was taken into account of the frailty of the human mind that the trial was conducted in October 2017 for events that happened in November, 2014.*

15. ***THAT*** *the Learned Trial Judge erred in facts and law when he started seeing the Appellant as the perpetrator of the document (PE 28) and he treated her as such in his direction to the assessors. The Appellant was a mere recipient because she was guided by her father's advise that her*

participation was for the common good of the indigenous people of Nadroga Navosa for the management of their Natural Resources. Defence Exhibit 1 & 2 refers.

16. ***THAT*** *the Learned Trial Judge erred in facts and law when he could not distinguish and consider that the Appellant was not involved in any planning or the formulation of the document Prosecution Exhibit 28. Further she did not attend any VANUA meetings wherein the late Ratu Osea Gavidi consulted with his vanua chiefs on the document. (PE,28)*

17. ***THAT*** *the Learned Trial Judge erred in law and facts when he specifically highlighted the* ***racially denoted*** *sections of the document Prosecution Exhibit 28 to give credibility to his judgment when the Appellant was not involved in any way in the planning, consultation and production of the document and neither had any knowledge of its content as borne by her Caution Interview and her oral evidence under oath.*

18. ***THAT*** *the learned Trial Judge erred in law and facts when he read the* ***racially derogatory*** *sections of Prosecution Exhibit 28 to invoke emotions of the members of the assessors when this was not lead specifically in evidence by the Prosecution during the trial. He did not properly direct the assessors on the issue.*

19. ***THAT*** *the Learned trial Judge erred in law and fact when he failed to take into account the lead Investigator's findings that there was no evidence of the existence of any rival government in place since November 2014 at any location in the Nadroga Navosa province.*

20. ***THAT the*** *learned Trial Judge erred in law and fact when he failed to assert the authority of the oath taken by the Appellant despite being made aware of the OATHS taken by Government Ministers as set out in the Fiji Constitution 2013. There was no copy of the supposed oath said by the Appellant handed into Court by the Prosecution as exhibit for the information of the Court and Defence Counsel.*

21. ***THAT*** *the Learned Trial Judge erred in law and fact when he failed to establish the wordings of the oath taken by the Appellant. The oath did not have the entity to which she was pledging allegiance and her service to.*

22. ***THAT*** *the Learned Trial Judge erred in law and fact when he did not give proper direction to the assessors on the OATH issue.*

23. ***THAT*** *the Learned trial Judge erred in law and fact when he failed to take into account that in the absence of a rival government the supposed oath and the alleged signing of the acceptance of Ministerial positions is void and meaningless. He also took irrelevant matters into consideration when convicting the appellant.*

24. ***THAT*** *the Learned Trial Judge erred in law when he convicted the Appellant when he admitted in his Judgment at paragraph16 that "**There was no evidence that these acts of the accused had actually incited violence, discontent or any sort of actual disturbance ...**" quoting from observations made by Aluthge J in Niudamu's case (supra) at paragraph 10 of his sentencing remarks.*

SENTENCE.

1. ***THAT*** *the Learned Trial Judge erred in law and facts when he did not consider that the Appellant is a first offender. She had children age 11 to 17 the ages when children are susceptible to pick up bad behaviour if they are not supervised and managed properly. They are still at school and need her to guide them and the supervision in their school work and their behaviour.*

She has a husband that travels because it is part of his job. When he does travel the children are on their own without any supervision. He did not consider that a "suspended" sentence or putting the Appellant on Probation under a Supervising Court and Welfare Officer in view of the circumstances were appropriate.

2. ***THAT*** *the Learned Trial Judge erred in law and passed a sentence that is "harsh and excessive" and wrong in principle in all circumstances of the case.*

3. ***THAT*** *the Learned Trial Judge erred in law and facts when he took irrelevant matters into consideration when passing sentence on the Appellant.*

4. THAT the Trial Judge erred in law when he took 3 years as a starting point for calculating the sentence. This is considered high.

01st to 04th grounds of appeal

[10] The appellant challenges the finding of seditious intention against her in the above four appeal grounds.

[11] The trial judge had identified the elements of the charges levelled against the appellant in paragraphs 15, 18-24, 28 and 29. The judge had then directed the assessors as to what the prosecution had to prove in terms of establishing seditious intention in paragraphs 32, 33, 36 and 37. The trial judge had brought to the attention of the assessors the evidence led by the prosecution against the appellant in paragraphs 42-46, 93, 106, 108 and 117-126 in support of its case and the appellant's evidence in paragraphs 130-166 of the summing-up. The judge had then analyzed

once again what the prosecution had undertaken to prove and the appellant's position in paragraphs 188-190 and 198 of the summing-up. The judge had specifically directed the assessors in paragraph 223 of the summing-up that they need to look at the contents of the entirety of PE28 before coming to a conclusion whether the words used in the document are seditious or not in terms of section 67 of the Crimes Act. The trial judge had quoted the following paragraphs in particular from PE28 for consideration of the assessors at paragraph 226 of the summing-up.

> *226. The document headed "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" (prosecution exhibit no. 28) **states** inter-alia:-*
>
> *Page 1, first paragraph*
>
> *"We, the democratically elected (by consensus) leaders of the People, hereby declare Nadroga-Navosa Province to be an independent and sovereign **State**, and to be hereinafter known as the "Nadroga-Navosa Sovereign Christian **State**"*
>
> *Page 2, Line 15*
>
> *"Therefore, we intend to put immediate end to all self-serving governments of all persuasions who have ruled us contemptuously in the past, as from the date of this Declaration."*
>
> *Page 2, second paragraph, line 5*
>
> *"We also claim the rights accorded us by the Statutes of Genocide 1949 for protection against genocidal laws which have been promulgated by the current government of Fiji over the past eight years, and which are now enshrined in their Fiji 2013 'mainstreaming' Constitution..."*
>
> *Page 3, second paragraph*
>
> *"As native people of Fiji, we reject outright the 'mainstreaming' Constitution of the current government, assented to on 6 September, 2013..."*
>
> *Page 3, second paragraph, line 6*
>
> *"We also reject outright the use of the thesis written by Muslim man, Aiyaz Saiyed Khaiyum, who is Fiji's current Attorney-General and Justice Minister,... for the 'extermination' of the native Fijian race of people from the landscape of Fiji, our country of origin..."*
>
> *Page 3, third paragraph*

"Our overwhelming desire to free and extricate ourselves and our future generations from the tyranny of foreign subjugation and genocidal laws intended for our extermination ... is the single decisive impetus for our Unilateral Declaration of Independence on 10 October, 2014."

Page 7, paragraph 6

"As attested to by facts articulated in this Declaration, we, the democratically elected (by consensus) leaders of the People of Nadroga-Navosa for reasons pertaining to our own survival, and that of our generations to come, hereby declare this province of Nadroga-Navosa to be an independent and sovereign ***State*** *,and to hereinafter known as the "Nadroga-Navosa Sovereign Christian* ***State*** *"..."*

[12] Having done so, the trial judge had directed the assessors to the appellant's position that no seditious intention was entertained at paragraph 227 of the summing-up and elaborated once again the explanations of the appellant at paragraphs 234-237. He had also directed the assessors to consider the cautioned interview and PE28 *in toto* to decide whether the contents of PE28 were seditious or not. He had also directed the assessors in paragraphs 260 and 261 that if the appellant is believed, her signing PE28 and taking an oath as a Cabinet Minister were not intentional and they should find her not guilty. Even if she is disbelieved, the assessors were asked to still decide whether those acts were done with seditions intention (see paragraph 262 and 271). The judge had also brought to their attention the deeming provision of section 66(2) of the Crimes Act, 2009 in relation to deciding the seditious intention on the part of the appellant (see paragraphs 22 and 272). Finally, the trial judge had given directions to the assessors to find the appellant not guilty if they believed her version and then directed them that even if they did not believe her still they had to consider whether prosecution had proved its case beyond reasonable doubt (see paragraphs 278, 279 and 283 of the summing-up).

[13] After the assessors had unanimously found the appellant guilty of both charges, the trial judge had in his judgment directed himself according to the summing-up and gone further and analyzed the evidence against (paragraphs 7-32) and for the appellant (paragraphs 42-62) in agreeing with them. The judge has fully complied with the law in doing so.

[14] What could be identified as common ground arising from several past judicial pronouncements is that when the trial judge agrees with the majority of assessors, the law does not require the judge to spell out his reasons for agreeing with the assessors in his judgment but it is advisable for the trial judge to always follow the sound and best practice of briefly setting out evidence and reasons for his agreement with the assessors in a concise judgment as it would be of great assistance to the appellate courts to understand that the trial judge had given his mind to the fact that the verdict of court was supported by the evidence and was not perverse so that the trail judge's agreement with the assessors' opinion is not viewed as a mere rubber stamp of the latter [vide **Mohammed v State** [2014] FJSC 2; CAV02.2013 (27 February 2014), **Kaivum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014), **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015) and **Kumar v State** [2018] FJCA 136; AAU103.2016 (30 August 2018)]

[15] The judge had considered the appellant's evidence very carefully in the judgment as follows.

> *42. This accused in her record of interview stated that on 4th November, 2014 she was chosen as "Minister for Family Affairs" and that she had repeated the oath statement. The accused admitted signing a list of names after it was explained to her.*
>
> *43. The 4th accused in her evidence informed the court that on 4th November, 2014 at Cuvu village she saw her name written on a piece of paper and she had signed beside her name on one page only. The piece of paper was on a table in front of her father at the time of the signing. The accused believed that she was signing on an administration to manage natural resources document within the context of the Vanua of Nadroga-Navosa which was a Tribal Kingdom. According to her, she was simply signing in the context of Nadroga Navosa Province under chiefly leadership.*
>
> *44. The first time she saw the document (prosecution exhibit no. 28) in its entirety was on 14th January, 2015 when she was caution interviewed by the Police. The document she had signed was totally different from the one shown to her during the caution interview.*
>
> *45. The accused denied having any knowledge of the contents of the document headed "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" and maintained that she only signed a single page and not a document.*

46. The ministerial appointment was to do with the administration and management of "The Kalevu Resource Trust" and on the day in question it was a prayer of commitment and a confession of her faith to God being called to serve the Vanua.

*47. In cross examination by **State** Counsel, the 4th accused stated that she did not freely accept the ministerial appointment that was offered to her. According to the accused, the word "Minister" meant a "Pastor" or "Talatala" which was what her father had told her.*

48. The accused was present at Nasama village on 10th October, 2014 and she knew that Nadroga-Navosa Province had been declared independent which was a sudden turn of events for her.

49. On 4th November, 2014 at Cuvu village all the names were called according to the list. After the name of the accused was called she made her way forward.

50. The accused confirmed that she had given truthful answers in her record of interview dated 14th January, 2015 which was conducted about ten weeks after the swearing in ceremony.

51. The accused agreed that she repeated the oath statement recited by Mereoni Kirwin in English language as per her answer to question 39 in her record of interview. She stated that it was an oath to serve in the Matanitu Vanua of Nadroga-Navosa which was recited after she had been called to serve as the "Minister for Family Affairs".

*52. The accused agreed that she was shown the document "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" during the record of interview by the police and that she had flipped through the document. When referred to page 8 of the document the accused was able to recognize her signature and her father's signature as well.*

*53. The Accused stated that the Nadroga-Navosa Sovereign Christian **State** was applicable only to the members of the Vanua of Nadroga-Navosa who were primarily Indigenous Fijians.*

*54. The accused disagreed with the suggestion that she knew that she was signing a document in connection with the Nadroga-Navosa Christian **State** although it was written so in big bold capital letters on the page she signed. According to the accused the big bold letters were not clear to her.*

55. The 4th accused gave a totally different version to court under oath from her caution interview, which was conducted about 10 weeks after the alleged offending on 4th November, 2014. During the caution interview, the 4th accused had recognized her signature when prosecution exhibit no. 28 was

shown to her. The signature page in the document was not detached and upon perusal of this particular exhibit the signature portion is part of a continuing document. The page on which the 4th accused had signed is noted as 8 of 11 pages. I therefore do not accept that the accused had only signed a piece of paper.

56. I also do not accept the evidence of the 4th accused that she had signed because she was told by her father that the word "minister" in the title "Minister for Family Affairs" meant a "Pastor" or "Talatala". The 4th accused is an educated person, I do not to believe that she was not able to differentiate between a "Pastor" and "Minister for Family Affairs". The two titles have different meaning and role.

57. The accused in her record of interview admitted signing a list of names, when one looks at prosecution exhibit no. 28 the signature page has a list of names which she had admitted signing. The inference that can be drawn by looking at prosecution exhibit no. 28 and the admission by the accused is that she signed a list of names as part of prosecution exhibit no. 28 and not a piece of paper as mentioned by the 4th accused in her evidence.

*58. Furthermore, the accused saw the signature of her father on the page she had signed, above the signature portion of the page where it was written in bold capital letters "NADROGA-NAVOSA SOVEREIGN CHRISTIAN **STATE** FIRST CABINET MEETING, TUESDAY 4 NOVEMBER, 2014. When questioned by the **State** Counsel, the accused stated that the notation was not clear to her. I have perused the document in question. I am not satisfied with the explanation given by the accused that the notation was not clearly stated.*

59. The accused also stated that she did not know the content of the document (prosecution exhibit no. 28) since it was not given to her. Lack of knowledge of the contents of prosecution exhibit no. 28 by the accused is irrelevant to the charges faced by her since knowledge is not an element of the offence of sedition. At Q.41 of her record of interview the 4th accused informed the Police of the following:

> *"Q.41 By signing the document, you are showing your support for the Nadroga/Navosa Province to be declared as the Nadroga/Navosa Sovereign Christian **State** and to be separate from the current Government now in place which is chosen by the people of Fiji. What can you say?*
>
> *Ans: Firstly I only signed for my father's call because I made several questions as I was a bit concerned. It brings us together on that day for the whole Nadroga/Navosa province to be present on that day.*

60. By taking into consideration the answer given by the 4th accused to Q.41 in her record of interview I have no doubts, that the accused knew the contents of prosecution exhibit no. 28 because she had asked several questions since she

was concerned about its contents. I therefore do not believe that the 4th accused signed prosecution exhibit no. 28 without knowing the contents.

61. I have observed the demeanour of the 4th accused whilst giving evidence. She was not only evasive but also not forthright in her evidence particularly in cross examination. It was obvious to me that she was not telling the truth in court. Whenever she realised that the question posed to her would put her in some difficulty she would ask for the question to be repeated to buy time to think of an answer.

62. The demeanour of the 4th accused was not consistent with her honesty. The manner in which the accused was giving her evidence gave me the impression that she was not a person who could be forced to do something which she would not wish to. I accept the accused told the truth in her record of interview but not to the court. I reject the evidence of the 4th accused as unreliable and untruthful.

[16] The trial judge had then proceeded to analyze the guilty finding of two charges in paragraphs 78- 82 of his judgment.

78. The document (prosecution exhibit no. 28) contains language which is intemperate, inciteful, provocative, relentless and inflammatory which has the tendency to raise discontent or disaffection amongst the inhabitants of Fiji.

79. The appointment of Cabinet Ministers and then taking an oath in whichever form is indicative of the formation of another Government which has the tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.

80. The form or contents of the oath taken is irrelevant to the charge. The purpose of the oath is relevant which was to serve as a Cabinet Minister in an unlawful entity.

*81. The application of the deeming provision in section 66 (2) of the Crimes Act also supports the prosecution case. The accused persons intended the consequences of their actions when they signed the document headed "Nadroga- Navosa Sovereign Christian **State** Provisional Institutions of Self Government" and took an oath to serve as Cabinet Ministers in an unlawful entity.*

*82 I am satisfied beyond reasonable doubt that the 1st, 2nd, 4th, 5th, 7th, 10th, 11th, 13th and 14th accused persons had signed the document headed "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji. The accused persons also took an oath to serve as Cabinet Ministers for the entity "Nadroga Navosa Sovereign Christian **State** " with a seditious intention of bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established. I*

accept the unanimous guilty opinion of the assessors and I find all the above mentioned accused persons guilty for the 2 counts each of the offence of Sedition as charged.

[17] Therefore, in all the circumstances above discussed, I do find any reasonable prospect for the first to fourth grounds of appeal to succeed before the full court.

5th, 6th and 7th grounds of appeal

[18] The appellant's complaint is centered on some pieces of evidence given by the appellant, particularly regarding her alleged lack of knowledge of the contents of PE28 and her position that she was not against the government of the day. The trial judge had started by stating in paragraph 40 of the summing-up that it was impractical for him to draw the attention of the assessors to all the evidence led in the case for 08 days (excluding the day for closing speeches) but would refer only the most salient of them, however advising them to consider all evidence which they considered important regardless of his referring to them or not.

[19] Having perused the entirety of the summing-up, I think the trial judge had clearly referred to the assessors the defense of the appellant fully including the areas complained of by the appellant as pointed out earlier in this ruling with the relevant paragraphs. The judge himself had considered the appellant's defense in detail in the judgment as highlighted above.

[20] Therefore, these two grounds of appeal have no reasonable prospect of success in appeal.

8th, 9th and 10th grounds of appeal.

[21] 08th appeal ground - it appears from paragraph 120 of the summing-up that the appellant's counsel had elicited the fact that PW6 had recorded a cautioned statement from the appellant's father who was not an accused at the trial and her father, Ratu Osea Gavidi had stated therein that he was setting up a Tribal Government. The judge had reminded the assessors in paragraph 121 that there was no evidence of the truth of what the appellant's father had purportedly stated in his cautioned statement and urged them to exercise caution in the matter of weight to be attached to what Ratu

Osea Gavidi had told the police witness. There was no need for additional directions explaining what constituted a Tribal Government. The appellant's counsel had not sought any more redirections on those lines either.

[22] 09th and 10th appeal grounds- paragraphs 122 and 137 show that the evidence of PW6 that the appellant had signed PE28 because of her father as elicited from PW6 had been placed before the assessors. No more directions had been sought by the appellant's counsel on the appellant's father's role. Neither were such directions necessary as the appellant's substantive defence/s were more than adequately dealt with by the trial judge.

[23] In any event the appellant's counsel should have sought redirections in respect of the complaints now being made on the summing-up as held in **Tuwai v State** [2016] FJSC35 (26 August 2016) and **Alfaaz v State** [2018] FJCA19; AAU0030 of 2014 (08 March 2018) and **Alfaaz v State** [2018] FJSC 17; CAV 0009 of 2018 (30 August 2018). The deliberate failure to do so would disentitle the appellant even to raise them in appeal with any credibility.

[24] Thus, these grounds of appeal have no reasonable prospect of success in appeal.

11th grounds of appeal

[25] The appellant seems to complain about DE1 and DE2 not having been properly directed on and evaluated. They are referred to in paragraphs 137 and 144 of the summing-up. DE1 relates to 'The Kalevu Resource Trust' addressed to the Native Land Commission and it is a letter to which the appellant had not even been a signatory. The date on which DE1 had been dispatched is not available; nor does it appear to have a substantial relevance to the appellant's case. DE2 had been written more than 03 months after the date of offences and therefore, it cannot have any significance to the appellant's defence.

[26] The appellant's counsel had not sought redirections in respect of DE1 and DE2 either. This ground of appeal has no reasonable prospect of success.

12th ground of appeal

[27] The state had submitted that the meeting on 04 November 2014 cannot be treated as a mere village meeting in terms of the evidence led at the trial. The trial judge had given ample exposure to all the circumstances surrounding the meeting in the summing-up and was correct to highlight the heading of the signature page of PE28. As for the prosecution not having presented Ms. Mereoni Kirwin, the state has submitted that she had left the country and could not be traced. It appears from evidence that had she been available she may have been another accused. The defence too had not made any attempt to secure her voluntary attendance.

[28] Therefore, this ground of appeal has no reasonable prospect of success in appeal.

13th and 14th grounds of appeal

[29] The appellant's complaints relate to the trial judge's remarks at paragraphs 61 and 62 of the judgment. The judge had not made any comments arising from her demeanour to the assessors. This court does not have the benefit of seeing the real-time performance of a witness at the trial which the trial judge had. In any event, the judge's rejection of the appellant's defence was not based only on her demeanour but on factual matters as amply described by the trial judge. It was well within the trial judge's domain to make the comments that he had made on the credibility of the appellant.

[30] Therefore, these grounds of appeal have no reasonable prospect of success in appeal.

15th and 16th grounds of appeal

[31] It appears that the prosecution had not conducted its case on the basis that the appellant was the author of PE28 or she had compiled PE28. The trial judge had fully understood it and never attempted to attribute such an authorship of PE28 to the appellant either in the summing-up or the judgment. It had been brought to the meeting on 04 November 2014 by Ms. Mereoni Kirwin.

[32] Therefore, these grounds of appeal have no reasonable prospect of success in appeal.

17th and 18th grounds of appeal

[33] The appellant questions and complains of the intention of the trial judge in quoting certain paragraphs of PE28 at paragraph 226 of the summing-up and at paragraph 25 of the judgment. She alleges that they had been selectively used by the judge to invoke the racially charged emotions of the assessors when the appellant was not involved in the compilation of PE28.

[34] The appellant had not pointed out any other paragraphs in PE28 which could demonstrate an innocent intention but not cited by the trial judge. Further, the trial judge had specifically directed the assessors to consider the entirety of the document in conjunction with the appellant's cautioned interview in order to draw whether seditious intention could be drawn.

[35] In any event, the counsel for the appellant could have asked for redirections if it was thought that the trial judge's directions in specifically referring to some paragraphs of PE28 were not a fair reflection of what massage the document was intended to convey.

[36] Therefore, these grounds of appeal have no reasonable prospect of success in appeal.

19th ground of appeal

[37] The appellant complains that the evidence of the investigator that there was no evidence of the existence of a rival government in Fiji had not been considered by the trial judge.

[38] However, on a perusal of the summing-up it shows that at paragraph 118 the trial judge had referred to that piece of evidence by PW6.

[39] Since the trial judge had directed himself in accordance with the summing-up in the judgment he should be deemed to have considered the above evidence in the judgment as well.

[40] The judgment of a trial judge cannot be considered in isolation without necessarily looking at the summing-up, for in terms of section 237(5) of the Criminal Procedure Act, 2009 the summing-up and the decision of the court made in writing under section 237(3), should collectively be referred to as the judgment of court. A trial judge therefore, is not expected to repeat everything he had stated in the summing-up in his written decision (which alone is rather unhelpfully referred to as the judgment in common use) even when he disagrees with the majority of assessors as long as he had directed himself on the lines of his summing-up to the assessors, for it could reasonable be assumed that in the summing-up there is almost always some degree of assessment and evaluation of evidence by the trial judge or some assistance in that regard to the assessors by the trial judge.

[41] Therefore, this ground of appeal has no reasonable prospect of success in appeal.

20th to 23rd grounds of appeal

[42] The appellant complains of the oath supposedly taken by her, its contents and it being different to the oath administered on the Cabinet Ministers of the Fiji Government. These matters relate to the eighth count.

[43] The trial judge had dealt with what the prosecution was expected to prove under count 8 at paragraph 37 of the summing-up. The eye-witness Mr. Napolioni Batimala had testified to the appellant having taken an oath but he could not remember the contents of the oath. The judge had referred to the appellant's version of the oath taking in paragraphs 253 of the summing-up. Then the trial judge had addressed the assessors on the oath tanking event at paragraphs 261, 262 and 271of the summing-up.

[44] In the judgment the trial judge had given his mind to the evidence on the appellant having taken an oath as a Cabinet Minister in paragraphs 17 – 19, 30, 31, 79 and 80 of the judgment. His conclusion is as follows.

> "79. *The appointment of Cabinet Ministers and then taking an oath in whichever form is indicative of the formation of another Government which has the tendency to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established.*

80. The form or contents of the oath taken is irrelevant to the charge. The purpose of the oath is relevant which was to serve as a Cabinet Minister in an unlawful entity.

*81. The application of the deeming provision in section 66 (2) of the Crimes Act also supports the prosecution case. The accused persons intended the consequences of their actions when they signed the document headed "Nadroga- Navosa Sovereign Christian **State** Provisional Institutions of Self Government" and took an oath to serve as Cabinet Ministers in an unlawful entity."*

*82. I am satisfied beyond reasonable doubt that the 1st, 2nd, 4th, 5th, 7th, 10th, 11th, 13th and 14th accused persons had signed the document headed "Nadroga-Navosa Sovereign Christian **State** Provisional Institutions of Self-Government" with a seditious intention to raise discontent or disaffection amongst the inhabitants of Fiji. The accused persons also took an oath to serve as Cabinet Ministers for the entity "Nadroga Navosa Sovereign Christian **State** " with a seditious intention of bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established. I accept the unanimous guilty opinion of the assessors and I find all the above mentioned accused persons guilty for the 2 counts each of the offence of Sedition as charged.*

[45] The appellant has not demonstrated why the trial judge's finding on her oath taking as a Cabinet Minster was erroneous.

[46] Therefore, these grounds of appeal have no reasonable prospect of success in appeal.

24th ground of appeal

[47] The observations at paragraph 16 of the sentencing order of the trial judge only relates to sentencing and not conviction.

[48] Therefore, this ground of appeal is misconceived and has no reasonable prospect of success.

Grounds of appeal on sentence

01st ground of appeal

[49] The appellant complains that the trial judge had not considered the fact that she was a first time offender. However, I find that in paragraph 60(c) of the sentencing order the judge had referred to the fact that the appellant was a person of good character without any previous conviction and paragraph 70 also refers to her as a first offender.

[50] Another complaint is that the trial judge had not considered her standing as a mother of 05 children and the need for her to supervise them. At paragraph 60(a) of the sentencing order the trial judge had referred to the fact that the appellant was 45 years old, married with 05 children aged 19 to 11 years respectively. In any event, allowance need not have been made for family circumstances [see paragraph [66] of **Raj v State** [2014] FJSC 12; CAV0003.2014 (20 August 2014)]

[51] Therefore, there is no sentencing error demonstrated by the appellant which has a reasonable prospect of success.

02nd and 04th grounds of appeal

[52] The appellant complains that the sentence passed on her was harsh and excessive and wrong in principle in all circumstances of the case.

[53] The maximum sentence for an offence under section 67(1) is 07 years of imprisonment. The trial judge had picked the starting point at 03 years, given a discount of 06 months for all mitigating features (there being no aggravating factors as conceded by the state) and reduced 02 months and 19 days of remand period to arrive at the final sentence of 02 years, 03 months and 11 days.

[54] The trial judge had carefully considered the objective seriousness of the offence, the purpose of the sentence, some previous sentencing decisions, why the sentence should

not be suspended and explained why he was not imposing a non-parole period (*vide* paragraphs 8 – 16, 66, 67, 68-72 and 73 of the sentencing order)

[55] The trial judge had not erred in principle. Neither was the sentence harsh and excessive.

03rd ground of appeal

[56] The trial judge had not taken any irrelevant maters into account contrary to the appellant's criticism.

[57] When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered **(vide Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range [**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015)].

[58] Before parting with this ruling I wish to point out that the drafting of appeal grounds has left a great deal to be desired. In **Pal v State** [2020] FJCA 179; AAU145.2019 (24 September 2020), I made *inter alia* the following remarks on this topic.

> *'[20] Lord Parker CJ in **Practice Note (Crime: Applications for Leave to Appeal)** [1970] 1 WLR 663 reminded counsel that 'it is useless to appeal without grounds and that the grounds should be substantiated and particularized and not a mere formula'. Though what degree of particularity is required may not be capable of precise definition, they should be detailed enough to enable court to identify clearly the matters relied upon.*
>
> *[21] It is the duty of the counsel in drafting and arguing grounds of appeal to act responsibly and not to make sweeping and unjustified attacks on the summing-up of the trial judge unless such attacks can be justified [vide **Morson** (1976) Cr App R 236]. Thus, counsel should not settle or sign grounds of appeal unless they are reasonable, have some real prospect of success and are such that he is prepared to argue before the court [vide*

*paragraph 2.4 of the '**A Guide to Proceedings in the Court of Appeal Criminal Division** ('the Guide') published in 77 Cr App R 138].*

*[22] Du Parcq J in **Fielding** (1938) 26 Cr App R 211 said that*

> *'It is most unsatisfactory that grounds of appeal should be drawn with such vagueness ..... Ground 4 is in the following terms: "That the judge failed adequately to direct the jury as to the law and evidence to be considered by them".'*
>
> *'It is not only placing an unnecessary burden on the court to ask it to search through the summing-up and the transcript of the evidence to find out what there may be to be complained of, but it is also unfair to the prosecution, who are entitled to know what case they have to meet.'*

*[23] In **Singh** [1973] Crim LR 36 the Court of Appeal drew attention to the danger of extracting sentences from the summing-up out of context when, if they had been quoted in context, they would have been unobjectionable. **Nico** [1972] Crim LR 420 similarly states that the terms of any misdirection relied upon must be set out in the grounds.*

*[24] While the grounds of appeal should be reasonable full, counsel should not go to the opposite extreme and overloading them [vide **Pybus** (1983) The Times, 23 February 1983]. In **James; Selby** [2016] EWCA Crim 1639; [2017] Crim.L.R.228 the court warned that if grounds of appeal are inexcusably prolix and not consolidated , an application for leave to appeal might be refused on the basis that no ground was identifiable.*

Order

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is refused.

COURT OF APPEAL FIJI

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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL