

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

**CRIMINAL APPEAL NO. AAU 0022 OF 2023**  
**[Lautoka High Court: HAC 193 of 2020]**

**BETWEEN** : **INOKE SATOKO**

***Appellant***

**AND** : **THE STATE**

***Respondent***

**Coram** : Qetaki, RJA

**Counsel** : Appellant in Person  
Mr S. Seruvatu for the Respondent

**Date of Hearing** : 26 February, 2025

**Date of Ruling** : 14 March, 2025

## **RULING**

### **Background**

[1] The accused was charged with one count of Sexual Assault, and three counts of Rape. The Amended information filed by the Director of Public Prosecutions show that he was charged with the following offences:

#### **Count 1 (Representative Count)**

**Sexual Assault:** Contrary to section 210 (1) (a) of the Crimes Act 2009.

**Inoke Satoko**, between the 1<sup>st</sup> day of January 2019 and the 31<sup>st</sup> day of December 2019, at Rakiraki, in the Western Division, unlawfully and indecently assaulted **LB** by touching her breast and the surface of her vagina.

**Count 2**

**Rape:** Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

**Inoke Satoko**, on 3<sup>rd</sup> day of March 2020, at Rakiraki, in the Western Division, had carnal knowledge of **LB** without her consent.

**Count 3**

**Rape:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

**Inoke Satoko**, on the 3<sup>rd</sup> day of March 2020, at Rakiraki, in the Western Division, penetrated the vagina of **LB**, with his tongue, without her consent.

**Count 4**

**Rape:** Contrary to section 207 (1) and (2) (a) of the Crimes Act 2009.

**Inoke Satoko**, on the 3<sup>rd</sup> day of March 2020, on an occasion other than referred to in count 2, at Rakiraki, in the Western Division, had carnal knowledge of **LB** without her consent.

[2] The accused pleaded not guilty to the four charges and the ensuing trial was held over 4 days.

[3] In accordance with section 135 of the Criminal Procedure Act 2009, the prosecution and the defence had agreed to the “Admitted Facts” below, which were deemed to have been proven beyond any reasonable doubt by the trial judge:

1. The Accused Inoke Satoko was born on the 2<sup>nd</sup> March 1972, and resides at Navutulevu Rakiraki.
2. The complainant is LB or LBT, born on 31<sup>st</sup> July 2005 and student of Nakauvadra High School [However, as per the complainant’s Birth Certificate - tendered as Prosecution Exhibit PE3 - her date of birth is 30 July 2005].
3. That the complainant is the biological daughter of the accused.

4. That in 2019, the complainant was in Class 8.
5. That in Year 2020, the complainant was residing with her parents, the accused and mother Seraia Tunavatu, with two bothers and three sisters, at Vodovodo Settlement, Rakiraki.
6. That on 25<sup>th</sup> November 2020, the accused was formally charged in the iTaukei language by WDC 3916 Liliana.
7. Copy of the Birth Certificate of LB is tendered by consent.

[4] The accused was on 26<sup>th</sup> September 2022 found guilty of the 1<sup>st</sup> Count of Sexual Assault and 2<sup>nd</sup> to 4<sup>th</sup> counts of Rape as charged, and was convicted of the same.

[5] The final sentence delivered on 29<sup>th</sup> November 2022 is as follows: Head Sentence - 16 Year's imprisonment. Non- parole period- 14 Year's imprisonment. Time remaining to be served after considering the time the accused have spent in custody is: Head Sentence - 14 Years -Non parole period 12 Year's imprisonment. The accused was represented at the trial by the Legal Aid Commission.

[6] Aggrieved by the conviction, the accused filed a timely appeal against conviction on 7 February, 2023, but dated 23<sup>rd</sup> Day of December 2022. He submits two grounds of appeal against conviction. He subsequently filed (undated) Additional Grounds of Appeal with five grounds against conviction. On 24 August 2024, the Appellant filed four Supplementary Grounds of Appeal.

[7] I will deal only with the 4 Supplementary Grounds filed on 24<sup>th</sup> August 2024. The Respondent in its written submissions has specified 12 grounds of appeal, which ties up with the total number of grounds submitted by the Appellant - see paragraph [6] above. The primary reason for limiting the coverage to the 4 Supplementary Grounds is that the Appellant's submissions only cover the 4 Supplementary Grounds. The other reason is that, it appears that those other grounds earlier submitted, have been subsumed in the Supplementary Grounds.

#### **Grounds of Appeal (Supplementary Grounds dated 24<sup>th</sup> August 2024)**

[8] The following grounds were submitted:

**Ground 1-** *That the learned trial judge erred in law and in fact when he failed to direct his Lordship to give a proper direction on the modified Liberator directions in view of the conflicting version of the events given by the Appellant and the prosecutions during trial.*

**Ground 2-** *That the learned trial judge erred in law and in fact when his Lordship failed to direct himself on the inconsistencies and the contradictions in the complainant's evidence.*

**Ground 3-** *That the learned trial judge erred in law and in fact when his Lordship failed to make an independent evaluation of the evidence.*

**Ground 4-** *That the learned trial judge erred in law and fact that his Lordship failed to weigh the complainant's credibility and the defense version which he rejected.*

[9] The Respondent did not directly reply to the Appellant's submissions on the 4 Supplementary Grounds. Its submissions cover the 12 grounds of appeal including the Supplementary Grounds. The 12 grounds are reproduced below. The 4 Supplementary Grounds (Grounds **1, 9, 11 and 12**) are highlighted for clarity:

- 1. The conviction was unsafe and dangerous having regard to the inconsistent and contradiction of the evidence of the complainant.***
- 2. The learned Judge may have fallen into an error of law when he failed to make an independent assessment on the evidence adduced at the trial.*
- 3. The learned trial Judge erred in law by not giving the appellant a fair trial according to law whereby each person charged with an offence has the right to a fair trial.*
- 4. The learned trial Judge erred in law and in fact in not guiding his examination on the absence of physical evidence such as a medical report, DNA samples or an eye witness.*
- 5. The learned trial Judge erred in law by not advising the appellant on the risk involving remaining silent during examination-in-chief.*

6. *The learned Judge erred in law by not giving the appellant the benefit of the doubt when the evidence from the victim proves to be unsafe and insufficient to prove all the elements of the charges.*
7. *The learned trial Judge erred in law when was proof of inconsistency contradicting version of her response towards the alleged incidents and intentions of eliminating the appellant having knowledge of her others infidelity.*
8. *The learned trial Judge erred in law in respect of section 57 of the Crimes Act in that the prosecutor bears the legal burden of proving every element of an offence whereby on this matter the prosecution had failed to satisfy every element of the said offences.*
9. ***The learned trial Judge erred in law and in fact when he failed to direct His Lordship to give a proper direction on the modified Liberato direction.***
10. *The learned trial Judge erred in law and in fact when His Lordship failed to direct himself on the inconsistencies and the contradictions in the complainant's evidence.*
11. ***The learned trial Judge erred in law and in fact when His Lordship failed to make an independent evaluation of the evidence.***
12. ***The learned trial Judge erred in law and in fact that His Lordship failed to weigh the appellant's credibility and the defence version which he rejected.***

### **Appellant's Case**

[10] The Appellant (In-Person) relies on his written submissions on the 4 Grounds filed on 5 December 2024. At the hearing he stated he “*cannot believe what happened to me, to separate my family.*”

[11] **Ground 1:** The Appellant submits that the Judge's findings in paragraphs [24] to [29] lacks further direction in terms of **Liberato v Queen** (1985) HCA 66:159 CLR 507. There were two versions before the trial Judge. It is submitted that in cases where there is a conflict between the prosecution and the defence evidences, there are certain directions to the jury/assessors that the trial judge must make. The direction requires that even if the

jury/assessor's does not positively believe the defence witness, they should not convict unless satisfied that the prosecution has proved the case/charge(s) against the accused beyond reasonable doubt.

[12] **Ground 2:** That the learned trial Judge erred in law and in fact when his Lordship failed to direct himself on the inconsistencies and the contradictions in the complainant's evidence.

[13] See paragraph [36] (xxv) of LB's evidence as summarized by the trial Judge.

*Q. What happened after he made you lie down on the grass?*

*A. He laid me down. He held my hands tightly when I was lying down. Then he laid on top of my breast. Then he tried taking off my pants. I tried pulling up my pants but I couldn't. His hands were in my mouth. Then he forcefully took off my pants. Then I felt his penis went inside my vagina.*

*Q. What did he use to hold your hands tightly?*

*A. Both of his hands.*

This clearly shows inconsistencies. Firstly, she claimed the Appellant was holding her hands tightly when she was lying down. Secondly, the Appellants hands were in her mouth. Thirdly, the complainant informed the court the Appellant was holding her hands.

[14] Another contradiction is in paragraph [56] of the judgment. In her testimony in court, the complainant stated she had not informed her mother about any of the allegations which took place in the years 2019 or 2020, prior to informing the police. However, in her statement it is recorded as follows: "*I have told my mother about everything who didn't do anything at all.*" The evidence that was given in court by the complainant is inconsistent and contradicts the complainant's statement earlier made to the police. The Appellant submits that the learned trial Judge should have weighed the complainant's credibility by highlighting the inconsistencies and contradictions in her evidence. The trial Judge should have given the Appellant the benefit of the doubt when the evidence from the victim proves to be unsafe and insufficient to prove all the elements of the charge.

[15] **Ground 3:** The learned trial Judge erred in law and in fact when his Lordship failed to make an independent evaluation of the evidence. The complainant reported the matter to the police on 12 April 2020. The matter was reported nearly one year after the alleged incident of Sexual Assault, and a little over a month after the alleged incidents of Rape.

[16] The Appellant totally denied all allegations made against him by the complainant. The defence position is that the allegations made against the Appellant by the complainant are all false. Further, that the reason she (complainant) made these false allegation against the Appellant was because she was aware that her mother was in a relationship with another man. It is submitted by the Appellant that the trial Judge should have been mindful in allowing /accepting the late report of Sexual Assault and Rape, as it will cause a major problem and an unfair trial to the Appellant. The Respondent submits, there is no medical report presented or DNA samples. There was no direct witness as well.

[17] The Appellant submits that, had the trial Judge thoroughly assessed the contradictions and inconsistencies in the evidence of the complainant, he would have concluded that the State had failed to prove its case beyond reasonable doubt. In **Ram v State**, unreported CAV 1 of 2011 (May 2012) the Supreme Court said at paragraph 80 as follows:

*“A trial Judge’s decision to differ from, or affirm, the opinion of the assessors necessarily involves the evaluation of the entirety of the evidence led at the trial including the agreed facts and so does the decision of the Court of Appeal where the soundness of the trial Judge’s decision is challenged by way of appeal as in the instant case. It is necessary for a trial Judge or appellate court to be satisfied that the ultimate verdict is supported by the evidence and is not perverse. The function of the Court of Appeal or even this Court in evaluating the evidence and making an independent assessment thereof, is essentially of a supervisory nature and in the appellate Court will not set aside a verdict of a lower Court unless the verdict is unsafe and dangerous having regard to the totality of evidence in the case....”*

[18] The Appellant submits that the learned trial Judge evidently failed to make an independent assessment of evidence including all irregularities/inconsistencies before finding the accused guilty.

[19] **Ground 4:** That the learned trial Judge erred in law and fact that his lordship failed to weigh the complainant's credibility and the defence version which he rejected. That the complainant Vasemaca's testimony for Accused /Appellant at paragraph [39] of Judgment, states that after he was remanded, the Appellant's wife and other children had moved to Nadi, as the Appellant's wife was seeing another man. This was in January 2021. The witness said that in February 2021, the complainant and her sister had come to stay at her place at the FSC compound in Rakiraki. In May 2021, the witness had gone with the complainant and her sister to Nadi to stay with the complainant's mother and her step father. It is submitted that the evidence given above by the complainant and the defence witness (Vasemaca) is consistent to each other. This piece of evidence clearly shows that the complainant have the intention to eliminate the appellant having knowledge of the mother's infidelity.

[20] In summary, the Appellant's case is that the complainant and her mother had colluded and made up this whole story against the Appellant. The Appellant's contention is that the prosecution/Respondent, has failed to prove its case beyond reasonable doubt, and failed to satisfy the elements of the charges which of Sexual Assault and Rape.

### **Respondent's Case**

[21] The Respondent's written submission addressed all the 12 grounds and divided into (4) groups, presumably based on the similarities of concerns and issues that each of them raise. Below are the Groupings:

- (a) Grounds **1, 7, 10 and 12.**
- (b) Grounds 2, 6, 8, **9 and 11.**
- (c) Grounds 3 and 5.
- (d) Ground 4.

I will deal with the Respondent's submissions in as far as they relate to the issues raised in the Appellant's Supplementary Grounds, and in the order raised by the Appellant.

[22] **Ground 1:** This ground appears to be discussed under Group 2 of the Respondent's submissions. The Respondent states that the grounds are imaginative, the Appellant



claiming that the Court did not independently assess the evidence adduced by the State, and by relying on them as they were, was unsafe and insufficient. The Respondent pointed to paragraphs [33] and [34] of the Judgment where the trial Judge had highlighted the evidence of two State led witnesses and the Exhibits tendered by the prosecution. These evidences were summarised in paragraphs [35] and [36] of the judgment.

[23] The respondent refers to paragraphs [40] to [59] of the Judgment, and submits that the Court had examined all the evidence at great depth before arriving at its findings at paragraph [60] where the learned Judge stated:

*“[60] Therefore having considered the explanations offered by the complainant, it is the opinion of this Court that the said explanations are reasonable and acceptable.”*

[24] The Court held that the evidence adduced by the State were reliable and credible and it established all the elements of the charges of Sexual Assault and Rape.

[25] **Ground 2:** This ground is in Group 1 of the Respondent’s written submissions. The contradictions are raised in paragraphs [58], [59] and [60] of the judgment. It relates to inconsistencies or omissions in the complainant’s evidence. The Respondent states that the defence had raised two perceived contradictions during the hearing, which the Court identified at paragraphs [55] and [56] of the Judgment. At paragraph 57, the Court used **Sivoinatoto v State** [2018] FJCA 68; AAU0049 (1 June 2018) to examine the extent and effect of the contradictions and/or omissions.

[26] The Respondent submits that the Court evaluated the contradictions at paragraphs [58], [59] and [60] of the Judgment, it held after listening to and evaluating the plausible explanations provided by the victim as to the contradictions, her credibility and reliability as a witness and the effect it may have on her evidence, were unaffected in any manner.

[27] That for the above reasons, the Appellants assertions that the Court did not direct its mind on the contradictions or omissions in the complainant’s evidence, or did not properly evaluate it is misconceived.

[28] **Ground 3:** This ground is covered in Group 2 and 4 of the Respondent’s written submissions, which I have already discussed.

[29] **Ground 4:** This ground is covered in Group 1 and Group 4 of the Respondent’s submissions, which I have partly discussed in paragraphs [23] to [25] above. The Respondent submits that the Appellant’s claims that the Court erred in entering a conviction against him in the absence of medical evidence or eye witness has no real prospect of success. The Respondent states, it is trite law that no corroborating evidence is required in crimes of a Sexual nature. The court had made reference to this critical legal principle in paragraph [63] of the judgment.

### **Analysis**

[30] This analysis is made having due regard to the discussions on burden of proof and standard of proof, legal provisions and the elements of the offences, the agreed facts which are set out in paragraphs [3] to [32] of the judgment, and the submissions made by the Appellant on the one hand and that of the Respondent on the other hand. The Appellant’s contentions in this appeal as reflected in the grounds of appeal, may be restated as follows: That the learned trial judge erred in law and in fact in:

- (A) Not properly directing himself on how to resolve the challenge posed by conflicting evidences on the same subject matter, between the Appellant’s and Complainant’s evidences, which is referred to as “word for word conflict”, and the relevance of issuing a “modified Liberato direction” to cure the conflict.
- (B) Failing to properly direct himself on the “inconsistencies and contradictions in the complainant’s evidence”.
- (C) Failing to make an independent evaluation of the evidence.
- (D) Failing to weigh the complainant’s credibility and the defence version which he rejected.

[31] **Ground 1,** It is alleged that the learned trial Judge did not properly direct himself on how to resolve the challenge posed by conflicting evidences of material witnesses on the same subject matter, and the relevance of issuing a “modified liberato direction” to cure the

conflict. It is the Appellant's view that the trial judge must go further than what are stated in paragraphs [24] to [29] of the judgement to resolve the conflicting evidences on whether the Complainant consented or otherwise to the appellant performing on her what has been alleged in the charges.

[32] In paragraphs [24] to [29], the learned trial judge is simply clarifying the requirements of the law as to consent, and is not making a determination on whether consent has been given or otherwise, by the complainant for the Appellant to perform the alleged sexual acts on her. The learned judge is tasked to assess, evaluate, weigh the evidences of both the complainant and the accused. Even when assessors were in use, the legal position is that, the trial judge is the ultimate Judge of the facts, not the assessors.

[33] In **Liberato and Others v The Queen**, 159 CLR 507, a trial by jury, it was held, by Mason A.C.J, Wilson and Dawson JJ, a trial by jury,

*“After directing the jury at a criminal trial that before they could convict the accused they had to be satisfied beyond reasonable doubt of the accused's guilt, the judge said that the jury would have to decide whether to accept the evidence of a prosecution witness or evidence to the contrary of a defence witness.*

[34] In the same case, Brennan and Deane JJ, who considered that special leave to appeal should be granted, held:

*“When a case turns on a conflict between evidence of prosecution witness and the evidence of a defence witness, it is commonplace for a judge to invite a jury to consider which is to be believed. But it is essential to ensure, by suitable direction, that the answer to that question, if adverse to the defence, is not taken as concluding the issue whether the prosecution has proved beyond reasonable doubt the issues which it bears the onus of proving. The jury must be told that, even if they do not positively believe the evidence for the defence, they cannot find an issue against the accused contrary to that evidence if that evidence gives rise to a reasonable doubt as to that issue.*

[35] **Leberato v Queen** is distinguishable from this case. This case was not tried by jury nor by a judge with assessors. The trial Judge is in full control of the conduct of the case

subject only to the law and especially the Rules and Procedures of the High Court when conducting a trial in a criminal case. In my reading of the Judgment, the learned Judge had actually carried out the usual functions of the assessors, when disputes or conflicts of facts arise. He is the final Judge of facts, even when trial with assessors were in place.

[36] After having summarized the evidence of all witnesses led during the trial, the trial judge continued and stated:

*“[45] The accused totally denied all the allegations made against him by the complainant. The defence position is that the allegations made against him by the complainant are all false and the reason she made these false allegations against the accused was because she was aware that her mother was in a relationship with another man. At support of this claim the defence called witness Vasemaca Dugudrau to testify on behalf of the accused.*

*[46] Witness Vasemaca testified that sometimes between February and May 2021, while the complainant and her sister were staying at her house at the FSC Compound in Rakiraki, the complainant had informed that the report lodged by her at Rakiraki was a lie. The complainant is said to have informed that her mother planned this due to the reason that she was seeing another man. However, Vasemaca had failed to inform the Police or anybody about this important piece of information.*

*[47] It is Vasemaca’s testimony that in May 2021, she had accompanied the complainant and her sister in Nadi, to stay with the complainant’s mother and stepfather. She had stayed in Nadi for 6 months. Only about 3 to 4 months after returning home to Rakiraki had she shared this news or information with anyone. She said she had informed her mother of what the complainant told her. However, even her mother had failed to inform the Police or anybody about this important piece of information. The witness testified that when her brother went to the Remand Centre he had informed the accused about this information.*

[48] *It is the contention of the Prosecution that it was the accused who had told or advised Vasemaca to say what she testified to in Court. Although, the witness denied this suggestion, Court is in agreement with the Prosecution. If this sought of information had in fact been told to the witness by the complainant, it was imperative for her to promptly inform the authorities about it. However, she had failed to do so for over 10 months.*

[49] *For the aforesaid reasons, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version.*

[37] The trial judge in resolving conflicting evidence, did not accept “the defence version.”

[38] I accept the Respondent’s submission that, “*At paragraphs [40] to [59] of the judgment the Court examined at great depth all of the evidence before arriving at its findings on the reliability and credibility of the evidence led at paragraph [60]. The Court held at paragraph [64] that the evidence adduced by the State were reliable and credible(safe) and it established (sufficient) all elements of the charges of Sexual Assault and rape. “*

[39] It needs to be stated in the context of this ground and all the grounds of appeal that the accused totally denies all the allegations made against him by the complainant. The defence position is that all the allegations made against him by the complainant are all false and that the reason she made these false allegations against the accused was because she was aware that her mother was in a relationship with another man. It was in support of this claim that the defence called Vasemaca Dugudrau to testify on behalf of the accused. And at paragraph [61] and [62] the trial Judge stated:

“[61] *....., it must be borne in mind that the complainant in this case is not merely complaining of an isolated incident or single act. Here the complainant has testified to a sequence of events or a series of acts which the accused perpetrated on her, on two separate occasions, nearly one year apart. Therefore, it is the opinion of this Court that it is highly unlikely for the complainant who was merely 13-14 years old at the time, to make up or manufacture such a sequence of events against he own father, unless it really took place.*

[62] *Having analyzed all the evidence in its totality, it is my considered opinion that the complainant's evidence, can be accepted as truthful, credible and reliable. The complainant withstood the rigorous cross examination by the Defence and remained consistent throughout her evidence, in relation to the material particulars in this case."*

[40] Ground 1 is not arguable.

[41] With respect to **Ground 2**, it is alleged that the trial judge failed to direct himself on the "*inconsistencies and the contradictions in the complainant's evidence*". The Appellant submits that there were inconsistencies in the evidence given by the complainant, as illustrated in the Questions and Answers from "Evidence of the complainant LB" at paragraph [36] of the judgment.. Firstly, she claimed that the Appellant was holding her hands tightly when she was lying down, and secondly, the Appellant's hands were in her mouth. Thirdly, the complainant informed the court that the appellant was holding her hands with both of his hands.

[42] The other inconsistency/contradiction which concerns the Appellant is contained in paragraph [56] of the judgment, as follows:

*"[56] The two contradictions highlighted by the defence were:*

*(i) In her testimony in Court the complainant states that she had not informed her mother about any of the allegations which took place in the years 2019 or 2020, prior to informing the Police.*

*However, in her statement it is recorded as follows: "I have told my mother about everything who didn't do anything at all."*

*(ii) That in her testimony in Court she stated that at the sugar cane field her father had removed her panty, her tights and her shorts. However, she had been wearing her t-shirt. So only her bottom half was without clothes.*

*However, in her statement it is recorded as follows: "While on top of me, I was without clothes."*

[43] The trial judge had accepted the explanations on the inconsistencies/contradiction in the complainant's evidence-see paragraphs [57] to [60] of Judgment:

1. *In Sivoinatoto v State....; the Fiji Court of Appeal discussed as to how a Court should deal with issues arising out of contradictions and omissions.*
2. *As to the first contradiction the complainant insisted during her testimony in Court that she had not informed her mother about the allegations prior to reporting the matter to the Police.*
3. *As to the second contradiction it is manifest that what the complainant had meant when she told the police that she was without clothes was that she was only partly naked and not totally naked. This is what she had testified to in Court when she said that at the sugar cane field her father had removed her panty, her tights and her shorts. However, she had been wearing her t-shirt.*
4. *Therefore, having duly considered the explanations offered by the complainant, it is the opinion of this Court that the said explanations are reasonable and acceptable. As such, I am of the opinion that the reliability and credibility of the said evidence is unaffected.”*

[44] Ground 2 is not arguable.

[45] With respect to **Ground 3**, the Appellant alleges that the learned trial judge failed to make an independent evaluation of the evidence. The Appellant referred to the following evidences:

- (a) The complainant reported the matter to the Police on 12 April 2020, nearly 1 year after the alleged incident of Sexual Assault and a little over a month after the alleged incidents of Rape which is claimed by the complainant.
- (b) The complainant Sexually Assaulted her and Raped her, which was completely denied by the Appellant – see paragraph [45] of the judgment.

[46] The Appellant had pleaded not guilty. He exercised his right to remain silent, however, he produced one witness who testified, not that the Appellant could not have committed the acts alleged in the charges, but that the Appellant was framed by his wife and daughter colluding against him, for the reason that his wife was in an affair with another man.

[47] At paragraph [60] of the judgment however, the trial judge concluded that the explanations offered by the complainant are reasonable and acceptable. In the case of inconsistency between evidence given in Court and evidence given to the Police, it is the evidence given in Court that takes precedence.

[48] Ground 3 is not arguable.

[49] In relation to **Ground 4**, the Appellant stated that the trial judge failed to weigh the complainant's credibility and the defence version which he rejected. Paragraphs [61] to [64] of the judgment in my view well sums up the outcome of the trial judge's assessment, evaluation and weighing of all the evidences adduced at the trial, and I quote:

*“[61] In this case the defence is alleging that the complainant and her mother have colluded and make up this whole story against the accused, who is her own father. However, it must be borne in mind that the complainant in this case is not merely complaining of an isolated incident or a single act. Here the complainant has testified to a sequence of events or a series of acts which the accused perpetrated on her, on two separate occasions, nearly one year apart. Therefore, it is the opinion of this Court that it is highly unlikely for the complainant, who was merely 13 – 14 years old at the time, to make up or manufacture such a sequence of events against her own father, unless it really took place.*

*[62] Having analyzed all the evidence in its totality, it is my considered opinion that the complainant's evidence, can be accepted as truthful, credible and reliable. The complainant withstood the rigorous cross examination by the Defence and remained consistent throughout her evidence, in relation to the material particulars of this case.*



[63] *It must be mentioned once again that in terms of the provisions of section 129 of the Criminal Procedure Act, where any person is tried of an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted.*

[64] *Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all the elements of the charges of Sexual Assault and Rape with which the Accused has been charged."*

[50] Ground 4 is not arguable.

### **Conclusion**

[51] In consideration of the foregoing, I hold that the Appellant has not raised an arguable ground.

### **Order of the Court**

*Application for leave to appeal against conviction is refused.*



A handwritten signature in blue ink, appearing to read "Alipate Qetaki", is written over a horizontal line.

Hon. Justice Alipate Qetaki  
RESIDENT JUSTICE OF APPEAL