

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 322 OF 2011S**

**STATE**

**VS**

**WATANASIO CAMAIRA**

**Counsels** : **Ms. S. Naidu and Ms. J. Prasad for State**  
**Mr. T. Muloilagi for Accused**  
**Hearings** : **15<sup>th</sup> to 19<sup>th</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> April, 2013**  
**Ruling** : **23<sup>rd</sup> April, 2013**  
**Written Reason:** **3<sup>rd</sup> May, 2013**

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**WRITTEN REASONS FOR “NO CASE TO ANSWER” RULING**

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1. On 23<sup>rd</sup> April, 2013, the prosecution closed their case after calling five witnesses, that is, two civilians, two police officers and a doctor.
2. Defence verbally made a submission that there was no case to answer. The details of this submission are in the court record. The prosecution verbally replied that there was a case to answer. The details of the answer are in the court record.
3. In any event, I must consider Section 231(1) and (2) of the Criminal Procedure Decree 2009, which reads as follows:

- (1) When the evidence of the witnesses for the prosecution has been concluded, and after hearing (if necessary) any arguments which the prosecution or the defence may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person (or any one of several accused) committed the offence.
- (2) When the evidence of the witnesses for the prosecution has been concluded, the court shall, if it considers that there is evidence that the accused person (or any one or more of several accused persons) committed the offence, inform each such accused person of their right:
  - (a) to address the court, either personally or by his or her lawyer (if any); and
  - (b) to give evidence on his or her own behalf; and
  - (c) to call witnesses in his or her defence.

4. Section 231(1) and (2) of the Criminal Procedure Decree 2009 is somewhat similar to the repealed section 293(1) and (2) of the Criminal Procedure Code, Chapter 21. Consequently, the authorities on the interpretation of section 293 of the Criminal Procedure Code also applied to the interpretation of section 231(1) and (2) of the Criminal Procedure Decree 2009.

5. The test in the interpretation of the above sections are well settled. It is whether or not, there is some relevant and admissible evidence, direct or circumstantial, touching on all elements of the offence, the weight and credibility of such evidence, are not matters for assessment by the court, at this stage of the proceeding. The weight and credibility of such evidence, are matters for the assessors, in the trial proper. I rely on the following authorities: Sisa Kalisogo v Reginam, *Criminal Appeal No. 52 of 1984, Fiji Court of Appeal*; The State v Mosese Tuisawau, *Criminal Appeal No. 14 of 1990, Fiji Court of Appeal*, and The State v George Shiu Raj & Another, *Criminal Appeal No. AAU 0081 of 2005, Fiji Court of Appeal* and

**The State v Brian Singh**, *Criminal Appeal No. AAU 0097 of 2005, Fiji Court of Appeal, all Court of Appeal Authorities.*

6. Applying the above authorities to the evidence presented by the five prosecution's witnesses and after carefully considering the parties' submissions, I made a finding that there was a case to answer on 23<sup>rd</sup> April, 2013, and the accused ought to be call upon to make his defence. I said I would give my reasons later. The above are my reasons.
7. He is entitled to:
- (i) address the court, and/or remain silent;
  - (ii) give sworn evidence himself, in his defence, and/or
  - (iii) call witnesses.

I order so accordingly.

**Salesi Temo**

**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecutions, Suva.**  
**Solicitor for Accused** : **Legal Aid Commission, Suva.**