

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 059/2011**

**BETWEEN: THE STATE**

**AND: 1. ISIKELI TAMANI  
2. AMENA ARAIBULU**

**COUNSEL: Mr J Niudamu and Ms R Uce for the State  
Mr I Ramanu for the 1st Accused  
Mr S Waqainabete for the 2<sup>nd</sup> Accused**

**Dates of Trial: 24-27/09/2013**

**Date of Summing Up: 30/09/2013**

**Date of Judgment: 02/10/2013**

## **JUDGMENT**

[1] Isikeli Tamani and Amena Araibulu have been charged with the following charges on amalgamated information dated 1<sup>st</sup> day of August, 2011 by Director of Public Prosecutions.

### **FIRST COUNT**

#### **Statement of Offence**

**IMPORTATION OF CONTROLLED CHEMICALS:** Contrary to Section 6(b) of the Illicit Drugs Control Act, 2004.

### **Particulars of Offence**

**ISIKELI TAMANI**, on the 6<sup>th</sup> day of January, 2010, at Suva, in the Central Division, imported into Fiji controlled chemical namely pseudoephedrine hydrochloride weighing approximately 2.680kilograms without lawful authority.

### **SECOND COUNT**

#### **Statement of Offence**

**AIDING AND ABETTING:** contrary to Section 21(c) of the Penal Code, Cap, 17 and Section 6(b) of the Illicit Drugs Act, 2004.

#### **Particulars of Offence**

**AMENA ARAIBULU**, on the 6<sup>th</sup> day of January,2010 at Suva in the Central Division, aided and abetted Isikeli Tamani to import into Fiji controlled chemicals namely pseudoephedrine hydrochloride weighing approximately 2.680kilograms without lawful authority.

- [2] After trial on these charges, the assessors returned unanimous opinion of guilty against 1<sup>st</sup> accused and unanimous opinion of not guilty against 2<sup>nd</sup> accused. I direct myself on my own summing up and on looking at the evidence in its entirety I find that I cannot agree with not guilty opinion against the 2<sup>nd</sup> accused. I find the not guilty opinion of the assessors against 2<sup>nd</sup> accused appears to be perverse.
- [3] In this case prosecution charged the 2<sup>nd</sup> accused for aiding and abetting Isikeli Tamani to import into Fiji controlled chemical namely pseudoephedrine hydrochloride weighing approximately 2.680kilograms without lawful authority.

- [4] According to Jonetani Raloka Rokosugu he was employed as a Delivery and Receiving Clerk at Carpenter Shipping in the year 2010. On 6/01/2010 2<sup>nd</sup> accused called him and informed that he was coming to clear a consignment. As both were in the same industry he knew Amena for about 5 years. Amena had given him a waybill number which he checked through a bond clerk. As the consignment was ready for clearance he had asked Amena to come with the consignee. Amena then called him and informed that consignee Jack Wilson had come. When he went near a taxi 2<sup>nd</sup> accused showed the 1<sup>st</sup> accused as Jack Wilson. He was seated in front passenger seat. When he asked from Amena whether Jack Wilson has any identity, 2<sup>nd</sup> accused told him he does not have any identification. 2<sup>nd</sup> accused had given the waybill consignee's copy to the witness. Before he went into the bond to submit the waybill he had spoken to 1<sup>st</sup> accused and asked whether he is Jack Wilson. 1<sup>st</sup> accused had told him that he is Jack Wilson. At that time 2<sup>nd</sup> accused was standing near the taxi. Before opening the box custom officer went up to the taxi for the verification of Jack Wilson. Thereafter the carton box was opened in presence of custom officer. A tricycle was in the box with a small plastic box. He identified P2. After the verification of goods 2<sup>nd</sup> accused Amena had showed him a \$100.00 bill. Amena requested him to share with the customs officer. He declined the offer and asked who was going to sign the waybill customer's copy. Amena requested him to sign the document as Jack Wilson is paralyzed. Then he wrote his name at the place where consignee should place his signature. At that time some officers from CID and Custom Intelligence Unit arrived there and all the people were taken to CID Head Quarters.
- [5] Josua Volau a custom officer who was on duty at Carpenter Shipping Suva on 06/01/2010. At about 2.00pm Amena had come to clear a parcel of Jack

Wilson. When Amena was directed to identify the parcel he had told him that the owner had come and he is in the taxi as he is a paralysed person. He then went out physically and checked the taxi. Amena had showed 1<sup>st</sup> accused as Jack Wilson to him on that day.

[6] According to 2<sup>nd</sup> accused he received a call from Tamani on 06/01/2010 and both met at Kasabia, Toorak at 10.00am. While in the taxi Tamani had given a card with a serial number and told him to check from Carpenter Shipping. He had called Jonetani who works at Carpenter Shipping. Jonetani confirmed the arrival of the parcel addressed to Jack Wilson. Tamani had said that he is Jack Wilson and has all the documents for clearance. At 3.00pm when he went to Carpenter Shipping Tamani had come in a Taxi and gave original documents to clear a bicycle. \$300.00 had been given to him by Tamani to pay custom duty and to pay Jonetani and customs officer. Jonetani took the documents and went into the office. Witness told Jonetani that Jack Wilson is a paralysed person who was seated in the taxi. This was observed by Jonetani and the customs officer. Witness said that he knew Tamani for about 5 years. He admitted that he knew Tamani is not Jack Wilson. He admits that he did not inform this to either police or custom officer. He showed Tamani as Jack Wilson to Jonetani and the custom officer. Further he had admitted in his caution interview that he showed Isikeli Tamani as Jack Wilson to Jonetani.

[7] In this case a parcel detected with illicit drugs at Carpenters FEDEX bond at Nadi Airport. It was properly delivered to Carpenter Shipping Suva under the supervision of custom and the police. The parcel was addressed to Jack Wilson of 77 Malau Place, Vatuwaqa. On 06/01/2010 1<sup>st</sup> accused with the help of 2<sup>nd</sup> accused tried to clear the parcel from Carpenters Shipping Bond Yard at Edinburgh Drive Suva.

- [8] Second accused knowing very well that 1<sup>st</sup> accused is not Jack Wilson produced documents in the name of Jack Wilson to Jonetani and Josua Valau to clear a parcel which contained illicit drugs. Even he introduced 1<sup>st</sup> accused as Jack Wilson to Jonetani and Josua. Second accused very well knew 1<sup>st</sup> accused's real name as he was his neighbour and helped him several times to clear parcels from customs. All the documents which he submitted to Jonetani to clear the parcel were in Jack Wilson's name. He had tried to bribe Jonetani and Josua to clear the parcel. Further he had not taken any endeavour to inform this to police or customs.
- [9] The evidence presented by prosecution very well establishes that second accused intentionally assisted Isikeli Tamani in committing Importation of Controlled Chemical. As per Law all those who do any act or acts to assist, aid and abet the principal offender are also guilty of the offence.
- [10] In the premises, I find that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons are guilty to their respective charge. I convict them accordingly.

P Kumararatnam

**JUDGE**

At Suva  
02/10/2013

