

**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**

## **SUMMING UP**

Ladies and Gentleman of Assessors,

1. It is now my duty to sum up this case to you. I will direct on matters of law which you must accept and act upon. On matters of facts however, which witnesses to accept as reliable, which version of the evidence to accept, these are matters for you to decide for yourselves. So if I express my opinion to you about facts of the case or if I appear to do so it is a matter for you whether you accept what I say, or form your own opinion. In other words you are the judges of facts. All matters of facts are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.

2. You have to decide what facts are proved and what inferences drawn from those facts. You then apply law as I explain it to you and form your individual opinion as to whether the accused is guilty or not guilty.
3. Prosecution and defence made their submissions to you about the facts of this case. That is their duty. But it is a matter for you to decide which version of the facts to accept or reject.
4. You will not be asked to give reasons for your opinions but merely your opinions of yourself and your opinion need not be unanimous but it would be desirable if you agree on them. Your opinions are not binding on me but I can tell you that they carry great weight with me when I deliver my judgment.
5. On the question of proof, I must direct you as a matter of law that the onus of burden of proof lies on the prosecution throughout the trial and never shift. There is no obligation on the accused person to prove his innocence. Under our criminal justice system the accused person is presumed to be innocent until he is proved guilty. This is the golden rule.
6. The standard of proof in a criminal trial is one of proof beyond reasonable doubt. This means you must be satisfied so that you are sure of the accused's guilt before you can express an opinion that he is guilty. If you have any reasonable doubt about his guilt then you must express an opinion that he is not guilty.
7. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence that who saw the incident or felt the offence being committed. The other kind of evidence is circumstantial evidence that you put one or more circumstances together and draw certain irresistible inferences. Evidence presented in the form of a document is called Documentary evidence.
8. The facts which agreed between the prosecution and the defence are called agreed facts. You may accept those facts as if they had been led from witnesses from witness box.

9. The following facts are agreed between prosecution and 1<sup>st</sup> accused:
1. It is agreed that Isikeli Tamani is referred to as the first accused in this case.
  2. It is agreed that Isikeli Tamani, 48 years, is unemployed and resides at Lot 20, Wainibuku, Nakasi.
  3. It is agreed that Isikeli Tamani is confined to a wheel chair.
  4. It is agreed that when Isikeli Tamani was arrested he was found to be in possession of \$8038.85 in cash.
  5. It is agreed that the Illicit Drugs was sent to the Australian Forensic Drug Laboratory for analysis.
  6. It is agreed that the main analysis was conducted by Gladys Yau Foon Yu who is an analyst employed by the Australian Forensic Laboratory in NSW, Australia.
10. The following facts are agreed between prosecution and 2<sup>nd</sup> accused:
1. It was agreed that Amena Araibulu is referred to as the second accused in this case.
  2. It was agreed that prior to and during this incident Amena Araibulu was employed by Pacific Agencies as Operational Supervisor.
  3. It was agreed that Amena Araibulu commonly use the name Kelly to refer to Isikeli Tamani.
  4. It was agreed that on the 6<sup>th</sup> of January 2010 Amena Araibulu was at the work place around 9am.
  5. It was agreed that the Amena Araibulu received a call at around 10am on the 6<sup>th</sup> January 2010 from Isikeli Tamani.
  6. It was agreed that the phone conversation was about a parcel that Isikeli Tamani was expecting that was send from abroad through FEDEX Courier Company and he is

requesting Amena Araibulu on whether he knew as to who was the agent of FEDEX.

7. It was agreed that the money seized from Amena Araibulu are now in police custody.
8. It was agreed that Amena Araibulu was caution interviewed on the 7<sup>th</sup> January 2010 at Criminal Investigations Department Headquarters, Suva.
11. The caution interview statements of the accused persons are in evidence. What an accused says in his caution interview is evidence only against him. I will direct you shortly on how you should consider that evidence.
12. Your decisions must be solely and exclusively upon the evidence, which you have heard in this court and upon nothing else. You must disregard anything you have heard about this case outside of this court room.
13. Your duty is to find the facts based on the evidence and apply the law to those facts. Approach the evidence with detachment and objectivity. Do not get carried away by emotions.
14. Now let's look at the charges.

## **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 Sava, 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.

15. Section 6(b) of the Illicit Drugs Act, 2004 reads as follows:

Any person who without lawful authority imports, exports, manufactures, possesses or supplies as to whether that chemical or equipment-

(b) Being reckless as to whether that chemical or equipment is to be used in or for the commission of an offence under Section 5;

Commits an offence and is liable to be a fine not exceeding \$1000, 000 or imprisonment for life or both.

16. In respect of 1<sup>st</sup> count the prosecution has to prove following elements of importation of controlled chemical under Illicit Drugs Act,2004:

1. The 1<sup>st</sup> accused
2. without lawful authority
3. Imports controlled chemical into Fiji
4. And the accused was being reckless to whether that chemical is to be used in or for the commission of an offence.

17. As per section 2 of the Illicit Drugs Controlled Act 2004 “**imports**” means to bring or cause to be brought into Fiji Islands and is a continuing process including any stage thereof until any item reaches the intended recipient.

18. As per section 21(2) of the Crimes Decree 2009 “a person is reckless with respect to a result, if he is aware of a substantial risk that will occur, and having regards to the circumstances known to him, it is unjustifiable to take the risk. The question of whether taking a risk is unjustifiable is one of the fact.
19. As per section 21 (1) of the Penal Code,cap,17 when an offence is committed of the following person is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-
- 21(1) (c) “every person who aids or abets another person in committing the offence”
20. In this case the prosecution needs to prove the following elements of aiding and Abeting:
1. that Isikeli Tamani did in fact commit the offence of Importation of Controlled Chemical.
  2. that the second accused assisted Isikeli Tamani in committing Importation of Controlled Chemical.
  3. it was second accused’s intention to assist Isikeli Tamani in committing the offence and with that intention he did acts which he thought would help Isikeli Tamani.
21. In Law the person who actually does the deed which constitutes the offence, is not the only person who may be convicted of a crime. All those who do any act or acts to assist, aid and abet the principal offender are also guilty of the offence.

### **The Prosecution Case**

22. According to Vimlesh Narayan the first prosecution witness he works for Fiji Customs and Inland Revenue Authority for the last 18 years. On 30/01/2010 he was at duty at Carpenter FEDEX bond in Nadi International Airport. While verifying an Airway Bill he had come across some discrepancies on the bill. Two weights were shown on the bill. Further no contact number of the local importer written on the bill. The goods had

come from China which is a high risk country. As per the bill a bicycle packed in carton box had come from China and sent by a person called Esther Wilson. The recipient's name is Jack Wilson of No:77, Malau Place, Vatuwaqa, Suva. Then the carton box was opened with the help of FEDEX employee Praneel Anish Narayan. A multi colour tricycle found inside with a blue coloured rear boot. Some granules found in the rear boot. On further checking a similar granule parcel found under the seat of the tricycle. Both parcels packed in zip lock plastic. As the samples tested positive for anti drug, a meeting was called and decided to send the goods to the Suva with proper supervision by Customs and police officers.( control delivery)The Airway Bill with tracking Number 869571077388 was marked as P1. Witness identified the carton box with dismantle multi coloured tricycle. Both items were marked as P2. Two parcels of granules which were detected in the box were then shown to the witness. The granules which found in the rear boot of the tricycle were marked as P3 and the granules which found underneath the seat were marked as P4.

23. Answering to questions put forward by counsel for 1<sup>st</sup> accused witness said that local contact number is important to contact the recipient. In absence of contact number a postal note is sent to the recipient. Recipient has to sign in order to claim the parcel.
24. Answering to questions put forward by counsel for 2<sup>nd</sup> accused witness said if the recipient is disabled person an authorisation letter could be given to a person to sign on his behalf.
25. Archal Reddy a Forensic Officer of the Fiji Police Forensic Science Laboratory said that she weighed and obtained samples to be sent to Australia from P3 and P4 submitted to her by Inspector Aiyaz and she obtained the samples in the laboratory situated in Central Police Station. After obtaining the samples P3 and P4 are kept in the police exhibit room. 3.0006 grams of samples obtained from each packet. (P3 and P4)According to her gross weight in P3 was 1791grams and gross weight in P4 was 933grams. She had prepared a worksheet which had been marked as P5. She identified P3 and P4 in open court.

26. Answering a question put by counsel for 1<sup>st</sup> accused witness said they do not follow a standard procedure yet.
27. Praneel Anish Narayan an employee of Carpenters Air Freight FEDEX Nadi bond corroborated the evidence given by Vimlesh Narayan the customs officer based at Nadi Airport. Witness identified P1, P2, P3, and P4. According to him P1 the Airway Bill is prepared is with 5 copies and the 5<sup>th</sup> copy is the owners copy. He had prepared the Bonded Cargo Transfer Manifest which is marked as P6.
28. Ramesh Prasad Lal a supervising officer of Carpenter Shipping. According to him when Bonded Cargo transfer Manifest arrives with the cargo it was placed inside the Custom Bonded Warehouse. All particulars are entered in to Bond Register. After notifying the recipient the parcel was opened in front of the custom officer and the recipient. Upon approval of custom officer the parcel is released to the recipient. According to him on 06/01/2010 Goundar worked as the Bond Officer and Josua was the custom officer.
29. Answering to counsel for 1<sup>st</sup> accused witness said that he can remember receiving a parcel addressed to Jack Wilson. Counsel for 1<sup>st</sup> accused marked the Airway Bill Destination copy (recipient's Copy) as 1D1.
30. IP/Iqbal Khan Officer In charge of Transnational Crimes Unit received information from Transnational Crimes Unit Nadi Office about the seizure of Illicit Drugs. He then directed his officers and the custom officers to control delivery to FEDEX Suva.
31. Sailasa Turagaluvu was a CID officer in the year 2010. On 06/01/2010 he was on duty. At 14.30 hours a team comprising Sgt/Saimoni, DC/Jone, DC/Inoke and himself went to BP Service Station close to Walu Bay round aboard. At 15.00hours they had approached Carpenter Shipping and met custom officer Joe. He saw the box which was going to be cleared. He then met Sakiusa Matanataba who was standing with a Fijian man. He identified the Fijian man as 2<sup>nd</sup> accused Amena. At that time he had seen a taxi. In that taxi 1<sup>st</sup> accused was seated in front passenger seat while a small boy seated in the rear. Driver was in the driving seat. Thereafter his team had taken the carton box along with 1<sup>st</sup> accused and 2<sup>nd</sup> accused to CID Head Quarters, Suva. At the CID Head Quarters the box was opened. He identified P2, P3 and P4.



32. In cross examination witness said that he saw both accused first on 06/01/2010. He identified first accused as he was seated in the front passenger seat. According to him he could see the taxi very well from the corridor.
33. Jonetani Raloka Rokosugu 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 with a box found inside the 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. The waybill where he placed his signature as consignee was shown to him. He identified the document which had been marked as 1D1. The Notification of Clearance which had been given to him by Amena was marked as P7.

34. In the cross examination by counsel for 1<sup>st</sup> accused witness said that he believed Amena and met Jack Wilson. Jack Wilson was shown by Amena. Witness admitted that he breached the company procedure by placing his signature in the waybill.
35. Answering to the questions put by counsel for 2<sup>nd</sup> accused witness said that he asked both Amena and Isikeli Tamani about the identification of Jack Wilson.
36. 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. After that police officers had come there and took the parcel and Amena and Jonetani with them. He identified both accused in open court.
37. In the cross examination witness said that Jonetani signed the waybill and the register on behalf of Jack Wilson. Amena had showed Jack Wilson to him on that day. According to him the identification of recipient is the duty of Carpenter Shipping. He is the final authority to release the goods. He reiterated that he went with Amena and Jonetani to identify Jack Wilson who was seated in front passenger seat of the taxi. 1D1 was shown to the witness.
38. Sakiusa Matanataba a work mate of 2<sup>nd</sup> accused had gone to Carpenters Shipping along with 2<sup>nd</sup> accused. Second accused went inside to meet some staff. At that time police surrounded the building and arrested him. He was not informed the reason for his arrest.
39. Jone Tikosaya was residing at No: 77, Malau Place, Vatuwaqa. The owner of the house is Joshco Wakaniyasi. He is the president of Fiji Spinal Injury Society. He too is confined to a wheelchair. He is his full time care giver. In the year 2010 Isikeli Tamani had told him that a card would be delivered to his address. A postman delivered a card addressed to Jack Wilson. He then called Isikeli Tamani and handed over the card to him at Samabula. When he went to deliver the card Isikeli was in a taxi. A small boy was in the rear seat. He identified 1<sup>st</sup> accused in open court.

40. In the cross examination witness said that Isikeli Tamani had told him a card would be sent to his address. Accordingly he received a card and he delivered it to Isikeli Tamani.
41. According to Satya Nand on 06/01/2010 he had picked up 1<sup>st</sup> accused from Wainibuku. He then asked him to go to Suva. While going, 1<sup>st</sup> accused had told him to retrieve a number from his mobile. When they came to Suva Street a Fijian man was standing there. 1<sup>st</sup> accused gave that telephone number to that Fijian man. After that they returned to Wainibuku. At 3.00pm he picked the 1<sup>st</sup> accused again from the same place and went to Samabula to pick a card. After picking the card he directed him to go to Carpenters Shipping. 2<sup>nd</sup> accused was already arrived there. He then gave the card to 2<sup>nd</sup> accused who then went inside Carpenter Shipping. While they were waiting outside in the taxi some police officers came in a van and surrounded the car. Some officers went in to the warehouse and others got into the taxi. When 1<sup>st</sup> accused saw these people he said "arre". He knew 1<sup>st</sup> accused very well before this incident. He identified both 1<sup>st</sup> and 2<sup>nd</sup> accused in open court.
42. In the cross examination witness said that he had seen the card which 1<sup>st</sup> accused gave to 2<sup>nd</sup> accused. When they went to Walu Bay a small boy was inside the taxi. First accused had told him that he came to collect a parcel from Carpenters Shipping.
43. Epi Veimosai was the interviewing officer of 2<sup>nd</sup> accused. He had interviewed 2<sup>nd</sup> accused on 07/01/2010 at Major Fraud Unit, CID Head Quarters. During the interview 2<sup>nd</sup> accused responded very well to the interviewing officer. This was witnessed by Sgt/Tomasi Tukana. 2<sup>nd</sup> accused was not subjected to threat, intimidation or force. All the rights were given to him. Interview was commenced on 07/01/2010 and concluded on 09/01/2010. The caution interview statement of 2<sup>nd</sup> accused was marked as P8. He identified the 2<sup>nd</sup> accused in open court.
44. In the cross examination by counsel for 2<sup>nd</sup> accused witness said that 2<sup>nd</sup> accused never mentioned that he only assisted Isikeli Tamani to clear the parcel.

45. IP/Aiyaz Ali finally gave evidence on behalf of the prosecution. He is the investigating officer in this case. He is attached to CID Head Quarters when both accused arrested on information. After taking both accused to CID Head Quarters, a search conducted in both accused house on 07/01/2010. After caution interview both accused were released pending analyst report from Australia. He identified P2, P3 and P4. P3 and P4 were locked in his cabinet as it needed to show both accused during their caution interview recording. After recording caution interview of both accused P3 and P4 were handed over to Central Police Station. On 11/02/2010 P3 and P4 were handed over to Fiji Police Force Forensic Officer Ms. Reddy to obtain necessary sample to be sent to Australia for expert opinion. The total weight of the drugs with plastics is 2.680kg. In the first week of November 2010 Australian Government National Measurement Institute submitted a report confirming both samples contains pseudoephedrine. This is an offence under Illicit Drugs Act 2004. The report was marked as P9. The samples were retained by the institute.
46. At the time of arrest certain items were recovered from both accused. \$8038.55 recovered from 1<sup>st</sup> accused while \$344.00 recovered from 2<sup>nd</sup> accused. Search list of 1<sup>st</sup> accused was marked as P10 and search list of 2<sup>nd</sup> accused was marked as P11. The money recovered from 1<sup>st</sup> accused and second accused were kept under restraining order issued by High Court. \$44.70 cents had been returned to second accused. The charge statement of 1<sup>st</sup> accused was marked as P12 and charge statement of 2<sup>nd</sup> accused was marked as P13.
47. He had recorded the caution interview statement of 1<sup>st</sup> accused on 07/01/2010 and concluded on 08/01/2010. All the rights of the accused were given before recording his caution interview statement. Considering medical condition of 1<sup>st</sup> accused necessary breaks and food given to him. Interview was conducted in his personal computer and this was informed him verbally. Every page of 1<sup>st</sup> accused's caution interview statement was given to him for reading and to do necessary amendment before 1<sup>st</sup> accused placed his thumb impression. His interview was witnessed by Sgt/Nilesh Kumar on the first day and Sgt/Vilitati Bari on the second day. The caution interview statement was marked as P14.

48. In the cross examination by counsel for 1<sup>st</sup> accused witness said that the mobile phone which recovered from 1<sup>st</sup> accused had been returned to him. Money is retained under a restraining order. 1<sup>st</sup> accused had gone to Carpenters Shipping to clear the parcel. In the process of clearing police intercepted and arrested the accused along with the parcel.
49. Answering questions put forward by counsel for second accused witness said that investigations were not concluded within 48 hours. After suspension of caution interview statement of 1<sup>st</sup> accused on the first day he was taken to Central Police Station. On 06/01/2010 1<sup>st</sup> accused was taken to Lami Police Station. 1<sup>st</sup> accused was allowed to accompany a personal assistant only when he was kept at CID Head Quarters. While in the police custody police officers attended to 1<sup>st</sup> accused request.
50. In the re-examination witness said that lot of time taken to examine the exhibits and to conduct search. Further 1<sup>st</sup> accused was taken to hospital twice while he was in police custody. Long hour breaks given to 1<sup>st</sup> accused when his caution interview statement was being recorded.
51. That was the case for the prosecution.
52. At the end of the prosecution case you heard me giving several options to both accused. Their rights were properly explained. They chose to give evidence from witness box.
53. According to 1<sup>st</sup> accused on the day of arrest he was kept in a police station without his helper. Only some of his needs were attended by the police officers. On 06/01/2010 he had gone to Carpenters Shipping in order to help a friend who told him over the phone to collect a parcel to be delivered to one Jack Wilson. As his friend helps him financially for his business and to buy his medicine he decided to collect the parcel from Carpenters Shipping. As Jack Wilson did not have his ID he sought help from 2<sup>nd</sup> accused. He said that he never received the parcel.
54. In the cross examination 1<sup>st</sup> accused said that he was caution interviewed on 6-7/01/2010 at CID Head Quarters. He could not read it back as he did not have his reading glasses. He had placed his thumb impression without reading. He says that his interview had been fabricated by the police. He

admits that he was taken to hospital. He was assaulted by police officers. But he had not lodged any complaint to anybody including learned magistrate. He admitted after receiving the card had gone to Carpenters Shipping to clear the carton in a taxi. Card was given to 2<sup>nd</sup> accused for clearance. No authority given to him to clear the carton. He knew very well that he can't collect the parcel. Hence he sought 2<sup>nd</sup> accused's assistance. One Tevita Halalilo had given the name of Jack Wilson but he does not know Jack Wilson personally. Witness said that the money recovered from him came before the parcel.

55. 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 Carpenters Shipping. He had called Jonetani who works at Carpenters 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 Carpenters Shipping Tamani had come in a Taxi and gave original documents to clear a bicycle. Three Hundred Dollars (\$300.00) had been given to him by Tamani to pay custom duty and to pay Jonetani and custom officers. 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. While it was being checked by custom officer inside the room a police team came and arrested him. They were taken to CID Head Quarters and opened the parcel and shown the drugs concealed inside the bicycle. Witness said that he knew Tamani for about 5 years. During this period he had cleared goods about three times and this is the fourth time. All the times he received tips. He says that he agreed to clear the consignment in good faith and without any intention. He worked for Pacific Agency as an Operational Supervisor for about 12 years.
56. In the cross examination witness said that he knew clearance procedure very well. ID is required to clear a parcel. His company also practice this. He only assisted Tamani to clear the parcel. He admitted that he knew Tamani is not Jack Wilson. He admits that he did not inform this to either police or custom officer as Tamani had original documents. He showed

Tamani as Jack Wilson to Jonetani and the custom officer. Witness admitted that he knew Tamani's brother and advised him that is unsafe to send drugs to Fiji. Further he admitted that he advised Tamani's brother that importing drugs through shipping is safe. His mother also works for Carpenters Shipping. But he used Jonetani to sign on behalf of Jack Wilson.

56. In the re-examination witness admitted that he advised Tamani's brother about the procedure of sending drugs to Fiji.
57. That was the case for the defence.

### **Summary**

58. Ladies and Gentleman of assessors, 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 and 2<sup>nd</sup> accused tried to clear the parcel from Carpenters Shipping Bond Yard at Edinburgh Drive Suva. They were arrested by CID Officers and recorded their interview under caution. The Drugs which were detected at that time were properly weighed and sealed before it is produced in this court. All the exhibits are properly marked and produced before this court. I have already explained to you each witness's evidence in detail. Consider their evidence very carefully.
59. Ladies and Gentleman of assessors, in this case prosecution tendered both accused person's caution interview statement as evidence. I have told you earlier that what one accused person says in his caution interview statement it is only evidence against him. It is not evidence against the other. 1<sup>st</sup> accused says that the police ill-treated him and fabricated his statement. But 2<sup>nd</sup> accused is not challenging his caution interview statement. You have heard the police officer who recorded the caution interview of 1<sup>st</sup> accused denied ill-treating 1st accused. According to police officer interview took place two days because of the time taken to search and to give the accused sufficient rest during the interview. What weight you choose to give the interviews made by these two accused is a matter entirely for you. If you

consider them to be unrealisable either because the police ill-treated the accused, or because the accused themselves told lies to police, then you may think that you cannot put much weight on them at all. If however you consider them to be reliable records of what the accused said to the police, then you may think that they contain important statements of what allegedly occurred on 06/01/2010.

60. Ladies and Gentleman of assessors, in this case accused persons opted to give evidence from witness box. That is their right. But they have nothing to prove to you. But you must give their evidence careful consideration.
61. In this case 1<sup>st</sup> accused is charged for Importation of Controlled Chemical contrary to Section 6(b) of the Illicit Drugs Control Act, 2004. 2<sup>nd</sup> accused is charged for Aiding and Abetting contrary to Section 21(c) of the Penal Code, Cap.17 and Section 6(b) of the Illicit Drugs Control Act, 2004. I have already explained to you about the charges and its ingredients.
62. Ladies and Gentleman of assessors, you have heard all the prosecution witnesses. You have observed them giving evidence in the court. You have observed their demeanour in the court. Considering my direction on the law, your life experiences and common sense, you should be able to decide which witness's evidence, or part of their evidence you consider reliable, and therefore to accept, and which witness's evidence, you consider unreliable and therefore to reject.
63. Ladies and Gentleman of assessors, If I do not mention a particular witness or a particular piece of evidence that does not mean it is unimportant. You should consider and evaluate all the evidence in coming to your decision.
64. You must also carefully consider both accused person's position as stated above. Please remember, even if you reject the version of both accused that does not mean that the prosecution had established the case against them. You must be satisfied that the prosecution has established the case beyond reasonable doubt against both accused persons.
65. Ladies and Gentleman of assessors, remember, it is for the prosecution to prove both accused's guilt beyond reasonable doubt. It is not for both accused to prove their innocence. The burden of proof lies on the



prosecution to prove both accused's guilt beyond reasonable doubt, and that burden stays with them throughout the trial.

66. Once again, I remind, that your duty is to find the facts based on the evidence, apply the law to those facts and come to a correct finding. Do not get carried away by emotions.
67. This is all I have to say to you. You may now retire to deliberate. The clerks will advise me when you have reached your individual decisions, and we will reconvene the court.
68. Any re-directions.

I thank you for your patient hearing to my summing- up.

P Kumararatnam  
**JUDGE**

At Suva  
30/09/2013