

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No.005 of 2012

BETWEEN : **STATE**

AND : **PITA RAGOLEA DRITI**

BEFORE : **THE HON. JUSTICE PAUL MADIGAN**

Counsel : Mrs. A. Campbell-Moffat S.C.
 with Messrs J . Remedios and M. Korovou
 for the State
 Mr. F. Vosarogo for the Accused.

Dates of hearing: 18-22, 25 November 2013
Date of Summing up: 26 November 2013

SUMMING UP

[1] Ladies and gentleman assessors:

The time has come now for me to sum up the case to you and to direct you on the law involved so that you can apply those directions to the facts as you find them.

[2] I remind you that I am the Judge of the Law and you must accept what I tell you about the law. You in turn are the Judges of the facts and you and only you can decide where the truth lies in this case. If I express any particular view of the facts in this summing up then you will ignore it unless of course it agrees with your view of that fact.

- [3] Counsel have addressed you on the facts but once again you need not adopt their views of the facts unless you agree with them. You will take into account all of the evidence both oral and documentary. You can accept some of what a witness says and reject the rest. You can accept all of what he or she says and you can reject all. As judges of the facts you are masters of what to accept from the evidence.
- [4] You must judge this case solely on the evidence that you heard in this Court room. There will be no more evidence, you are not to speculate on what evidence there might have been or should have been. You judge the case solely on what you have heard and seen here.
- [5] The court room is no place for sympathy or prejudice. As I said to you when you were being sworn in, this case has political overtones because of the very nature of the charges but neither you nor I will be judging this case with politics in mind. Everybody has political opinions, even Judges; but Judges are **never** permitted to express those opinions neither professionally nor socially for the obvious reason that Judges must be seen to be impartial. Similarly, for the purposes of this case only, you are not allowed a political opinion. You are not permitted to let your political views cloud your judgment. It is irrelevant what you might think of the Prime Minister. It is irrelevant what you might think of the Attorney General - you will judge the defendant solely on the evidence presented to you in the context of the Law that I direct you on and nothing else . Likewise you are not to feel sympathy for the defendant. He has obviously had a long and meritorious career in the RFMF; but again that is irrelevant to your findings. Any emotive reaction to the evidence either for or against the defendant is out of place. You will conduct an objective appraisal of the evidence. However, having said that, I must tell you this: the defendant with his worthy record of service and never in trouble with the Law in all of his 53 years is a factor you should take into account when deciding whether or not you believe his evidence. You may think he is entitled to ask you to give considerable weight to his good character when you assess his

credibility and when you decide if the prosecution has proved its case to you, so that you are sure.

- [6] Now, as I expected there has been a lot of media coverage of this trial and quite frankly you will not have been able to avoid it. That is in itself not a bad thing because the public have the right to know what proceedings are being conducted in the courts of these islands, but I direct you Members of the Panel not to be side-tracked in your task by this media coverage. Your task is to render an opinion to me according to the evidence and not according to newspaper or Radio/TV reports . Publicity is not evidence . Your task is to decide whether it is proved that Driti was attempting to incite Manasa to mutiny or whether he was uttering seditious words and they are the **only** issues for you to decide and you will decide them on the evidence.
- [7] The accused is facing two separate and distinct counts in this trial. They are charged in the alternative. You cannot find the defendant guilty of both. First you will consider Count 1 which is the more serious one involving incitement to mutiny. If you find the defendant guilty on that count , do not consider Count 2 at all. But if you are not sure or for any other reason find him not guilty on that charge then you will go on to consider count 2, the uttering of seditious words charge. I will come back to those options at the end of this summing up because I want you to be sure that you are aware of your tasks in this process.
- [8] I am not bound by your opinions but I will give them full weight when I decide the final judgment of the Court.
- [9] It is most important that I remind you of what I said to you when you were being sworn in. The burden of proving the case against this accused is on the Prosecution and how do they do that? By making you sure of it. Nothing less will do. This is what is sometimes called proof beyond reasonable doubt. If you have any doubt then that must be given to the accused and you will find him not guilty- that doubt must be a reasonable

one however, not just some fanciful doubt. The accused does not have to prove anything to you. If however you are sure that the accused incited Manasa Tagicakibau to mutiny or that he uttered the seditious words attributed to him then you will find him guilty.

[10] In our law a person incites to mutiny if , in the knowledge that another person is serving in the armed forces, that first person attempts to seduce or persuade that other person from his military duty and from his allegiance to the Republic of Fiji.

[11] Now let me try to break that down for you to make it more easily understood and to make it easier for you to apply the legal principles to the facts, as you find them. Unlike many of our laws this particular law doesn't have any hidden and difficult elements in it; the offence just uses straight words which can be taken to mean what they say. The words "inciting" , "seduce" and "persuade" all mean pretty much the same thing; that is to influence somebody or to talk somebody into doing something that they might not ordinarily want to do. Although the offence is called incitement to mutiny, the offence doesn't actually mention the word mutiny, so you don't have to worry about what mutiny means. What the prosecution have to prove to you so that you are sure, is this:

- that Major Tagicakibau was at the time serving in the military forces; and
- that he owed a duty of allegiance to Fiji and to the Commander of the Republic of Fiji Military Forces; and
- that Driti, the defendant, attempted to persuade the Major away from that allegiance to Fiji and to the Commander of the Royal Fiji Military Forces.

[12] The law for this offence is as simple as that. It gets even simpler when you see that the first and second elements of the offence are agreed facts - you don't even have to decide them. They are decided for you. So all you have to

find Ladies and Gentleman is that in 2010 between the first of August 2010 and the end of October, at any one of those meetings we have heard about, Driti tried to get the Major to ignore his duty and do things that would go against the Commander, and he being also the Prime Minister, against the Republic of Fiji. It doesn't matter that there is a dispute whether the Commander's A.G. was to be killed or not; all you have to find is that the plan was to have the A.G. removed from office. That is enough to betray one's allegiance to the State. Forget about the finer points. Was he being asked to betray his commission? Was he being asked to betray the Commander as head of Government? Those are the ultimate questions for you to decide.

[13] If, in finding him not guilty of the offence of inciting to mutiny, then, and only then will you move on to decide whether he is guilty or not guilty of the alternative count of uttering seditious words. Words are "seditious" if they are said with the intention of bringing the Government into hatred or contempt or they are said with an intention to excite disaffection against the Government of Fiji. It is not seditious merely to say that the Government has been misled or mistaken in anything that it has done. the law also says that we must look at the circumstances in which the words are said and in those circumstances every person uttering the words must be intending what he is saying to have effect.

[14] Now that sounds very complicated and confusing, doesn't it? Let me try to break that down again for you for the purposes of our case. We now know, and it is not disputed by the defendant that he said to the Major: "the Attorney-General should be removed because he is too influential and he is moving the Government away from its chartered course"; and also "the Commander has lost his plot and been webbed by the A.G. and his aides". It **is** in dispute, and a matter for you to find, whether he also said that the Commander had lost his anointment and he needs to be removed and that if His Excellency the President doesn't dismiss the government, then he needs to go as well. If you accept that the defendant made these last two utterances, that is that the P.M. needs to be removed and /or that H.E. has

to go, then I direct you in law that these **are** seditious words and if you find he uttered them then you would find him guilty.

[15] But putting those words aside and looking just at the words that the defendant admits to having said, as well as his admission to saying throughout that the Attorney certainly had to go, then let us examine the legal steps you should take in that situation. You must first ask yourselves; is this just a moan about the Government and the way it is doing things or is he trying to persuade Manasa to hate the Government as much as he does? There is a huge difference between saying to your fellow officers over a drink in the Mess, "Oh, the Government made a big mistake yesterday sacking the D.P.P. " and saying to a Junior Officer : "The P.M. has lost the plot, the A.G. is the cause and he must be removed." You see, one is just a grumble with no intention to do anything about it and the other **in the circumstances** is a bit of a threat to law and order. By saying this to a Junior Officer who must and has always obeyed you and who has his own private intelligence cell, can be seen to be far more than a grumble; it is at the very least a suggestion that he might also find that the Government is not good and Ladies and Gentleman, that **is** seditious. The law also says that for these purposes the Government includes the Attorney General alone¹. After all he is the lawyer for the Government. It is all about what a reasonably informed observer would think of what the Defendant's intentions were at the time he was saying these words to Manasa. Was it an attempt to encourage disloyalty or hostility towards the Government? Of course it is a matter for you.

[16] In deciding whether these words were "seditious" (i.e. were they being said trying to excite Manasa to be also unhappy with the Government), look at the circumstances in which they were said and look at what could be reasonably thought to be the defendant's intention of the effect of those words on Manasa.

¹ See R.v. Metropolitan Stipendiary Magistrate, ex parte Choudhury [1991] 1All ER 306 at 323e

[17] Ladies and Gentleman, as well as directing you on the law, it is also my duty to remind you of what I think is the relevant and important evidence in this case. Note that I say what **I** think, but really what **I** think is not important at all. It is what **you** think which is important because you are the supreme Judges of the Facts. In my summary of the facts if I stress something and seem to be regarding it as important, and you do not think it is important, then you can ignore what I say. Similarly, if I fail to mention something and you think it is important then you will give it the weight and importance you think fit. In other words you must give weight to whatever facts you think are important in this case: now having said that I will carry on to remind you of the evidence.

[18] You will be aware, that the thrust of the prosecution case comes from the evidence of Lieutenant Colonel Manasa Tagicakibau who at all relevant times was based at the Queen Elizabeth Barracks and was of the rank of Major in charge of the Logistical Support Unit ("LSU") . I mean no disrespect to the officer or his rank but in this summing up I will refer to him as Manasa. The defendant, Pita Driti was then his superior and held the very high rank of Brigadier General and was in 2010 Commander of Land Forces. Manasa had in 2010 been in the Forces for some 20 years. In those 20 years he had known Mr. Driti , serving with him in Lebanon: they were known to each other both professionally and personally. In 2010 Manasa had been away on a year's study leave and he returned to take up his previous posting as OC Logistics, but he was unhappy because most of the duties and responsibilities of the post had been assumed in his absence by the then Chief of Staff, Ratu Mara. Manasa spoke to Mara twice about it but there was no result so in early February 2010 Manasa went to see the defendant who was one of the most senior officers as Commander Land Forces and therefore everybody's superior. He wasn't helped there either but told to just accept the "status quo" and put up with it. Manasa the witness was concerned because Chief of Staff Mara was holding three important posts:

- he was Chief of Staff, Land Forces Command (that is deputy to the Brigadier General).
- He was Commanding Officer 3 F.I.R. (an operational unit of about 500 people).
- he was effectively the OC Logistics handling all resources of the Force (which was in effect PW1's job).

Manasa thought that this was a highly unusual situation and he presumed that there were underlying currents happening that he was not aware of; because of the great position of power that Mara had arrogated to himself.

[19] PW1 Manasa then took it upon himself to use his own little private intelligence cell because he was disturbed and a little suspicious of what was going on. The members of his intelligence gathering cell were tasked to listen and observe within the military, outside in the public sphere and in the markets to find information that might contradict anything that the RFMF stands for. Over time intelligence started rolling in reaching a crescendo about the end of February 2010. This information concerned the disaffected utterances of Ratu Mara, and the undocumented movement of arms and ammunition between Q.E. Barracks and the G.P. Hotel, which was the temporary residence of part of the 3FIR troops. The intelligence gathered was relayed through intermediaries to Commander Land Forces (Driti) and to the Commander RFMF, the P.M. Manasa was told that the intelligence had been passed on and had been received. He was very concerned that there was no feed back from the intelligence passed on. As a precaution he made sure that the main armoury was following proper security regulations with regard to the movement of weapons. In April 2010 it was confirmed that all weapons were safe and accounted for but the members of the cell group reported that their military sources had "dried up." PW Manasa asked his cell group members to keep a low profile and to try and get close to the Chief of Staff and try to learn his state of mind. In April/May 2010 Manasa learned on some occasions talking to Chief of Staff Mara over a cup of tea that he was still voicing discontent with the Government. On those occasions other officers would be present and on

one or two occasions the defendant Driti himself was present. Remarks such as: we hope the Government will take us out of these economic doldrums were made. The defendant would say nothing but just laugh it off.

[20] In July 2010 Manasa went to South Korea with Chief of Staff Mara for a one week buying trip for the Army. Manasa's impression of Mara during the trip was that he was dissatisfied and discontented with the Government in Fiji. In particular he was of the view that the Government should stand down. Manasa advised him that the best course of action would be to have dialogue with the Commander (P.M.) but Mara did not agree with his advice. They returned from Korea in July 2010 and at the end of that month, Ratu Mara was told to go on leave and use all his leave before a decision would be made on his future. Manasa didn't speak to anybody about the conversations that he and Ratu Mara had in Korea but he noted that in the two weeks between returning and Ratu Mara going on leave the intelligence was streaming in of Mara's utterances. When Mara went on leave Manasa got his full job back as officer in charge of Logistics. Suliano became the officer in charge of the 3F.I.R.

[21] Now all of what I have just told you in re-capping the evidence, you might think is irrelevant to the charges that Driti is facing, but it is essential background to understand the meetings that the defendant and Manasa had later; to enable you to place those meetings in context.

[22] When Ratu Mara had gone on leave and in early August 2010 there was the first of four "one-on-one" meetings between Manasa and the defendant Driti. Manasa had been called to go to meet the Commander Land Forces (the defendant) . Manasa was not told why, but he assumed it was about work. There were just the two of them and they started talking about work before moving on to talk about the Government. They talked about work a bit, but then the conversation quickly moved on to the state of the economy. He stressed to Manasa that he remained loyal to the CRFMF (PM) as he was the "anointed one" but he had issues with those around him who

were influencing the P.M. and he mentioned particularly the Attorney-General in this regard who Driti thought was influencing the PM to move Government away from its chartered course. PW1, Manasa suggested that the CLF raise the issue with the PM himself but he said that the PM would not listen to them, and by them he meant him, CLF and Mara Chief of Staff. He also said that the PM was not listening to the Military Council but paying too much attention to the A.G. and he was aggrieved by that. At the end of that first meeting Driti said he would approach the P.M. and ask him to have the A.G. step down from his post.

[23] Now Members of the panel, you might think that all of this was, as Mrs. Campbell Moffat said in her opening "just a grumble" and as Manasa told us, he thought that the CLF was telling him this was because he thought that the Senior Officers such as he was were being made aware of the situation; that is that the economy was not healthy and that the P.M. was listening to the A.G. rather than to the Military Council.

[24] In September 2010 Manasa was again called up to the defendant's office and again they discussed the A.G. and the economy. The defendant immediately started talking about the Attorney General as soon as Manasa had sat down. He said that he needs to be removed. He gave the same reasons in that he was too influential and was moving the Government away from its intended course. Driti knew that Manasa had a team doing intelligence gathering and the reason Driti was telling him these things at this meeting was to task his team to do intelligence on the A.G. and to garner information as to his movements, his habits, the places he frequents, and the company he keeps, etc. Manasa understood that this information would be used to get evidence of the A.G.'s misbehavior or his misconduct.

[25] In late September he was again called in and told that there were other teams also doing surveillance work on the A.G. and Manasa was told to find out ways to "eliminate" the A. G. by Christmas 2010. Manasa thought

that Driti meant by that that his life should be taken, and that was the first time any mention of taking his life was mentioned.

[26] You might think, and it is a matter for you, that that is more than a "grumble". Manasa told us that this instruction was a huge "jump" and although no particular instruction was given, he understood that he was being told to find ways to do that, that is to "eliminate" him, possibly in a clandestine operation. When he left the meeting he took the precaution of instructing his cell members not to act on the orders of others but to only go into action if he himself gave the word "go". He didn't speak to anyone else about the matter

[27] Manasa was summoned to yet another meeting with the Defendant in early October 2010 for no reason known to him. At that meeting the defendant said that he had lost confidence in the Commander (P.M.). He had "lost the plot" and was being "webbed" by the Attorney General and other agents. He made allegations about the P.M.'s character and his social activities as well as commenting on his remuneration. That was the first time that the witness had heard these things and so Manasa asked him about his earlier belief that the P.M. was "the anointed one" and how one was to know if that anointment had been taken away. Driti made reference to prayer groups who had been giving him advice. He said that there was a need to remove the Commander and that there was indeed a plan in place and when asked he outlined the plan to be:

- During the P.M.'s absence from Fiji, on a visit to troops in the Sudan, Driti and Aziz would go to His Excellency the President and ask that the administration be dissolved - P.M. and Ministers (The witness added that this was the first time he had heard the name Aziz in connection with this plot)
- A team would approach the Immigration Department and have the P.M.'s passport rendered invalid.

- If H.E. did not agree to the plan, then there was no option but to have him removed as well.
- The P.M.'s family would be detained and sent to whichever country the P.M. decided to settle in.
- A new administration, probably the former SDL administration would be tasked to take the country to new elections in 2011. Members of the public would be approached to be part of the administration but their names were not yet to be divulged.
- The Great Council of Chiefs and the Methodist Church would be called up to Camp and apologies made to them for events of the past and then they would be invited to join the new administration to map out the future for Fiji.
- Troops from N.Z. and Australia would be brought in to secure the border, to contain any internal conflicts from disgruntled people and to strengthen the RFMF's own forces.

[28] Manasa said that when hearing all of this, he tried to think about the numbers of troops needed to effect this plan. He suggest to CLF that it was not a good option , the best way forward would be to have a dialogue with the P.M. He told the defendant that he would not take part. When he heard this, Driti was a "bit" angry and told him that there was no room for weak officers. His anger subsided a little and he was told to take some days to think it over. In the end the witness decided it was not a good option; there was no hard evidence of wrongdoing on the CRFMF's part and in any event the Military supports the P.M.

[29] Manasa went away from the meeting on the understanding that they would talk again about this. Through one of his informants he sent a message to the CRFMF (P.M.) not to leave the country in the near future. That was the witness' own decision because he was not in agreement with the plan. He then arranged to have a meeting with the commander of the 3F.I.R. (Major Suliano). After some degree of messing about and an intervening meeting

between the defendant and Suliano, a meeting was finally held between Manasa, Suliano and the chief of Staff (Ops), Major Moceica. Also present was one member of Manasa's private intelligence cell. The meeting revealed that Suliano and Manasa were in fact in agreement to stay loyal to the Commander and they all decided that they should call on Chief of Staff (Land Forces) Lt.Cl Kalouniwai, to see if he was on the same side. Kalouniwai was also the head of RFMF intelligence. He told them that army intelligence already had most of this information and the "plan information" was the last piece in the jigsaw. Kalouniwai decided that all of these matters must be presented to the P.M. immediately and they should all go to brief him. The P.M. was briefed; he called for Driti and Mara that day and they were instructed to go on leave. The next day Manasa received a text message from the defendant merely saying: "Thank you Manasa: you have got what you wanted."

[30] In cross-examination, after a lot of irrelevant questions about the structure of the military and about the witness' involvement with Mara, (I add that you may not think it was irrelevant - it is a matter for you); it was finally put to the witness that Driti never used the word "eliminate" when talking of the A.G. Manasa insisted that he did use the word but admitted that by saying that the A.G. be dealt with "in a clandestine operation" were his own words. He was insistent that there was talk of a "plan" and that the first time he heard that was at the October meeting and in re-examination he said that he could remember these things because they were very serious - he would remember them for 5 or 10 years and after the event , he considered the matter every night. There was no possibility that he could have forgotten what was said.

[31] Well Ladies and Gentleman; that was the end of Lt.Col. Tagicakibau's evidence. I make no apologies for rehearsing it before you in detail for the very reason that he is the most important witness in this trial. It is to him that the State alleges the seditious words were said; it was him that the State alleges was being persuaded to mutiny by Driti. And at the end of all

this it is for you to tell me whether you find that the State has proved so that you are sure that he is guilty of one of these offences.

[32] The second prosecution witness was Tevita Teu Korovou, a warrant officer in the camp in 2010. He was in charge of a hand-picked unarmed combat martial arts platoon of 26 men. He had known the defendant since school days but more importantly had served under him in Lebanon. That was a military relationship but not personal. In September 2010, he was called up by Driti to go and see him in his office. This was a very unusual occurrence that so senior an officer should ask to see him. When he got there the defendant told him that he didn't agree with what the Government was doing; he didn't like what the Commander had done to the Chief of Staff (that is Ratu Mara) and he didn't agree that the Commander was always listening to "Khaiyum". and not to the Military Council? He said he wanted to use the witness and his platoon - he didn't say why exactly. The witness left the office immediately after that and couldn't believe it. He didn't ask any questions or say anything but he left the office and totally rejected what the C.L.F. had been saying. He gathered his platoon men together and told them about it - he told them not to follow any information coming to them - he told them that because he didn't agree with what he had heard that morning and he didn't want to see bloodshed in the camp because he had seen blood in 2000 and 2006. He didn't believe that there would be a coup but from what he heard that morning, he thought that there was going to be one. When pressed in cross-examination, the witness was adamant that the defendant had said those words in the iTaukei vernacular. He even added that he had written the words in a book that he kept and on the day he wrote his Police Statement he copied the words from the book.

[33] The next prosecution witness was the enigmatic Fred Driver , the former Intelligence Officer with RFMF but currently working with FICAC. He too had served in Lebanon with the defendant for a year and since he has left RFMF, it appears that they have a casual information sharing relationship. In September or October 2010, the Defendant's nephew, Ben Padarath

called Fred and asked him to go to a flat in Waimanu Road and talk to the defendant. He went there and there was a meeting between the defendant and Fred and Ben. Driti immediately asked Fred where the allegiance of the RFMF lay. Fred said that he didn't know because he was now in FICAC. He assumes that Driti asked him because he used to be in RFMF intelligence. The defendant then asked Fred to get some evidence of PM's and AG's salaries from Nur Bano Ali's office without saying why he wanted it, but Fred said again that he couldn't do that. He denied in cross-examination that when he had called Kalouniwai after this conversation that he had told him that Driti had asked him about the focus of the intelligence at the camp. This matter was never put to Kalouniwai.

[34] Captain Vakatalai was the Defendant's Personal Staff Officer ("PSO") for some three years before serving in the Middle East and on return from that tour he was reposted to be the Defendant's PSO. He agreed that due to the nature of their close association over the years he knew the defendant well. He had only been back in the post for two weeks when the defendant was sent on final leave by the Commander. He helped Driti to clean out his office and while they were both doing that they had a conversation. There was just the two of them and Driti told him that there was a plan to remove the Commander and that plan had been first brought to him, to his home by the former Chief of Staff Lt. Col Mara, who said that it was a plan formulated by him (ie Mara) and Brig. Aziz and the two of them had discussed and agreed to bring it to the C.L.F.. The defendant reminded the PSO of the day in the recent past when Brig Aziz had come to his office, and said that he had come to discuss the plan. He added that the plan included paying a visit to His Excellency the President and asking him to dissolve the Government of the day. The PSO said that he was not given details of the plan nor was he told when it was proposed that it be put into effect. It was the first time he had heard of any such thing and he was not sure why the defendant had made reference to the recent visit of Brig. Aziz to the office.

- [35] The PSO said that when he had come back into the service of Brig. Driti, from his personal observation he was able to say that he was a changed man from the earlier years. He noted especially that whenever the Attorney-General was speaking on the radio, he used to make "disagreeing remarks."
- [36] The final witness for the prosecution was the Woman Sergeant (Police) who was a witness to the interview of the defendant over several days in February and March 2011. You heard her and the prosecutor read that interview into the record of these proceedings. Now Ladies and Gentleman, there is no objection from the Defence to that interview being in evidence before you in this trial. What that means is this: by not objecting the Defence is not saying that this is all true and we rely upon it; they are saying that all proper procedures were followed when this interview was conducted and there is nothing that they can say that would suggest that the record of the interview is not authentic or should not be before you. The interview then becomes evidence for you to accept or discard as you wish and to give it whatever weight you want when conducting your deliberations.
- [37] In that record of interview you will have seen that the defendant denies throughout that he was endeavoring to overthrow the Government. He says that he was presented with a plan drawn up by Mara and Aziz, but it was totally unworkable. It was a set-up he says by Brigadier Aziz. The plan contained five options, one of which was the overthrow of the Government when the Commander was out of the country on a visit to troops in the Sudan. Mr. Driti said that four of the "options" in the plan were shallow and superficial and the fifth, the "overthrow" option was unworkable and would need a lot of planning. He said that the option to have the Attorney-General removed was in response to a perception that he was too influential and perhaps corrupt. He admitted in the interview that he was not disappointed with the Government of the day but he was against the Attorney-General, and he discussed this with Major Tagicakibau. He asked the Major to conduct surveillance on the Attorney but denied that he ever asked the Major to "eliminate" him. He denied that he had ever told the

Major about the plan to remove the P.M. and to ask H.E. the President to dissolve the Government. He said that the allegations from the Major came from somebody who was "striving for promotion", and acting in his own interests,; and you will note that this allegation was never put to the Major in cross-examination.

[38] The defendant admitted in his interview that he had talked to his PSO about the plan to remove the Commander from Office when he had come back from the Prime Minister's Office and was cleaning out his office before going on leave. But he explained that by saying he was just mentioning it in relation to why he was being sent on leave.

[39] He finished his interview by saying that at all times he was just carrying out the duties that he was obligated to do and the plan just contained options for discussion and nothing more. It was too early to report the two officers under him (presumably Mara and Aziz) because he wanted to safeguard their careers.

[40] The State is saying that the interview is also evidence of the defendant's knowledge of the plan well before he says he was aware of it; that he knew of the plan and that he was "running with it".

[41] Ladies and Gentleman, it is for you to make what you will of the defendant's answers in this interview.

[42] And that was the end of the prosecution case. You heard me explain to the defendant what his rights are in defence that he could give evidence or he could remain silent. After having the advice of his counsel, it was his decision to go into the witness box and give sworn evidence.

[43] The Defendant, Pita Driti gave evidence on oath. He told us that he is 53, married with 2 sons and 2 grand-daughters. He told us in detail about his military career and I will not repeat it here, save as to say that he described to us a career of fast promotion through the ranks, his overseas service

until finally in 2009 he was promoted to Brigadier-General and appointed to the post of Commander Land Forces, Apart from being a Member of the Order of Fiji, he was awarded the Company Medal for Leadership and a Merit Service decoration. He was a Member of the Military Council and in the period of turmoil in late 2006 he was a member of a core group of advisors advising the Cdr. RFMF. After the take over, this group became the Military Council. They were to advise the Commander on security issues, they would discuss policy assessing policy and advise on it accordingly. They would brief the Commander on intelligence received; they would give their views on various Ministers and at times even recommended the removal of Ministers. His role as Commander Land Forces was to oversee the operational arm of the RFMF, to train troops both for overseas deployment and to control domestic unrest. He oversaw the Navy and its maritime surveillance and he helped in rural development. In all of these pursuits he was responsible to the Commander and would take orders and directions from him on his intentions while at the same time passing on the Commander any intelligence that he might receive.

[44] In turning to the period that is specified in the charges, Driti said that the office of the Logical Support Unit ("LSU") was just a few hundred meters away from his and at the relevant time it was headed by Major Tagicakibau (the man I have been referring to as "Manasa"). the Major was "under his umbrella" and they would have meetings on a weekly or fortnightly basis. it was his habit to speak to individual commanding Officers on a one-to-one basis. Manasa had gone on a study course in 2009 and returned in 2010. The two of them met on 2 or three occasions to sit and discuss issues. Most of LSU was under his control except for the vehicles because "we" and the Defendant used the word "we" wanted to avoid abuse of the use of vehicles. He and Mara would manage them for a while and then give them back to him - in addition the Major would be "totally confused" by the leasing arrangements that had been put in place in his absence.

[45] The first time they met was straight after one of the routine conferences. Driti called him in to discuss procurement. He then mentioned the A.G.

and how unhappy he was about the way the Government was being run. The Defendant knew that the Major was operating his own intelligence cell and the defendant instructed the Major to track the activities of the Attorney. He explained what he wanted the Major to do. He told him that he had had reports of the Attorney's corrupt dealings and corrupt decisions and all of that sounded serious and it needed investigation. After that reports came back to Driti verbally by the Major's men. In one of the meetings he told Manasa that he was not happy with the way that the Government was running and that the Attorney-general had to be removed because he was influential in all decisions and Driti was unhappy with the way that the P.M. was listening to him too much and not to the Military Council. The defendant said that as a senior member of the Military Council as well as the operations "man" for the Commander, dealing with security, he had a right to talk about these things and a right to know more. He said that when he talked about removal of the A.G. - he meant that it was to be conducted through a procedure whereby he would take the reports to the Military Council - they would then brief the Chairman (P.M.) and recommend that the Attorney step aside.

[46] He certainly never said the word "eliminate" and he never talked of a clandestine operation. The only other time that he met Manasa was after he had been told to go on leave. He never discussed with Manasa a plan to remove the Government; he never asked him for support to join in on removal of the Government.

[47] The "plan" first came to his attention through Lt. Colonel Mara who came to him and discussed it as part of a few options. It was in his home within Q.E.B. Mara gave him the five options telling him he had discussed it with Brig. Aziz. Option five was to overthrow the Government, to strand the P.M. abroad, and bring Australia and NZ forces in for support. Driti told us that this was absurd, first all you had to ensure that the foreign forces would come; anyway it was still in its conceptual stage. Anyway, the L.S.U. was not an adequately manned force for control. When Driti first heard the plan, his thought was to stand back and see what was going to happen; but

he did say to both of them that the 5th option (removal of Government) was a "no-no".

[48] In late September, he called Brigadier Aziz to his office and discussed the plan with him. Aziz said it was going to take a lot of detailed planning and further consideration.

[49] Driti was adamant in his evidence that when he was speaking to Manasa he never mentioned to him the removal option, nor did he talk to him about using his men or the men of 3FIR.

[50] Being suspicious of being "set-up", he asked Brigadier Aziz "is this a set-up?" and the Brigadier replied "no - it is not a set up - it just needs a lot of planning." Driti says he took no steps to execute the plan - it was very broad, it was illegal and bad conceptually - just not workable. He felt it was very serious so his instant reaction was to "stand off and be concerned". He refrained from telling the Commander about it because he was thinking of the careers of the two officers and he wanted to be sure about it first. The first four options were legal and workable and they were about to compile a brief to present to the Commander.

[51] When the defendant spoke to Fred Driver in the flat at Waimanu Road, he asked him about the P.M.'s and the A.G.'s pay which he had learned was being managed by Dr. Nur Bano's office. He didn't speak to Fred about anything else and certainly didn't ask him about the allegiance of the army.

[52] He was summonsed to the P.M.'s house early in the morning of 24 October 2010. In the presence of Mara, the Commissioner of Police, and the Force Chaplain, Driti heard the P.M. say that he had intelligence about a plan to overthrow him and perhaps His Excellency during his forthcoming trip to the Sudan. The P.M. had all the details and said that it involved him, Mara and Aziz, although Aziz was not there. He was told to take all his leave and then resign from his post and from his Commission.

- [53] On hearing of his dismissal, Driti went straight to his office to pack up his things. At that time, he had a conversation with the Major and with his P.S.O. He never told the Major that the PM. had lost his anointment and had to go. He never said that if the President didn't co-operate, he would have to go too. He never encouraged the Major to abandon his allegiance to the Government and he would never do that.
- [54] Driti concluded his evidence by saying that in all of his conversations with Manasa, the Major, it was just to signal his disagreement with how the Government was running and how he would rather that the A.G. be removed from office because of his corrupt activities and he was leading the Government away from its chartered course. Driti had remained true, he says, to the initial reason for the take-over and that was to clean up and wipe away corruption with no benefit to the new administration and he stuck by that principle right to the end. He was to receive no gain from whatever the RFMF did.
- [55] Well Ladies and Gentleman, that was all that the defendant told us. Again I make no apologies for setting it out before you in detail, for the very reason that in all fairness you should be reminded of his defence.
- [56] You are to apply the law as I have directed you to the evidence as a whole (that is the evidence from both the Prosecution and from the defendant); you are to make findings of fact from that evidence and return to me with your opinions on whether he is guilty or not guilty of the incitement to mutiny count. If you find him guilty of the mutiny count you will stop there and go no further, but if you find him not guilty of the incitement to mutiny you will then go on to consider the second charge, You will decide whether the words he used to Manasa about the government, in the circumstances that they were said, were seditious or not. If you think they were you will find him guilty of the second count; if you think they were not you will find him not guilty of that count.

[57] It would be far better if you could all be agreed on your opinions, but that is not essential if you cannot agree. When you return you will be asked individually to give me your opinions by the Court Clerk. You may take as long as you wish but you will let the Clerks know when you are ready and I will reconvene the Court to hear your individual opinions.

[58] You may now retire but just before you do I will ask counsel if there is anything they would wish that I add or alter anything in this summing up. Counsel?

Paul K. Madigan
Judge

At Suva

26 November 2013.