

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 80 of 2013

STATE

v

1. INOKE RAIKADROKA

2. MOHAMMED SAGAITU

Counsel: Mr. L. Fotofili with Ms. R. Uce for the State
Mr. J. Savou (L.A.C.) for the First Accused
Mr R. Vananalagi for the second accused

Dates of trial to date: 26, 27, 28, 29 May 2014

Date of Ruling : 2 June 2014.

RULING

(No case to answer)

1. Both accused apply for a ruling that there be no case to answer on all of the charges on the Information that each faces.

2. In assessing this application I take into account the legislative provision of section 231(1) of the Criminal Procedure Decree 2009 which allows a finding of not guilty against an accused if there is **NO** evidence of the charge that he faces. More specifically, that evidence must be evidence either direct or circumstantial on each element of the relevant charge. Matters of credibility or weight are not relevant at this stage of proceedings. (I direct myself on the authorities of **Sisa Kalisogo** Cr. App. 52 of 1985 and **Mosese Tuisawau** Cr. App 14 of 1990)
3. The first accused faces two counts of Slavery contrary to section 103(1)(a) of the Crimes Decree 2009 ("the Decree"). In the alternative he faces two counts of Aggravated Sexual Servitude, contrary to section 106(1) and section 108 of the Decree. In addition he faces 5 counts of Domestic Trafficking in Children contrary to section 117 (1)(a)(b)(c)(i) of the Decree.
4. The second accused faces two counts of Domestic Trafficking in Children contrary to section 117(1)(a)(b)(c)(i) of the Decree.
5. In determining whether there be a case to answer, I look at each accused separately and at each count separately.
6. Mr. Savou for the first accused submits that for the two slavery counts that there is no evidence before the court of the exercise of "right of ownership" as defined in s.102 of the Decree. In respect of the two alternative counts of Aggravated sexual servitude, he submits that there is no evidence of the necessary ingredient of "force or threats". He says that not one of the girls being made to perform sexual services gave evidence of being forced or threatened to do so. For the offences, of domestic

trafficking he submits that the particulars do not spell out the purpose of the transportation as far as the victim is concerned.

7. I have given much thought to these submissions and have analysed the evidence provided by the prostitutes, their relatives and the evidence contained in the cautioned interview that was admitted by consent.
8. I find that none of the submissions of Counsel of the First Accused can be substantiated and accordingly there is evidence before the Court on each element of the charges against the First Accused (Counts 1(in the alternative), 2 (in the alternative), and Counts 3, 4, 6, 7 and 9. I find a case to answer for all of those counts and the first accused is put to his defence.
9. Counsel for the second accused submits in respect of the two domestic trafficking in children counts against his client that there is no evidence before the Court of the intention of his client when transporting the child and as a result the element of the offence, contained in s.117(c)(i) that "he intends that the other person will be used to provide sexual services" is not made out.
10. Again I have considered Mr. Vananalagi's submission and reviewed the oral evidence and the evidence in the caution interview admitted by consent and I find that there is an overwhelming circumstantial case to establish every element of the offence. Accordingly there is a case to answer for the second accused on Charges 5 and 8 and he is put to his defence.



2 June 2014.

P. Madigan
Judge