

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 129 OF 2015

THE STATE

V

RATU EPELI NIUDAMU & 15 OTHERS

Counsel: Mr. Lee Burney for State
Mr. K. Tunidau for 1st Accused
Mr. A. Ravindra Singh for 2nd to 16th Accused

Date of Hearing: 22nd August, 2017

Date of Ruling: 22nd August, 2017

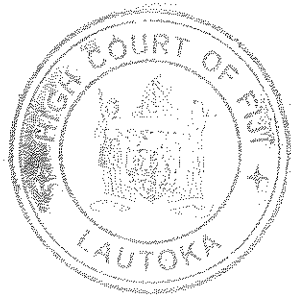
RULING- MISTRIAL

1. When, on the 21st August, 2017, the state moved to mark a document titled 'RA SOVEREIGN CHRISTIAN STATE Provisional Institutions of Self Government' (highlighted in orange), through witness I.P Sevuloni Masitabua, the Counsel for

2nd -16th Accused Mr. A.R. Singh recorded his objection on the basis of non-disclosure of this document.

2. The State Counsel conceded that this document has not been disclosed for the purpose of this trial. The Court ordered the State to disclose this document to the Defence and adjourned the trial giving Counsel Mr. Singh an opportunity to consult his clients and get instructions to decide future course of action.
3. Today (22nd August, 2017), Mr. Singh filed a Notice of Motion with an application for mistrial. He argues that non-disclosure or late disclosure of this document has done an irreparable damage to the defence case and the prejudice thereby caused cannot be remedied without ordering mistrial. Counsel for 1st accused also supported this application.
4. State Counsel Mr. Burney objects to this application and submitted that, although this document was not disclosed to the Defence for the purpose of this trial, it was disclosed during *voir dire* proceedings in which Mr. Singh appeared for Defence. Mr. Burney further argued that this document was handed over to police by the 4th Accused herself and that, she, in her caution interview, had admitted having given this document to police.
5. I perused the proceedings of *voir dire* to verify the truthfulness of submission of the State. It appears that this document has been tendered in evidence marked as VD1 B through IP Sevuloni. No objection had been taken by Mr. Singh on the basis of non-disclosure. This document is referred to in both caution statements of the 4th Accused that were disclosed to the Defence. Therefore, if this document is crucial to the prosecution of the Defence case, Mr. Singh, who is well aware of this document, could have made an application to this Court.
6. Furthermore, I perused this document carefully. There is no material difference in the content between the 'RA SOVEREIGN CHRISTIAN STATE Provisional Institutions of Self Government' that has already been marked and this document except for line-up of names and portfolios of so called members of

Cabinet. Therefore, no prejudice will be caused to the Defence due to non or late disclosure of this document. Application made for mistrial is dismissed.




Aruna Aluthge

JUDGE

At Lautoka

22nd August, 2017

Solicitors: Office of the Director of Public Prosecution for the State

Kevueli Tunidau Lawyers for the 1st Accused

Aman Ravindra Singh Lawyers for 2nd – 16th Accused