

**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 with Mr. S. Babitu for State**  
**Mr. K. Tunidau for 1st Accused**  
**Mr. A. Ravindra Singh for 2nd to 15th Accused**

**Date of Hearing:**    **12<sup>th</sup> September, 2017**

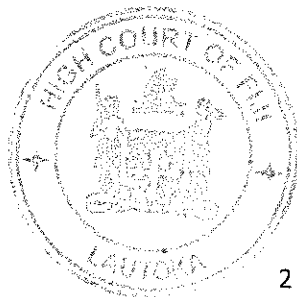
**Date of Ruling:**    **12<sup>th</sup> September, 2017**

**RULING- MISTRIAL- III**

1. After the pronouncement of the Ruling dated 8<sup>th</sup> of September, 2017 on Expert Witness (Ruling), Counsel for 2<sup>nd</sup> to 15<sup>th</sup> Accused Mr. A.R. Singh made an oral submission for a 'Mistrial' on the following ground:

That the trial Judge had denied the Accused his right to a fair trial guaranteed under the Constitution of the Republic of Fiji by not allowing him to call his only witness who is purported to be an expert on International Law.

2. Having considered the application and the objection raised by the Prosecution, the application was dismissed. I hereby give my written reasons for the dismissal.
3. There is no provision in law to make such an application during the course of the trial. An application to seek Constitutional redress in respect of an alleged violation of constitutional right can only be made to the High Court exercising civil jurisdiction.
4. This Court will not exercise inherent jurisdiction when alternative remedies are available. Any person dissatisfied with an order of this Court has the right to appeal to the Court of Appeal.
5. Mr. Singh has made this application on the basis that he can call any witness under Section 233 of the Criminal Procedure Act and accused's right to call witnesses is absolute.
6. An applicant claiming a violation of his right to obtain the attendance and examination of a defence witness should show that the examination of that person was necessary for the establishment of the truth and that refusal to call that witness was prejudicial to the defence rights. (see *Guilloury v. France*, no. 62236/00, § 55, 22 June 2006). In *Polyakov v. Russia* 29 January 2009, ECtHR, App no 77018/01 European Court of Human Rights (ECtHR) pointed out that the right to call witnesses by the Defence is not absolute and could be limited in the interest of the proper administration of justice (para. 31)
7. In the Ruling dated 8th of September, 2017, this Court has clearly indicated that right to call a defence witness, especially an expert witness, is not absolute. Rules of evidence relating to admissibility and relevancy should be applied and administered by a Court of law to ensure that unnecessary and irrelevant evidence does not corrupt the judicial mind of the Assessors.
8. Application made by the Counsel for 2<sup>nd</sup> 15<sup>th</sup> accused for mistrial is dismissed.



  
Aruna Aluthge

JUDGE

**At Lautoka**

**12th September, 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 – 15th Accused**