

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 361 of 2016

STATE

v.

1. **JOSAIA WAQABACA**
2. **ANARE RAVULA**
3. **FRED WESLEY**
4. **HANK ARTS**
5. **FIJI TIMES LIMITED**

Counsel: Mr. L. Burney, Ms. U. Tamanikaïyaroi and Mr Y. Prasad for State
Mr Ravindra Singh A. for Accused 1
Mr D. Sharma for Accused 2
Mr N. Barnes, Mr M. A. Corlett (QC) for Accused 3 & 4
Mr W. Clarke for Accused 5

Hearing: 30th April 2018, 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th May 2018

Summing Up: 18th May 2018

SUMMING UP

1. The hearing of this case has now reached to its conclusion. It is my duty to sum up the case to you. Our functions are different. It is my task to ensure that the trial is conducted according to law. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.
2. You are to determine the facts of the case, based on the evidence that has been placed before you in this courtroom. That involves deciding what evidence you accept or

refuse. You will then apply the law, as I shall explain it to you, to the facts as you find them to be, and in that way arrive at your opinion.

3. I may comment on the facts if I think it will assist you when considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the facts. Hence, it is entirely upon you to accept or disregard it unless it coincides with your own independent opinion.
4. You must reach your opinion on evidence, and nothing but on the evidence itself. Evidence is what the witnesses said from the witness box, documents and other materials received as exhibits. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The opening address of the learned counsel for the prosecution is not evidence. The purposes of the opening address by the learned counsel for the prosecution is to outline the case of the prosecution and the nature of evidence intended to be put before you. The closing addresses of the counsel of the prosecution and the defence are not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
5. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimony and the exhibits put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation. As judges of facts you are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own conclusion or form your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that I will give the greatest possible weight on your opinions when I form and deliver my judgment.
6. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused or anyone else. Please do not bring into the assessment of evidence any preconceived views, opinions

about this case. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts solely upon the whole of the evidence. It is your duty as judges of facts to decide the legal culpability as set down by law.

7. **Burden and Standard of Proof**

8. I now draw your attention to the issue of burden and standard of proof. The accused are presumed to be innocent until they are proven guilty. The presumption of innocence is in force until you form your own opinion that the accused is guilty for the offence based on the evidence presented during the course of this hearing.
9. The burden of proof of the charge against the accused person is on the prosecution. It is because the accused are presumed to be innocent until they are proven guilty. Accordingly, the burden of proof rest on the prosecution throughout the trial and it never shifts to the accused. In other words there is no burden on the accused to prove his innocence, as his innocence is presumed by law. However, in some instances, the law allows to shift the burden on the defence. However, the standard of burden on the defence is not same as of the prosecution. The defence can discharge it by evidential burden. I will explain you these principles in details in a while.
10. The standard of proof in criminal trial is "proof beyond reasonable doubt". It means that you must be satisfied in your mind that you are sure of the accused person's guilt. If there is a riddle in your mind as to the guilt of the accused after deliberating facts based on the evidence presented, that means, that the prosecution has failed to satisfy you the guilt of the accused beyond reasonable doubt. If you found any reasonable doubt as to the commission of the offence as charged or any other offence by the accused, such doubt should always be given in favour of the accused person.

Information

11. Each of the five accused persons is separately charged with one count of sedition. I do not wish to reproduce the particulars of the offence as they are before you.

12. The learned counsel for the prosecution, in his opening address outlined the case of the prosecution. The prosecution has charged that Mr. Waqabaca has submitted an article written by him, for the publication in the *Nai Lalakai* Newspaper, which was published on the 27th of April 2016. The prosecution alleged that this article, written by Mr. Waqabaca, is a seditious article as it has a tendency to promote the feelings of ill will and hostility between the Muslims and non-Muslims population of Fiji. The fourth accused, Mr. Hank Arts is alleged that he has published this alleged seditious article in the *Nai Lalakai* newspaper on the 27th of April 2016. The second and the third accused, Mr. Ravula and Mr. Wesley are being charged for aiding and abetting Mr. Arts to publish this seditious article. The fifth accused, the Fiji Times Limited, is being charged for the printing of this article in the *Nai Lalakai* newspaper on the 27th of April, 2016.
13. The prosecution alleges that this article, if taken into consideration in its entirety, says that Muslims are land-grabbing monsters who rape, murder, and abuse children. The learned counsel for the prosecution further said that this article says that unless the readers of *Nai Lalakai* take action, these Muslim monsters would take over Fiji just as they have done in Bangladesh. The language used in this article is extremely inflammatory and it could lead to serious consequences involving public disorder, creating ill will and hostility against Fijian Muslims.
14. The defence denies this allegation, suggesting that this article has no such meaning as claimed by the prosecution. Instead, this article suggests to have a national reconciliation in view of resolving the important issues that the indigenous people of Fiji feel, and those issues will cause great instability in future. Moreover, the second, third, fourth and fifth accused claim that they have no knowledge about this article; hence, they had no intention or knowledge to commit this crime.
15. Before I take your attention to the main elements of the offences as charged, I consider it would be prudent to explain you the nature and the purpose of the offence of Sedition. Sedition is a crime against the State, or the authority of the government. The purpose of this offence is to prevent any unlawful attack on the tranquility of the State. Sedition covers everything, whether by word, deed, or writing which is calculated to disturb the tranquility of the State and lead ignorant persons to endeavour to subvert the

government and the laws of the State. I think this definition of the offence of sedition would suffice, for you to understand the main elements of the offence. I would definitely discuss in details about this offence in a while, when I commence to discuss the applicable legal directions pertaining to the main elements of the offence and the evidence adduced in the hearing.

16. According to the laws in this country, an offence consists of two main elements. That is, the physical and fault element. In order to convict a man for a criminal offence, the court must satisfy beyond reasonable doubt that he has committed the physical act of the offence with the necessary fault element. It is because a man cannot be convicted for an act, if he has no fault intention, knowledge, recklessness or negligence for the said act.

17. Section 67 of the Crimes Act has defined the offence of Sedition as follows:

- i) A person commits an indictable offence (which is triable summarily) if the person—*
- b) Does or attempts to do, or makes any preparation to do, or conspires with any person to do any act with a seditious intention;*
- c) Utters any seditious words;*
- d) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or*
- e) Imports any seditious publication, unless he has no reason to believe that it is seditious.*

18. The relevant intention to commit the offence of sedition has been stipulated under Section 67 (1) (i) to (v) of the Crimes Act. Where it states that:

"Sedition intention" is an intention;

- i) to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established; or*

- ii) *to excite the inhabitants of Fiji to attempt to procure the alteration otherwise than by lawful means, of any matter in Fiji as by law established; or*
- iii) *to bring into hatred or contempt or to excite disaffection against the administration of justice in Fiji; or*
- iv) *to raise discontent or disaffection amongst the inhabitants of Fiji; or*
- v) *to promote feelings of ill-will and hostility between different classes of the population of Fiji.*

19. Section 66 (1) (a) to (d) of the Crimes Act has provided that the alleged act, speech or the publication is not seditious if it was done with the intention:

- a) *to show that the Government of Fiji has been misled or mistaken in any of its measures; or*
- b) *to point out errors or defects in the government or Constitution of Fiji as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or*
- c) *to persuade the inhabitants of Fiji to attempt to procure by lawful means the alteration of any matter in Fiji as by law established; or*
- d) *to point out, with a view to their removal, any matters which are producing or having a tendency to produce feelings of ill-will and enmity between different classes of the population of Fiji.*

20. I now state you the main elements that the prosecution has to prove in respect of the first, fourth and fifth counts.

21. For the first count:

- i) Mr. Waqabaca did an act, namely submitting an article, written by him, for the publication in the *Nai Lalukai* newspaper,
- ii) He did that act with an intention to promote feelings of ill-will and hostility between the Muslims and non-Muslims population of Fiji.

22. For the fourth count:

- i) Mr. Hank Art. published this article in *Nat Lulukai* newspaper.
- ii) The article is a seditious publication.
- iii) He published this article with an intention to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji.

23. For the fifth count:

- iv) The Fiji Times Limited.
- v) Printed this seditious article with the intention to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji.

24. The Fiji Times Limited is not a natural person. According to the law, a company is considered as a legal person, though it is not an actual person as of us. Therefore, a company is also capable of doing things. As an actual person, the company is also responsible for their actions. Accordingly, the law allows to charge the company for criminal responsibilities.

25. The company can perform the physical act through an employee, agent, or officer of the company.

26. In order to determine the fault element of the company - in this case, the fault element is sedition intention,- you can consider:

- i) Whether the Board of Directors of the Fiji Times has carried out the printing of this seditious article with an intention to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji, or,
- ii) The Board of Directors has expressly, tacitly, or impliedly authorized or permitted the commission of this offence, or

- iii) High Managerial agent of the company has carried out the printing of this seditious article with an intention to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji, or,
 - iv) The high managerial agent of the company has expressly, tacitly, or impliedly authorized or permitted the commission of this offence.
- 27. In this case, the prosecution alleges that Mr. Arts being a high managerial agent of the Fiji Times Limited, intentionally carried out this offence of printing this seditious article or he has expressly, tacitly, or impliedly authorized or permitted to the commission of this offence.
- 28. I now take your attention to the second and third count, where Mr. Ravula and Mr. Wesley have been charged for aiding and abetting Mr. Arts to publish this seditious publication.
- 29. Responsibility for a criminal offence may be incurred either as a principle offender or as an accessory. The principle offender is the actual perpetrator of the offence, whose individual conduct satisfies the definition of the offence. An accessory could also be charged with the committing of the offence. In this case, Mr. Ravula and Mr. Wesley have been charged as the accessories for aiding and abetting the principle offender, Mr. Arts, to commit the offence of Sedition by publishing the said seditious article.
- 30. The *actus reus* or the physical element of these offences are, the conduct of aiding and abetting. Aiding means to aid, to give help, support or assistance to. The word "abet" means to incite, instigate or encourage the principle offender in committing an offence. These physical elements of aid and abet could be done in the form a conduct. A conduct means an act or an omission to perform an act or a state of affairs.
- 31. In this case, the prosecution alleges that Mr. Ravula and Mr. Wesley as the editor of *Nai Lalakai* and the Editor-in-Chief, respectively, had a contractual duty to assist Mr. Arts to publish the edition of *Nai Lalakai* on 27th of April 2016, by ensuring the editorial standards were maintained, including a duty to prevent the publication of any seditious publication. Accordingly, the alleged conduct of the aid and abet by Mr.

Ravula and Mr. Wesley is an omission to perform an act that they were contractually required to perform under their respective employment contracts.

32. The required mental elements for an aider or an abettor are narrower than the intention that is required for the principle offender. The accessory must have done this conduct with an intention to aid and abet the principle offender to commit an offence, or, the aider or an abettor has performed an act or an omission and was reckless that the said conduct would aid and abet the principle offender to commit an offence.

33. Accordingly, the main elements of the second count are that:

- i)* Mr. Ravula as an editor of *Nai Lalakai*,
- ii)* With an intention to aid and abet Mr. Arts in publishing this seditious article,
- iii)* Failed to perform his contractual duty to assist Mr. Arts by ensuring editorial standards, including a duty to prevent the publication of this seditious article,

34. The main elements of the third count are that:

- i)* Mr. Wesley as the Editor-in-chief,
- ii)* With an intention to aid and abet Mr. Arts in publishing this seditious article,
- iii)* Failed to perform his contractual duty to assist Mr. Arts by ensuring editorial standards, including a duty to prevent the publication of this seditious article.

35. Madam assessors and Gentleman assessor, I will discuss these main elements of the offences in details in a while when I endeavour to discuss the applicable legal directions with the main elements and the evidence adduced during the hearing.

36. I now proceed to summarize the evidence that was adduced during the hearing. This is, fairly a long trial. By summarizing the evidence, I will try to assist you to remind yourself about the evidence presented by the prosecution and the defence.

Evidence of the Prosecution

Evidence of Mr. Naipote Katonitabua

37. The first witness of the prosecution is Mr. Naipote Katonitabua. He is the Permanent Secretary of the Ministry of *i-Taukei* Affairs. He has assumed duties as the Permanent Secretary in February 2016. Mr. Katonitabua in his evidence explained about his duties, responsibilities and the works that he carries out as the Permanent Secretary of the Ministry. It is a part of his duties to have regular contacts with the *i-Taukei* communities. One of the objectives of the programmes of the Ministry is to disseminate the right information to the *i-Taukei* communities. It has been a continuous concern of the Ministry that some people of the *i-Taukei* communities question from the Ministry about the policies based on the misinformation that they receive. They gather these misinformation primarily from *Nai Lalakai* newspaper, as it is the major or the only newspaper that the *i-Taukei* communities read on weekly basis. Mr. Katonitabua said that he has seen the *Nai Lalakai* newspaper as the major source of information of these *i-Taukei* communities, specially in the outer islands and the interior of Viti Levu and Vanua Levu.
38. The Ministry of *i-Taukei* Affairs conducts consultation processes with the *i-Taukei* communities, where they normally ask the people if they have any issues to clarify. During these consultation processes, many of the *i-Taukei* communities refer to them sensitive issues such as land and ethnicity for clarification. When they were asked about the source of their information, these people have told him that they were reading *Nai Lalakai* newspaper.
39. You can recall that Mr. Katonitabua in his evidence, explained that *Nai Lalakai* is the only local newspaper that is being circulated among the *i-Taukei* communities. It has been a concern for the Ministry about the misinformation contained in the newspaper, as it has been a challenge to them to correct and clarify those misinformation. These

communities are predominately *i-Taukei* and they could understand English, but more comfortable with *i-Taukei* language. They are Christians.

40. Mr. Katonitabua said that it was not only this article, but few more articles that came before had contained misinformation. Therefore, the Ministry wanted to intervene as these articles contained misinformation. He has informed the Fiji Times via e-mail about this concern and advised them that they could consult the Ministry regarding some sensitive issues for clarification and if that was not followed; the Ministry would approach the Police to investigate about this.

Cross Examination by the learned counsel for the First Accused.

41. You may recall that Mr. Katonitabua was then cross examined by the learned counsel for the first accused. I will now summarize the evidence adduced during the cross examination by the learned counsel for the first accused.
42. Mr. Katonitabua said that, he reported this matter to the Police two months after the publication of this article in the *Nai Lalakai* newspaper. Mr. Katonitabua said he has been aware about the misinformation published in this newspaper since 2015. It was his own initiative to take steps to report this matter to the police, as no action was taken by the Fiji Times to clarify those misinformation on the issues pertaining to *i-Taukei* Affairs.
43. Between the publication of this article on the 27th of April 2016 and the time that he reported this matter to the Police on the 28th of June 2016, he has received a lot of inquiries for clarification from the public about this article. Mr. Katonitabua said that he has recorded the name of these people who made inquiries for clarification in his Public Relations' Report.
44. This article was published in the "Letters to Editor" section. It contains five misinformation. At the beginning of the article, there are two points. The first point is to conduct a national reconciliation. The second point gives an option if the first option does not take place. Then it talks about a report of William Marshall, which had been

sent to many prominent individuals in the country, including the President and Prime Minister.

45. The fourth paragraph of the article states about the debts. It says that the people will be burdened with paying large amount of debts. Then it talks about that if they are not able to do this, the country will be taken away from them before their eyes. The seventh paragraph says that the Muslim communities are not indigenous. Mr. Katonitabua said that Muslim communities are not indigenous to Fiji, but they are citizen of Fiji. He further said that people who practice Hindu faith are not indigenous. The Christian faith is also not indigenous as it came later into Fiji.
46. Mr. Katonitabua then explained the contents in the seventh paragraph saying that these are the people that unlawfully entered the countries, one of which is Bangladesh in India, where they murdered, raped its women, tortured its children until they ruled and owned it. Mr. Katonitabua said that he is not an expert on Asian Countries and also does not have information how the Bangladesh was formed from India. However, he said that the last two lines in this paragraph have no reference to Fiji. These two lines have mentioned about an event that took place outside of Fiji. He said that he is not aware whether they murdered, raped or tortured the women and children in Bangladesh. Mr. Katonitabua said that this paragraph referred what the Muslim community did in Bangladesh and no reference about the Muslim community in Fiji.
47. Ladies and Gentleman assessors, you may recall that, the learned counsel for the first accused asked Mr. Katonitabua, that this article does not say that you must hate Muslims or dislike Muslims or throw them out of Fiji. Answering to this question, Mr. Katonitabua said that there are no such words with such meaning in the article.
48. Mr. Katonitabua in his evidence then said that this article contains some issues which are very general and not specific. They are land and *i-Taukei* cultural values. The issue of land is very important for *i-Taukei* people. The point 1 of the second paragraph of the article talks about conducting a national reconciliation: to resolve issues that are being experienced by the indigenous Fijian. The letter suggests that a national reconciliation could be held to look at these issues suffered by the indigenous *i-Taukei*

people. He said this is not a way forward as the Government has different plans to resolve these issues.

49. Mr. Katonitabua said that the word of "God" has been used in this article at several places, but it has different meanings. The article says that "we must fully devote ourselves so we must pray properly". He then explained the places where the word "God" has been used in the article.
50. When the learned counsel for the first accused asked the witness whether there are any words saying that this religion is superior to other or to suggest either hate or ill-will towards another religion, Mr. Katonitabua referred to paragraph six of the second column of the article, which says that "no use discussing things and issues about Maori and Abbo which we are experiencing the same risk and its impact on us", Maori and Aborigines are indigenous to New Zealand and Australia. They are ethnic groups and not religious groups. He further said that there is only one religion mentioned in the article. Mr. Katonitabua did not agree with the proposition put to him by the learned counsel for the first accused, saying that there are no words saying "we must hate Muslims". However, he changed his position later and said there is no word in the article saying "hate Muslims", or all *i-Taukei* must hate Muslims or all Fijian must hate Muslims.

Cross Examination by the learned counsel for the Second Accused.

51. I will now take your attention to the cross examination of the learned counsel for the second accused.
52. Mr. Katonitabua explained that the word "reconciliation" means that two parties reach to an agreement through consultation and dialogue. "The Letters to Editor" column in a newspaper contains the opinions by members of the public on the subject that they would like to raise. Most of the newspapers have such a column giving the members of the public to make their opinions based on the subjects they wish to raise. The author of this article is Mr. Josaia Waqabaca. He is an indigenous activist. The article contains the opinions of Mr. Waqabaca.

53. During the cross examination, Mr. Katonitabua said that every citizen in Fiji has the right to have his or her own views and also has a right to have their own political views. He also said that every citizen in Fiji has a right to disagree with the Government policies and the programme that the Government is implementing.
54. This is a letter, in fact a petition to the Hon Attorney General. In this letter, the writer has recommended to have a national reconciliation to discuss certain issues. One of the issues that he is concerned is, about the national debt. He has said that the debt will become so large that it will cripple the future generations of indigenous Fijian. The second issue that he was talking about is the alienation of indigenous Fijian lands from the fourteen provinces. He further talks about the cultural identity of the indigenous Fijian by referring Maori and Aborigines. Mr. Katonitabua agreed in his evidence that the author is suggesting to the Hon Attorney General to have a National Reconciliation, where all of these issues pertaining to the indigenous Fijians could be discussed.
55. Moreover, Mr. Katonitabua in his evidence said there is no word in the article, saying that "Muslims in Fiji are monsters". When he was questioned by the learned counsel whether there is any word in the article saying that "Muslims in Fiji are land grabbing monsters, Mr. Katonitabua said that it reflects such concern in Paragraph Five of the column two of the article. Paragraph five of column two says that; " Let us never forget that there are places like Serua, Lodon, Namena, Dawasamu, which also covers our fourteen (14) provinces of Fiji, which have been taken away from us. This is one of the risks that we will experience by our children if we continue to be neglectful" Mr. Katonitabua agrees with this translation and said there is no word in the article saying that Muslims in Fiji are land grabbing monsters. He further said that there are no words of the article, saying that the Muslims in Fiji raped women and tortured and abused children. Moreover, Mr. Katonitabua in his evidence said there are no words in the article suggesting any actions against the Muslims, such as banning or ousting Muslims or preventing Muslims from holding prominent positions in Fiji.
56. According to Mr. Katonitabua, *i-Taukei* communities receive information primarily from reading *Nai Lolakai*. This newspaper is published once a week on every Wednesday. The indigenous Fijian has access to talk back shows from 24 hour radio

and TV channels, which telecast indigenous Fijian programs. He further said that, though the communities have access to other electronic social media such as Facebook, twitter and Instagram, the elders in the communities read information through newspapers and the only newspaper is *Nai Lalakai*. The elders in the village do not prefer mobile phone communications through viber, SMS, messaging and WhatsApp. Elders are the real stakeholders that the Ministry meets in the rural areas. Most of the elders have that same mindset on sensitive issues. One of the issues raised for clarification is whether their lands have been taken away from them. They get these information from the *Nai Lalakai* newspaper. Most people in the rural areas do not consider these letters to editor as opinions, they consider them as facts. Mr. Katonitabua said that the villagers are entitled to have their own mindset and the Ministry is doing their job in providing clarification about the position of the Ministry.

57. The witness further said that some of the issues that have been highlighted in this article are false statements. It has been costly for the Government to go down to the villages and continue the awareness programmes on the issues of equal citizenry and working together as a citizen of Fiji.
58. Mr. Katonitabua had contacted the Fiji Times Office about this issue via e-mail but he could not locate the copies of the e-mail. Apart from this e-mail communication, nothing else took place between Mr. Katonitabua and Fiji Times Limited or its employees.
59. During the conclusion of the cross examination by the second accused, Mr. Katonitabua affirmatively agreed that no words in the articles says that the people in Fiji should hate or have ill feelings against Muslims in Fiji, and no where it states specifically that you have to ban Muslims from Fiji, deport them or ban them from places of worship, or burn their schools or religion of Islam should be banned. He further said there is no word in the letter saying or encouraging the State, the Government, or the State institutions to implement any form of discrimination against Muslims. Finally, during the cross examination, Mr. Katonitabua said this article contains nothing, but the personal opinions of Josia Waqabaca.

Cross Examination by the learned counsel for Fifth Accused,

60. The learned counsel for the third and fourth accused did not cross examine Mr. Katonitabua. I will now take your attention to summary of the evidence given by Mr. Katonitabua during the cross examination of the learned counsel for the fifth accused.
61. Mr. Katonitabua said that the *Nai Lalakai* newspaper, especially after the General Election of 2014, has been raising issues that are sensitive to *i-Taukei* communities. As the Permanent Secretary to the Ministry of *i-Taukei* Affairs, it is his duty to correct those misinformation. During the consultation held in May and June, they have found that the source of these misinformations is the *Nai Lalakai*. These misinformations highlight the fear that the *i-Taukei* land have been taken away from the landowners. Therefore, the Ministry has to intervene to provide correct information to *i-Taukei* communities.
62. Mr. Katonitabua had read this article on the 27th of April 2017. He then directed his team that was doing consultations, to address these issues with the *i-Taukei* communities. He then sent a letter to Fiji Times Limited in July stating that they have to provide correct information. He has sent an e-mail to Fiji Times Limited regarding this article, but he could not retrieve a copy of this email. Mr. Katonitabua has not complained to the Media Industry Development Authority. He has discussed these issues of misinformation at their management meetings. He made a report to the Police about this article on the 28th of June 2016. He had made the report to the Police, before he wrote a letter to the Fiji Times Limited.
63. During the management meetings of the Ministry, they discussed about the *i-Taukei* issues and one of them was about the sources of misinformation, that the *i-Taukei* community receives. The first such management meeting took place four weeks after this article was published. It was his decision as the Chairman of the Committee to take action against this article. There was no decision by the Management meeting to report this matter to the Police. Even though he made his mind to report this matter to the Police before he conducted the Management meeting, Mr. Katonitabua had waited another one month after the meeting to report this matter to the police. Eventually, he

made this complaint to the Police on the 28th of June 2016 and that was almost two months after the publication of this article in *Nai Lalakai*. When he was asked for the reasons for the two months delay, Mr. Katonitabua said that he had to attend to other things in the Ministry. These other things required more attention than this article.

64. When Mr. Katonitabua was then asked about the statement that he made to the Police, he said that his statement to the Police contains his own words and also the observation made by the Ministry regarding the issues raised. He made this statement in his capacity as the Permanent Secretary of the Ministry of *i-Taukei* affairs. He then explained that he never consulted or sought the approval of the Minister of *i-Taukei* affair before he made this complaint. He has informed his Minister verbally, after he made this complaint.
65. Mr. Katonitabua in his evidence said the translation which he provided in his statement to the police was made by him. In his statement made to the police, he has said that the publications published in *Nai Lalakai* newspaper can cause instability in the country. He then explained that the issues such as land, fishing rights, natural resources, Great Council of Chiefs, ethnicity between religious groups and the filling of vacant positions of the leadership in *i-Taukei* communities, as the main delicate issues in the country. These are the issues that are dear to the *i-Taukei* communities. The Ministry conducts provincial council meetings in the 14 provinces and also conducts "Tikina" Council meetings in all districts, where the communities raise these issues. The Ministry provides the information as what they consider to be accurate information.
66. You may recall Mr. Katonitabua explained about the structure of the consultation process. He normally meets around 165,000 people from the *i-Taukei* communities during these consultation processes within a year.
67. Mr. Katonitabua has written a letter to Fiji Times Limited, informing them to provide the correct information to the *i-Taukei* communities. In this letter he has not specifically referred about this article. However, in that letter he has raised his concern about the information regarding the land, GCC, the need of the religious groups to work together and the installation of vacant chiefly positions. The learned counsel for the fifth

accused then produced the said letter which Mr. Katonitabua admitted that it is the letter that he sent to Fiji Times, requesting them to provide correct information.

68. You may recall Mr. Katonitabua read the contents of that letter in open court. After reading the said letter, Mr. Katonitabua said that the purpose of this letter is not to request the Fiji Times Limited to provide correct information, but it contains the information regarding the role of the *Turaga-ni-koro* as it was one of the concerns raised by the communities for the clarifications. The letter was a press release. The letter and the English translation of it, are tendered in evidence as defence exhibits one and two. This letter issued by the Ministry of *i-Taukei* Affairs was published in the *Nai Lalakai* newspaper. The said publication in the *Nai Lalakai* was tendered in evidence as defence's exhibit 3.
69. Subsequent of reporting this matter to the police, the relationship between the Ministry of *i-Taukei* Affairs and the Fiji Times improved. The *Nai Lalakai* now gives a page for the Ministry of *i-Taukei* Affairs to provide their versions of correct information. Mr. Katonitabua then explained about the *Na Noda Viti*, that is published in the Fiji Sun by the Ministry of Information. He has never received any inquiries seeking clarification about any information published in *Na Noda Viti*. *Na Noda Viti* is published by the Ministry of Information regarding the development projects undertaken by the Government.
70. You may recall that the learned counsel for the fifth accused then questioned Mr. Katonitabua regarding the contents of this article. He has never made an inquiry to confirm whether a petition was in fact given to the Hon Attorney General as stated in the first paragraph of the article. He then agreed that part one of the second paragraph talks about a national reconciliation. It has suggested to have a national reconciliation to discuss important issues that the indigenous people of Fiji feel or could cause great instability in the future. Moreover, the article suggests to have this national reconciliation based on the Ten Commandments. He has mentioned in his statement made to the police about the adversaries of the Government. He then explained what he meant by referring to adversaries of the Government. There are groups that have different versions or different information regarding the issues pertaining to *i-Taukei*

community such as land, culture and GCC *etc.* They are continuously providing information to the general public without clarifying them with the Ministry of *i-Taukei* Affairs.

71. According to the evidence given by Mr. Katonitabua, the word of "government" denotes two possible meaning. One is the institutions of the government, which is the Legislature, the Executive and the Judiciary, The other possible meaning is the political party that empowers the government such as Fiji First government and SDL government.
72. During his twenty two years in the civil service, Mr. Katonitabua has served under different governments, starting from government of Mr. Rabuka. He said that each of these governments under the different leaders had different policies on the issues pertaining to *i-Taukei* communities. There are, still, some perceptions among the *i-Taukei* communities regarding some of the reforms carried out by the government, like the dissolution of GCC will cause instability and strife among the indigenous people. It is the same perception that Mr. Waqabaca also holds regarding these issues. Based on these concerns, the writer of the letter Mr. Waqabaca recommends to have a National Reconciliation. Mr. Katonitabua said that the comments he made under the heading 'way forward' in his statement to the police, is an acknowledgement that the government has not been doing enough work on these perceptions that the *i-Taukei* communities have. Accordingly, Mr. Waqabaca is also suggesting a way forward for the government to perhaps do a better job dealing with these *i-Taukei* issues.
73. The second part of the second paragraph provides an option to Hon Attorney General to leave the country and never to return, if he does not take the first option of conducting a national reconciliation. Mr. Katonitabua said these kinds of suggestions are normal in the rough and tumble of politics in general. In respect of the paragraph that is referred to a Report of Justice Marshall, the witness said that he has no information about such a report. He agreed to the translation of that paragraph which says that the said petition of Marshall had been given to all top officials and religious and *i-Taukei* leaders, including the H.E, the President, the Hon Prime Minister and the Hon Chief Justice. He has not made any effort to confirm whether this report had actually been served to the

people as mentioned in the article. There is another paragraph in the article which says that if the Hon Attorney General goes away, the current and the future generations of the *i-Taukei* are going to be left with the burden of debt.

74. Mr. Katonitabua then explained about the ownership of the *i-Taukei* land, specially in Serua, Lodoní, Namena and Dawasamu. He said there is a historical context pertaining to the ownership of *i-Taukei* lands in these areas. This historical land issues in these areas goes back to 1880s. There is a historical concern among the *i-Taukei* communities in these areas, particularly in Serua about the creation of freehold lands by the colonial rulers in 1880s. That sense of grievance is still remained in the *i-Taukei* landowners. There is a historical grievance in the *i-Taukei* landowners in Lodoní about the freehold lands that were taken for Ratu Kadavulevu School. Mr. Katonitabua said that they receive grievances from the local land owners in these areas. The government has already commenced a process in order to return the land to the *i-Taukei* landowners in these areas. He admitted that there are genuine grievances about the lands and the government has already initiated a process to address them.
75. In respect of the passages that has mentioned about the changing of government. Mr. Katonitabua said that governments in Fiji have been changed through elections and also by coups.
76. Furthermore, Mr. Katonitabua said that the main point in his complaint to the Police was that Mr. Waqabaca represents the views that are opposed to the policies of the Government. He does not oppose to the institutions of the Government, but policies of the Fiji First Government. Mr. Katonitabua said that even though the Government has no policy to conduct a National Reconciliation, the idea of the reconciliation is not a bad idea. The Ministry of *i-Taukei* Affairs is not in favour of conducting such a reconciliation. It is the policy of the Government as well. The government has different policies and ways to deal with the issues discussed by Mr. Waqabaca in his article. The government does not trust the motive of this proposal for reconciliation. There are still some perceptions within the *i-Taukei* community regarding some reforms carried out by the government. It is the duty of the Ministry of *i-Taukei* Affairs to provide them with

correct information and reassure the public about these reforms. These efforts of the Ministry have met with mixed results so far.

77. According to Mr. Katonitabua, misinformation means expressing an opinion on the issues that the government does not like. This article has also expressed such an opinion. Mr. Katonitabua finally agreed that in this letter Mr. Waqabaca is suggesting the Government to have a reconciliation to remove the issues or concerns that the *i-Taukei* community has.

Re-examination by the learned counsel for the prosecution

78. I now draw my attention to briefly summarize the evidence given by Mr. Katonitabua during the re-examination by the learned counsel for the prosecution.
79. Mr. Katonitabua said that the statement he made to the police was mainly forced about the statements that were published in *Nai Lalakai* newspaper regarding the core issues that are being raised by the *i-Taukei* community. They are, the issue of land, building a better Fiji with all the ethnicity and religious groups and land ownership. This article refers to only two religious or ethnic groups, the Muslim community and the *i-Taukei* community. That was the real concern for them. This article specifically refers to the Muslim community and the hardship faced by the *i-Taukei* community. This can create insecurity in the communities. This has been the concern that the *i-Taukei* community raised during the public consultations. The *i-Taukei* community feels insecure because of the dissemination of information in this article. It has been there from October 2014. Moreover, Mr. Katonitabua said that he was concerned about the mentioning of the Attorney-General in the article.
80. Furthermore, Mr. Katonitabua said that the *Nai Lalakai* newspaper is very popular among the *i-Taukei* communities and they share copies of the newspaper among themselves. It is the newspaper widely being used by the *i-Taukei* community, mostly the elders in the communities. They read the *Nai Lalakai* rather than using modern technology. Elders are the most respected segment in the communities. They read these articles and then share it among themselves at their family gatherings, or social

gatherings. Ministry of *i-Taukei* Affairs found that the information they are sharing is sensitive to the Ministry of *i-Taukei* Affairs.

81. You may recall that Mr. Katonitabua, during his evidence-in-chief, mentioned about an email which he sent to the Fiji Times Limited, stating his concern about this article. During the re-examination, he said he has actually sent such an email before the publication of this article. In that email Mr. Katonitabua has stated about the misinformation that had been published in the *Nai Lalakai* over the time and the Ministry could provide more clarification about those issues. He further confirmed that the letter sent to the Fiji Times on the 4th of July 2016 by the Ministry was not in relation to this article.
82. Mr. Katonitabua said that this article has mentioned about some experiences of what the Muslim community had done in Bangladesh. Moreover, Mr. Katonitabua during the re-examination said that there are issues regarding the land ownership in Serua, Lodonu, Namena and Dawasamu and the Ministry of *i-Taukei* Affairs is working on it to return these lands to the initial land owning units.
83. When the learned counsel for the prosecution asked Mr. Katonitabua to point out the incorrect statements in the article, he pointed out the passage which referred to the petition of Marshal regarding the heavy debt and the passage which talks about the land alienation in the provinces of Serua, Lodonu, Namena and Dawasamu. He confirmed that these are the two incorrect phases in the article. He then explained his disagreement on the question posed to him by the learned counsel for the first accused, asking him that there are no words in the article stating one religion going against another religion. Mr. Katonitabua said that this article only talks about two religions, that is the Muslim and the *i-Taukei*.

Evidence of Inspector Esili Nadolo

84. The second witness of the prosecution is Inspector Esili Nadolo. He is the investigation officer of this matter. He has conducted the caution interview of the first accused as

well. He has been in the Police Force for 26 years. He explained about the investigation that he carried out regarding this matter.

85. On 30th of June 2016, he has executed a search warrant at the Fiji Times Limited in order to uplift certain documents therein. In the execution of the search warrant, IP Nadolo had uplifted a document called "*Sa Notisitaki Ko Vunitawa*" and the *Nai Lalakai* edition which was published on 27th of April 2016. He tendered these documents as exhibits one and two of the prosecution. He has conducted the caution interview of the first accused on the 14th of July 2016. Inspector Nadolo in his evidence explained the manner in which he conducted the caution interview of the first accused. The first accused was cooperative during the interview. It was done in *i-Taukei* language and was then translated into English language. He tendered the original version of the caution interview and the translated version of the caution interview as the exhibits of the prosecution.

Cross Examination by the learned counsel for the First Accused.

86. I will now take your attention to the cross examination of IP Nadolo by the learned counsel for the first accused.
87. IP Nadolo was in the Prosecution Unit of the Police and understands how to prove a charge in the court. He was instructed to be the investigation officer by the Director of Criminal Investigation Department. He was appointed on or about 26th or 27th of June 2016. He has conducted the caution interview of the first accused on the 14th of July 2016, that was about 18 days after his appointment. During this period he has only executed the search warrant at the Fiji Times Limited in order to obtain the article. He has executed another search warrant at the Fiji Times Limited in 2017. His investigation was supervised by the Manager Major Crimes at the CID headquarters and also received instructions from Director CID. He has not obtained a copy of the petition sent to the Hon Attorney General as stated in the article and also in the caution interview of the first accused. He has not received any complaint from the office of Hon Attorney-General regarding such a petition. He has not searched or obtained a copy of the petition of William Marshall.

88. This article was published on the 27th of April 2016. He became the investigation officer for this matter on or about 26th or 27th of June 2016. During this period between the 27th of April and 27th of June 2016, the Police has not received any complaint about this article, apart from the complaint made by the Permanent Secretary of the Ministry of *i-Taukei* Affairs. There is no report on any public disorder, or creating communal antagonism or tendency to promote feelings of ill-will or hostilities. If such an incident had been reported to any other police station in the country, there is a high chance for him to know about it. The first accused was interviewed for an offence of communal antagonism.
89. In regard to question 84 and its answer in the caution interview, IP Nadolo said that if someone wants to talk about *i-Taukei* issues, there is no such law requiring that person to consult the Ministry of *i-Taukei* Affairs before he make such comments. But in certain instances you need to consult the Ministry on some issues. IP Nadolo said that the first accused has spoken about the issues faced by the *i-Taukei* people during the interview. He further said that any person in Fiji has the right to talk about the grievances, including the grievances of the *i-Taukei* community. In reading this article, he has not found any words saying that "we must hate Muslims".

Cross Examination by the learned counsel for the third and fourth accused.

90. You have seen that the learned counsel for the second accused did not cross examine this witness. This is the summary of evidence adduced during the cross examination by the learned counsel for the third and fourth accused.
91. IP Nadolo said that he arrested the second, third and fourth accused few months after the publication of this article. There were no incidents reported regarding any sort of communal antagonism breaking out in Fiji, apart from the report that he received from the Permanent Secretary of the Ministry of *i-Taukei* Affairs. The article was in *i-Taukei* language. A colleague of him has interviewed Mr. Arts, the fourth accused on the 18th of July 2016. According to the record of the interview of the fourth accused, he cannot understand, read and speak the *i-Taukei* language. The fourth accused was arrested on the 17th of August 2016. Between the time period of Mr. Art's caution interview and

the time of his arrest, the Police has not carried out any investigation, in order to confirm whether the fourth accused can actually understand, read or speak *i-Taukei* language. The Police accepted the evidence given by the fourth accused in his caution interview, saying that he cannot understand, speak and read *i-Taukei* language.

92. Moreover, there was no investigation carried out during the same period in order to ascertain whether the fourth and fifth accused had ever seen this article before it was published. He was not really sure whether the fourth accused had actually seen the letter or a copy of it, before it was published. The interview of the third accused was conducted on the 7th of July 2016. The third accused made no comments in his caution interview. IP Nadolo did not give any reason why the police did not carry out such investigations to confirm whether the third and fourth accused had seen or knew about this letter before it was published.
93. The third and fourth witnesses of the prosecution are court officers, who had made the English translation of this article, pursuant to directions given by the court. In their evidence, they explained the manner they have translated this article into English language.
94. At the conclusion of the prosecution case, the five accused persons were explained about their rights in defence. The first, second and fourth accused persons opted not to give evidence or to call any witnesses for their respective defence. The third accused opted to give evidence and also called four witnesses. The fifth accused called two witnesses.

Evidence of the Defence

Evidence of Mr. Wesley

95. May I now take your attention to the evidence given by the third accused, Mr. Fred Wesley. He is the Editor-in-chief of the Fiji Times Limited and also performs duties as the Editor of the daily Fiji Times newspaper. He has started his career as a journalist in 1992 and has worked in Daily Post, Fiji Sun and then with Fiji Times since 2005. He has risen from a cadet reporter to the position of Editor-in-Chief. Mr. Wesley said that

he had no formal qualification in journalism when he started, but over the years, he had taken part in many workshops and trainings in journalism both local and abroad. He had worked under numbers of people who held the position of Publisher in the Fiji Times since 2005. The Publisher set the direction for the company. The Fiji Times was initially owned by the News Limited, but now it is owned by the Motibhai Group. The fourth accused, Mr. Arts became the publisher of the Fiji Times Limited in 2012 or 2013.

96. The Fiji Times Limited publishes four newspapers. They are the Fiji Times, Sunday Times, *Nai Lalakai* and Shanthi Dut. Mr. Wesley is the Editor of the Fiji Times beside his position as the Editor-in-chief. The second accused, Mr. Amare Ravula is the Editor of *Nai Lalakai* and Nilam Kumar is the Editor of Shanthi Dut. Mr. Sailosi Batiratu is the Editor of the Sunday Times. Each of these four newspapers has a section for the 'Letters to Editor'. It is the responsibility of the editor of each paper to decide on what letters to include in any particular edition of the newspaper.
97. Mr. Wesley then explained about his responsibilities and duties as the Editor of the Fiji Times. He has to set the direction for the newspaper according to the guidelines and the media decree. Moreover, he has to ensure that the stories that are published in the paper are fair, balanced and accurate. He has to ensure what to publish on the next day's edition. He also checks the 'Letters to Editor' personally as it is a very important part in respect of compliance with the guidelines and regulations. As the editor, he is responsible for the publication of the Fiji Times and everything that contain in it.
98. As the Editor-in-Chief, all other editors report to him. His role is like providing a supporting platform for other editors. If the editors need any clarification or assistance, they can approach him for that. As the Editor-in-Chief, if any issues are referred to him, he provides guidance, advice and direction. Otherwise, editors have sole jurisdiction and authority to run their respective newspapers according to the guidelines and regulations. Once the pages are laid out with its contents, the editors will authorize the pages as completed, and send it for publication. The pages are usually sent for printing by the editors, but if there is an issue that needs his advice or direction, the editors will raise it with him. The editors are responsible enough and know what should be referred

to him. He does not receive such requests for directions or advice often from the editors. He usually makes an effort to meet the editors before the publications of the newspaper and is usually briefed by the editors about the contents of the papers before it goes for publication. Each editor can decide what letters they would include in the letters to editor section.

99. Mr. Wesley then explained about the manner in which he handles the 'Letters to Editor' section in the Fiji Times. He is the only person who handles that section in the Fiji Times. The 'Letters to Editor' is an open forum that allows the public to voice their concern on topics of their interest. If he has a doubt about the letter, he refers them to the legal team for their opinion or completely drops it from publishing. After he had gone through the letters, he put these letters for the sub editors to go through and lay it out. They then send it back for him for proofing. Mr. Wesley explained that, even though he receives positive feedback from the legal team about a letter, he still has the discretion to drop it from the publication, if he is still not comfortable with it.
100. If Mr. Wesley thinks a particular letter has some issues such as, defamatory nature, ethnic sensitiveness, he then refers it for legal opinion. Other editors also get letters from public for the section of 'Letters to Editor' in their respective newspapers. They also follow the same process as he does. He normally discusses with the editors on various issues that arise during their daily businesses. All the editors have the authority to go to lawyers for legal opinions if they have issues about an article or a letter.
101. The *Nai Lalakai* is published in *i-Taukei* language on the weekly basis on every Wednesday. It has an approximate figure of circulation of 6000. The nature of the readership of *Nai Lalakai* is for those who could understand or read the *i-Taukei* language. The readership is basically based on the rural areas, in the villages where a lot of *i-Taukei* people live. Mr. Wesley has never been the editor of *Nai Lalakai*. Mr. Wesley could speak *i-Taukei* language but not fluently. He cannot read *i-Taukei* language. Therefore, he has never read *Nai Lalakai*.
102. In respect of this article written by the first accused, Mr. Wesley said that he never received such an article from the first accused. He has never seen or had any knowledge

about this article before it was published. Moreover, Mr. Wesley said that he never authorized the publication of this article in *Nai Lalakai*. He has done nothing to cause the publication of this letter. The first time he came to know about this letter is when he was arrested and questioned about it by the police at the CID headquarters.

103. Mr. Arts, the publisher cannot make any decision about the contents of any newspaper and he has never tried to do that either. The publisher cannot do that, because of the editor's independence. The role of the publisher or any other executive within the Fiji Times Limited is different to the role of the editorial department. Editorial department cannot allow outside interferences. Therefore, neither Mr. Arts nor the owners have ever tried to dictate the contents of the newspapers.

104. You may recall that Mr. Wesley in his evidence then explained about the organizational structure of the Fiji Times Limited, explaining the various departments and its responsibilities and duties. As an Editor-in-Chief, Mr. Wesley has a Deputy Editor-in-Chief. She is Elenoa Baselala. The Deputy Editor-in-Chief and all other editors directly report to him. The managers of other departments report to Mr. Arts who is the General Manager.

Cross Examination by the learned counsel for the first accused.

105. During the cross examination by the learned counsel for the first accused, Mr. Wesley said that there was not any complaint received by him from the Ministry of *I-Taukei* Affairs regarding this article. He has not received any complaint from any one regarding this article.

Cross Examination by the learned counsel for the second accused.

106. I will now draw your attention to the cross examination by the learned counsel for the second accused.

107. Mr. Wesley said that Mr. Ravula has signed a contract only for the editor for *Nai Lalakai*. Mr. Wesley has not signed any separate contract for the post of Editor of Fiji

Times. He has only one contract that is for the post of Editor-in-chief. Mr. Wesley, in his evidence said, that he does not know when or who in the *Nai Lalukai* received this letter. Furthermore, he does not know how and who has delivered this letter to *Nai Lalukai*. He does not know who checked this letter and who typeset the letter into *Nai Lalukai*. Finally he does not know who authorized this letter for the publication in *Nai Lalukai*.

Cross Examination by the learned counsel for the Fifth Accused.

108. May I now take your attention to the cross examination by the learned counsel for the fifth accused.
109. During the cross examination by the learned counsel of the fifth accused, Mr. Wesley explained about the values and principles of Fiji Times Limited. He holds several conferences in a day in order to discuss the contents of the Fiji Times newspaper which goes for publication for the next day. In respect of the mechanism of vetting and obtaining legal opinion for any issues before the publication, Mr. Wesley said that the company expects each of the members of the editorial staff to follow it. Apart from the daily conferences and discussions, the company conducts training for the editorial staff regarding the legal issues, media decree, the Constitution of Fiji etc. These training sessions are attended by the staff members. Attendance for such trainings is mandatory.
110. Mr. Wesley, in his evidence, explained that the company has provided the staff of the editorial department a printed guideline called "style". While referring to page 68 of the said book, he explained the few guidelines which they follow in regard to legal issues arising from the publications. Every member of the editorial staff is provided with this book. The company invites their lawyers for these training sessions to discuss about the legal issues and the provisions of media decree. Moreover, the Chairman of MIDA has also been invited to give them training about the Media Decree and relevant legal issues.
111. Mr. Wesley said that the provisions of the Media Act are strict and the editors can be personally liable or perhaps be imprisoned for breach of the provisions of the Act.

Therefore, they have to be very careful and vigilant about their work. There is an arrangement with the company's legal advisor Munro Leys lawyers, that all the publication under the Fiji Times Limited can approach them for any clarification of legal issues pertaining to their works. The Chief-of Staff and the officers, who are above to him, has direct access to the lawyers for legal opinion. He said that he cannot recall receiving any e-mail from the Permanent Secretary of the Ministry of *i-Taukei* Affairs, expressing his concern about this article published in the *Nai Lalakai*.

Cross Examination by the learned counsel for the Prosecution

112. Mr. Wesley was then cross examined by the learned counsel for the prosecution. I will now summarize the evidence adduced during the cross examination by the prosecution.
113. Mr. Wesley has held the position of the Publisher of the Fiji Times for a period of one year from 2014 to 2015. The publisher sets the tone for every aspects of the business. He has to ensure that editorial targets and guidelines, production costs, and administrative, accounts, advertising and marketing targets, are met. When he was the publisher, his role was just a supervisory role. If anyone wants direction, they could approach him. Otherwise, he did not manage other arms of the organization as each of these departments has expert managers to manage them. Mr. Wesley said that he played a very limited role as the Publisher. The editors were under his supervision as he also performed the duties of Editor-in-chief during that period. It was his task to make sure that the editors were properly trained.
114. Mr. Wesley is not familiar with the contractual obligations of Mr. Arts as the publisher. Mr. Wesley then explained about the second accused and how long he has been working with the Fiji Times. Mr. Ravula had also received trainings during his time with the Fiji Times. Mr. Wesley then explained about the scope of the training provided to them and said that the Fiji Times Limited is interested in providing them such trainings because they want to avoid being sued.
115. Mr. Wesley was asked about the code of ethics as stipulated under the Media Act, for which he explained about it. Having explained it, Mr. Wesley said if he received this

article, he would have followed the proper procedure before it was published. However, he is not aware whether Mr. Ravula had referred this article to the legal team.

116. Mr. Wesley was then asked about his employment contract and the performance of duties and obligations as stated in it. The performances of duties and obligation have been stated under sub-heading three of the contract. Accordingly, he has a duty to protect the values that the *Fiji Times Limited* holds and also fair and balance reporting. He explained that "Letters to editor" has a risk, as it exposes for legal jeopardy. He then explained about his role in editing the *Fiji Times*, including the "Letters to editor" section in *Fiji Times*. Mr. Arts has never involved or put his input for this. Mr. Wesley said that if he notices anything related to religion or ethnicity in a letter, he would usually refer it to the legal team for their advice.
117. You may recall that Mr. Wesley explained about the billing and payments procedure for the legal cost that they incur in seeking advice from the legal team. In the evening of every Tuesday, he has a meeting with the *Nai Lalakai* team before they publish the Wednesday edition. During such meetings, he is normally briefed about contents of the paper. He is not given any translations of the articles that are going to be published in the newspaper. Such briefings are basically focused to see what are the issues pertaining to the front, second and third pages and also the sport page.
118. According to Mr. Wesley, the *Nai Lalakai* edition published on the 27th of April 2016 was edited by the second accused Mr. Ravula. According to his knowledge, Mr. Ravula has not contacted the lawyers directly. Mr. Wesley said *Nai Lalakai* covers a variety of issues, such as sports, politics and other news that is relevant to the *i-Taukei* community. He is not aware about Mr. Waqabaca as a regular contributor to *Nai Lalakai*. Writers of the "Letters to Editor" are not paid by the newspaper. The *Nai Lalakai* newspaper carries his name as the Editor-in-chief and the name of Mr. Arts as the Publisher. The "Letters to Editor" section in the *Nai Lalakai* published on 27th of April 2016, contains only two letters, including this article.
119. There is a computer system that is interconnect to the editorial staff and the graphics and then to the press. Someone in the *Nai Lalakai* editorial staff has to enter this article

into the system. Then it will go to the graphics for the page settings. It will come back to the editor for the check and he can press the button to send the pages for print. The Publisher has no part to play in this process. Moreover, any other manager in other departments has no access to this process.

120. Mr. Wesley is working closely with the Publisher Mr. Arts and has a very good and close relationship with Mr. Arts. Mr. Arts has management meetings with the managers and the editor-in-chief once a month. Mr. Arts relies on Mr. Wesley on editorial matters. Mr. Arts does not attend any of the training sessions. Mr. Arts oversees the budget for legal opinions. Mr. Wesley has no knowledge whether the board of directors with Mr. Arts has put any limitation or restriction about the scope of the paper. There is no restriction or limitation imposed by the director through Mr. Arts to his work.
121. You could recall that the learned counsel for the prosecution then put his case to Mr. Wesley.
122. When the learned counsel of the prosecution asked Mr. Wesley that if he does not know what is said in the article, would he still allow the letter to be published. Mr. Wesley said 'yes' he would not allow it. Then the learned counsel for the prosecution asked him whether he wouldn't allow it because it is too risky to publish such an article. Mr. Wesley then said that he would expect the translation and then he would refer it to the lawyers, before he publish it. Afterwards, the learned counsel suggested that Mr. Wesley knew very well about the article before it was published on the 27th of April 2016. For which he said, "No". Then the learned counsel suggested that Mr. Wesley was not telling the truth. Mr. Wesley denies that he was not telling the truth. The learned counsel for the prosecution then suggested that Mr. Wesley was not telling the truth because he knows very well that he made a mistake allowing that to be published and now wants to cover it up. Mr. Wesley answered that he had no knowledge about the letter. I will explain how you have to approach this part of the evidence in detail in a while.

Re-examination by learned counsel for the third accused.

123. During the re-examination Mr. Wesley said that he is briefed by the *Nai Lalakai* editor about the stories that go into publication on the day of the publication. However, he has not shown the stories that were going to be published during these briefings. There is no discussion about the "Letters to the Editor" during these briefings. Mr. Arts does not attend such briefings. He then explained that the Fiji Times Limited use the system known as Pon grass for the editorial process. The editor of the newspaper has to complete the pages on the Pon grass system. Then it goes to graphics.

124. You may recall that at the conclusion of the re-examination, the court asked few questions from Mr. Wesley for clarification. During that, Mr. Wesley said that normally they print approximately 6000 copies of *Nai Lalakai* and those are in the market in circulation for a week until the new edition of the paper is released to the market. Once the new edition is issued for circulation, the previous editions will not be in the market for circulation.

Evidence of Mr. Vonitiasi Rakuma

125. The second witness of the third accused is Mr Vonitiasi Rakuma. He is a security officer. Mr. Rakuma in his evidence explained how he delivers the letters that normally received at the security gate, to the Fiji Times office. He knows Mr. Waqabaca as he comes to deliver letters. When Mr. Waqabaca comes to deliver letters, Mr. Ravula comes to take it.

Evidence of Neeraj Maharaj

126. The third witness of the third accused is Mr. Neeraj Maharaj. He is the System and Network Administrator of Fiji Times Limited. Mr. Maharaj in his evidence explained about the news editing system of the Fiji Times. That system is for the editorial and graphics departments. Other departments have another system. According to his evidence, he has run a search on the windows system of the computer used by Mr. Ravula in order to search for this article. During that search he has found this article

which was contained in a word file in the profile of Mr. Ravula. He then tendered the copy of screen shots taken out from the properties details of that document as defence's exhibits. He has done the same search on the computers of Mr. Arts and Mr. Wesley, but found nothing.

127. Mr. Maharaj then explained about the Pon grass system that is used for the editorial purpose. He said that it can trace back any newspaper article that was published previously in the system, with the details such as who had worked on it and had access to that document. The system has an archive and all the previously published documents that entered into system are stored in it. Mr. Maharaj has obtained the details of this article from the Australian counterpart of Pon Grass system in a text file. He explained that the data archive is managed by the Australian counterpart. With this information, it can determine who created the document in the system and who has edited it subsequently. This information is generated by the system automatically.
128. You can recall that Mr. Maharaj then tendered a document containing the details of this article. He then explained about the first, second, third and fourth versions. According to the information pertaining to version five, Anare Ravula has entered this article into the system. It was then edited by Viliame Ravai twice as per the version six and seven. According to version eight, one Semi has worked on the document. He is a graphic artist. Mr. Maharaj said that Semi must have done the page and sent it to the press.
129. During the cross examination, Mr. Maharaj said that he did not obtain the permission of Mr. Ravula to access his computer. But he said that he was instructed by his Manager to do so.

Evidence of Mr. Viliame Ravai

130. The fourth witness of the third accused is Mr. Viliame Ravai. He is a layout artist at Fiji Times Limited. He works with *Nai Lalakai* newspaper. They do the layout in the system called IN Design which is linked to the Pon grass system. The Editor, Mr. Ravula, approves the stories and puts them in to the Pon grass system for him to do the page layout. Once the "Letters to the Editor" is viewed, approved and put into the

system by Mr. Ravula, the layout artist then does the layout. After that, the Editor will view it again, before it goes for the printing.

131. In respect of this article, Mr. Ravai has done the version six and seven of the text file which is marked as defence's exhibit. He said that Mr. Ravula had entered the article into the system and he only did the layout. He has not done any changes or editing in the article. He explained that the version six and seven was given to him by Mr. Ravula in a USB stick. He only put them to the system and put the layout.

Evidence of Unaisi Ratubalavu

132. The third witness of the third accused is Mrs. Unaisi Ratubalavu. She is the Acting Editor of *Nai Lalakai*. In 2016, she was a senior reporter of the *Nai Lalakai*. According to her evidence, it is the editor who approves the stories which can go for the publication in the newspaper. She then explained her experience about the "Letters to the Editor" section. Mrs. Ratubalavu knows Mr. Waqabaca, as she has dealt with few of his letters sent to the editor previously. She has edited and amended few of his letters as they carried some sensitive issues. Mrs. Ratubalavu has informed her editor Mr. Ravula about Mr. Waqabaca's letter. You may recall that Mr. Ratubalavu then explained about the Pon grass system and how it works. It is the editor that finally puts the select button in the Pon grass system in order to send the pages for printing.
133. Moreover, as the Acting Editor of *Nai Lalakai*, Mrs. Ratubalavu usually sends an email to Mr. Wesley in evenings of every Tuesday, stating the summary of contents in the paper which is going to be published. The email contains a summary of the details from the first to the last page. If she has any issue about a letter or a story, she would meet Mr. Wesley and discuss it with him. She said that neither Mr. Arts nor Mr. Wesley has any involvement in the "Letters to the Editor" section of *Nai Lalakai*.
134. The *Nai Lalakai* has the authority to amend, delete or change the contents of the letters received for publication in the "Letters to the Editor" section. Approximately 6000 copies of *Nai Lalakai* are published on a weekly basis. They are then sent to various locations for circulation. When the next edition is issued, the unsold copies of the

edition of the previous week are collected back. Usually 600 to 800 copies are returned unsold. The readership of *Nai Lalakai* is predominately *i-Taukei* community.

135. Mrs. Ratubalavu has no idea about this letter. She has not seen this letter before or after it was published. She has not put any input into this letter. She does not know who has authorized this letter for the publication. Mrs. Ratubalavu could not remember whether Mr. Ravula was on duty on the 26th of April 2016. Mrs. Ratubalavu has not seen any letter to the editor from any of the readers complaining about this letter or dissenting from the views expressed in this letter. She has no knowledge whether Mr. Ravula spoke to Mr. Wesley or Mr. Arts about this letter before it was published. During this period she was covering the news of Parliament.
136. Mrs. Ratubalavu, in her evidence then explained, about the training and the standards that they maintain in the *Fiji Times'* publications. She explained that balance and fair reporting is the main standards of the newspaper. Mr. Arts has no access to the editorial system and has no influence in editorial contents.

Evidence of Professor Paul Geraghty

137. The first witness of the fifth accused is Professor Paul Geraghty. He is an Adjunct Associate Professor of Linguistics at the University of the South Pacific. He has been living in Fiji for about 40 years. Mr. Geraghty said that since he has accepted the position at the University of South Pacific in 2001, he has no much interaction with the local communities as he used to have when he was with the Ministry of *i-Taukei* Affairs.
138. You may recall that Mr. Geraghty provided an English translation of this article and explained about the differences of his translation with the translation made by the third and fourth prosecution witnesses. However, I advise you to disregard the opinion he made about the evidence given by the witness of the prosecution as it is not admissible.

Evidence of Mr. Richard Naidu

139. The second witness of the fifth accused is Mr. Richard Naidu. He is a lawyer and a former journalist. Mr. Naidu in his evidence explained about the legal services that his law firm provides to the Editorial Department of the Fiji Times Limited. Apart from providing legal service on editorial matters, Mr. Naidu has conducted training sessions for the journalists in the Fiji Times on various issues, such as Media Act, Defamation *etc.*
140. I have summarized the evidence presented during the course of this hearing. However, I might have missed some. It is not because they are not important. You have heard every items of evidence and reminded yourselves of all of them. What I did only to draw your attention towards the main items of evidence and help you in reminding yourselves of the evidence.

Analysis and directions

141. The onus is on the prosecution to prove beyond reasonable doubt that this article is capable of promoting feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji. Then the prosecution has to prove beyond reasonable doubt that the first accused submitted this article, written by him, for the publication in *Nai Lalakai* with the intention to promote the feelings of ill-will and hostility between the Muslims and non-Muslims population of Fiji. Moreover, the prosecution is required to prove beyond reasonable doubt that Mr. Arts published and the Fiji Times Limited printed this seditious article in *Nai Lalakai* newspaper with the intention to promote feelings of ill-will and hostility between the Muslims and non-Muslims population of Fiji. Furthermore, the prosecution has to prove beyond reasonable doubt that Mr. Ravula and Mr. Wesley, with the intention to aid and abet Mr. Arts to publish this seditious article, did not perform their respective contractual duties in assisting Mr. Arts to maintain editorial standards. In order to prove its case, the prosecution presented the evidence in the forms of direct, circumstantial and documentary evidence.

Direct Evidence

142. Sometimes you may find that some facts have been proved by direct evidence. For example, if there is reliable evidence from a witness who actually saw the accused committing a crime; if there is a video recording of the incident that plainly demonstrates his guilt; or if there is reliable evidence of the accused himself having admitted it, these would all be good examples of direct evidence against him.

Circumstantial Evidence

143. On the other hand it is often the case that direct evidence of all the elements of a crime are not available, and the prosecution relies upon circumstantial evidence to prove certain elements. That simply means that the prosecution is relying upon evidence of various circumstances related to the crime and the accused, which the prosecution says, when taken together will lead to the sure conclusion that it was the accused who committed the crime.
144. Circumstantial evidence can be powerful evidence, indeed, it can be as powerful as, or even more powerful than, direct evidence, but it is important that you examine it with care, as with all evidence, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt, or whether on the other hand it reveals any other circumstances which are or may be of sufficient to cast doubt upon or destroy the prosecution case.
145. Finally, you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence, and mere speculation. Speculating in a case amounts to no more than guessing, or making up theories without good evidence to support them.
146. Ladies and Gentleman assessor, it is your duty to examine the evidence presented by the prosecution and the defence, in order to decide whether you accept them or not. The learned counsel for the prosecution and the counsel for the defence, proposed you in their respective closing submissions what inferences you should form, from particular

parts of these evidence. Drawing of inference is a process by which you find from evidence which you regard as reliable, that you are driven to a further conclusion of another fact.

147. Let me give you an example of drawing or forming an inference or a conclusion, which does not arise out of the facts of this case, but will illustrate the need of care in judging whether the facts proved supports the inference of guilt. If my finger print is found in the living room of my neighbour's home, it is a sound inference that at some stage I have been in his living room. It would not, however, support an inference that I was the burglar who stole his DVD recorder from his living room. If you accept my neighbour's evidence that I have never been invited into his home, then, in the absence of some acceptable explanation from me, you might infer that at some stage I had been in my neighbour's home uninvited. You may or may not be driven to the further conclusion that I was the burglar. But, if you also accept that there was a second fingerprint of mine found at the point of entry or, that in my shed there was a DVD recorder found, which my neighbour recognizes as the one stolen from his living room, you would, no doubt, conclude for sure that I was the burglar. You will notice how the inference of guilt becomes more compelling, depending upon the nature and number of the facts and incidents proved.

148. What conclusion or inference you reach from the evidence is entirely for you to decide. However, in considering what inference you should draw or what conclusion you should reach, it is important to be mindful that speculation has no part in this process. The inference must be the only and certain rational conclusion or inference of the guilt of the accused persons. If the evidence that you accepted or considered as reliable that suggests you some other probable inferences or conclusions, which show the innocence of the accused or create a doubt as to the guilt of the accused, you are then not entitled to draw any inference or form any conclusion of guilt of the accused person.

Documentary Evidence

149. The evidence presented in the form of documents is documentary evidence. Accordingly, you can consider the contents and information in these documents as evidence.

Evaluation of Evidence

150. Ladies and Gentleman assessor, I now kindly request you to draw your attention to the directions on evaluation of evidence. It is your duty to determine this case based on the evidence. In doing that, you are required to evaluate the evidence in order to determine the credibility, reliability and truthfulness of them. That will assist you to determine what evidence you may accept and what part of the evidence you may refuse. In doing that, you may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and is correctly recalling the facts about which he or she has testified.
151. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is talking about in the evidence. You should then consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness not only with his or her own evidence but also with other evidence presented in the case.
152. It is your duty to consider the demeanour of the witnesses, how they react to being cross examined and re-examined and were they evasive, in order to decide the credibility of the witnesses and the evidence. Moreover, you have to consider the knowledge of the witness on the facts that he or she was testifying, his disinterestedness, his integrity, and his veracity in order to determine the credibility of the witness and his evidence.

153. Moreover, you must bear in your mind that a witness may tell the truth about one matter and lie about another; he or she may be accurate in saying one thing and not accurate in another thing.
154. In the adversarial system, all the parties who are involved in the hearing are given an opportunity to present their respective case through the evidence, to challenge the credibility, reliability and truthfulness of the evidence adduced by the other parties and suggests their position to the other parties. You can take into your consideration whether the evidence presented by a particular witness was challenged, discredited or suggested otherwise by the opposing parties by presenting evidence, in order to evaluate the credibility, reliability and truthfulness of the evidence. However, I must caution you that the remarks, questions and suggestions put by the counsel are not evidence, unless they are affirmed, confirmed or adopted by the witnesses in their respective answering.

Right to remain in silence

155. Madam assessors and Gentleman assessor, you may recall that the learned counsel for the prosecution in his closing address made some remarks that first, second, fourth accused chose not to give evidence. Moreover, he made some remarks that the third and fourth accused had chosen to exercise their rights to remain in silence during the recording of their respective caution interviews conducted by the police.
156. The accused does not have to give evidence. You must not assume that he is guilty because he has not given evidence. The fact that he has not given evidence proves nothing. It does nothing to establish his guilt. Likewise, a suspect does not need to answer to the questions posed to him during the recording of his caution interview, as he has a right to be in silent. Therefore, you must not take these facts into consideration when you evaluate the evidence in this case.

Agreed Facts

157. I now draw your attention to the agreed facts. They are the facts that the prosecution and the defence have no dispute. Hence, you are allowed to consider them as proven facts beyond reasonable doubt.

Separate Consideration

158. As you can see, each of the five accused persons has been separately charged for one count of Sedition. It is your duty to consider each of these counts and each of these accused persons separately. If you find an accused guilty for one count, that does not automatically make the remaining accused guilty for their charges.

Meaning and the effect of the Article

159. You have seen that all of these five charges are based upon one document that is, the article or the letter written by Mr. Waqabaca. The prosecution alleges that this article, if taken into consideration in its entirety says, that Muslims are land-grabbing monsters who rape, murder, and abuse children. The learned counsel for the prosecution further said that this article says that, unless the readers of *Nai Lalakai* take action, these Muslim monsters would take over Fiji just as they have done in Bangladesh. The language used in this article is extremely inflammatory and it could lead to serious consequences involving public disorder, creation of ill-will and hostility against Fijian Muslims.

160. On the contrary, the defence suggests that this article proposes to have a national reconciliation in order to solve issues that the *i-Taukei* community perceives on the principles of Ten Commandments. It has discussed issues ranging from national debt, land issues, and cultural issues of indigenous people. The defence argues that this article actually suggests to live as a good Christian and not to propagate any ill-will or hostility.

161. Accordingly, as assessors, the main task that you have, is to determine whether this article has the capacity to promote the feelings of ill-will and hostilities between Muslims and non-Muslims populations of Fiji. In order to do that, I propose you to evaluate this article in two steps. Of course, once again I remind you that this is only an approach I am suggesting to you, but it is entirely for you to decide how and what method you would use in evaluating this article, in order to determine whether it is a seditious article or not.

Meaning of this Article.

162. First you have to determine what is the meaning of this article, when it is taken into consideration in its entirety. Whether it has the meaning that the prosecution is alleging or the meaning that the defence is suggesting. You may see another meaning, contrary to those two meanings proposed by the prosecution and the defence.

163. The human mind, even at infancy, is no blank piece of paper. The education process either formal and informal, our interactions with our families, environment and the societies, create and determine our attitudes, values, opinions and views as a human. We see and understand every situation and incident that we encounter in our lives, through these attitudes, values, opinions and views.

164. In this case, you have to determine the meaning of words. Words begin to live when it is uttered or written down. It starts to live in the minds of the viewers, listeners or the readers in different forms. The form of the life of the word is determined through personal attitudes, values, opinions and views of the person. It is this reason why one person may see and understand this article in a manner different to another's understanding. I explain this, because I want to give you appropriate direction on how you must read this article in order to understand its meaning.

165. As I explained you before, if you read this article and interpret it according to your own personal attitudes, views, opinions and values, we call it as a subjective interpretation of this article. However, as you heard from the witnesses, this article was published in the *Nai Lalaka* newspaper in *V-Taukei* language. Furthermore, you heard that *Nai*

Lalakai is mainly read by the *i-Taukei* community who live in rural and outer islands. The elders are the main readership of this newspaper. Therefore, we need to determine how this article was interpreted or understood by these *i-Taukei* readerships. Accordingly, you have to look and read this article through the eyes and minds of these *i-Taukei* readerships. Hence, you must read this article from the eyes and minds of a reasonable, sensible and fair minded *i-Taukei* reader, in order to determine how this reasonable, sensible and fair-minded *i-Taukei* reader understood this article, taking into consideration it as a whole. This is called an objective test.

166. When you apply this objective test in order to understand the meaning of this article, you can take into the consideration the context or the circumstances under which this article was written or published. You have to take into consideration the nature of leadership, their behaviours in social and cultural spheres, the effect or the influence of the issues that have been discussed in the article, the social, historical and demographical context of the two classes of the population in Fiji.
167. When you venture into consider the context or the circumstances under which this article was written and published, you must only consider the evidence presented by the parties during this hearing. You are not allowed to consider the facts, information or opinions from your own knowledge or experiences if they are not presented in the form of evidence by the parties. However, you can apply your own experiences, knowledge and opinion about the society and the human relations in this country in order to evaluate the evidence presented by the parties.
168. You may recall that the learned counsel for the defence, during their respective closing addresses forcefully submitted that there is no evidence, confirming any reaction of ill-will or hostility towards Muslim community by the *i-Taukei* community, after the publication of this article. Actually, the Permanent Secretary in his evidence said that he received inquiries for the clarification about the misinformation that were published in *Nai Lalakai*. IP Nadolo said that he did not receive either complaint or a report regarding any incident of ill-will or hostility between Muslims and non-Muslims communities after the publication of this article. I will now take your attention to the

appropriate directions on this issue of the reaction of the readership on this article during the post-publication period.

169. The offence of sedition completes once you write or publish an article that has a capacity to promote feelings of ill-will and hostility between different classes of the population with the required seditious intentions. It is not necessary, at all, that this offence of seditious publication is followed by an actual riot or disturbance of the public order. It is because, a man cannot escape from the consequence of writing or publishing seditious words with the necessary seditious intention, solely because the audience or the readership to whom it was addressed may be too wise or too temperate to ignore or not to react to it. However, you can take into consideration the reaction of the readership in order to understand the actual meaning of this article.
170. The contention of the defence is that this article only suggests to have a national reconciliation in order to solve the main issues pertaining to *i-Taukei* community, that might cause great instability in future, if not resolved. The defence argues, therefore, that this article is not promoting feelings of ill-will, instead it suggests a way forward in order to remove such concerns.
171. You could recall that Mr. Katonitabua and Mr. Paul Geraghty, in their respective evidence, expressed their opinions about this article. I do not find that such opinion would assist you much in understanding the meaning of this article. An opinion must be based upon facts and correct information.
172. However, if you still consider their opinions, please take into consideration that, as per the evidence given by Mr. Geraghty, he has not much interaction with the *i-Taukei* communities over the last 10 - 15 years since he is much into his academic and teaching works at the University of South Pacific. Moreover, Mr. Katonitabua said that he meets *i-Taukei* communities during the consultation process conducted by the Ministry. Finally, neither Mr. Geraghty nor Mr. Katonitabua represents the general *i-Taukei* readership of *Nai Lalakai*.

173. I trust that you can recall that I explained you that an act, speech or the publication is not seditious if it was done with the one or some of the following intentions, *inter alia*:

- a) *to show that the Government of Fiji has been misled or mistaken in any of its measures; or*
- b) *to point out errors or defects in the government or Constitution of Fiji as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or*
- c) *to persuade the inhabitants of Fiji to attempt to procure by lawful means the alteration of any matter in Fiji as by law established; or*
- d) *to point out, with a view to their removal, any matters which are producing or having a tendency to produce feelings of ill-will and enmity between different classes of the population of Fiji.*

174. If the defence wants to rely on one or few of these grounds, the burden of proof of the existence of these grounds, then, will shift onto the defence. This burden of proof on the defence is different from the legal burden of proof on the prosecution. The defence can discharge this burden of proof by adducing or pointing to evidence that suggests reasonable possibility that the matter exist or does not exist. Unlike the burden on prosecution, the defence is not required to prove it beyond reasonable doubt. This is called, evidential burden of proof. Still the prosecution bears the legal burden of disproving these grounds beyond reasonable doubt, which the defence discharged on evidential burden of proof.

175. Accordingly, the defence is only required to adduce or point out some evidence that suggests reasonable possibility that this article is not seditious on the ground that it suggests to have a National reconciliation in order to remove the issues which could cause great instability in the future. If the defence adduced or pointed out such evidence, the prosecution has a legal burden to disprove the existence of such an intention or meaning in the article beyond reasonable doubt.

176. I trust that you can recall the answers given by Mr. Karonitabua when he was asked about part one of the first passages of this article. He explained the meaning of national

reconciliation as a good idea, though the government has no policy to conduct such a reconciliation process. He further agreed that there is no word in this article to suggest that Muslims are land grabbing monsters. Moreover, at the conclusion of the cross examination by the learned counsel for the fifth accused, Mr. Katonitabua agreed that letter suggest the government to have a reconciliation process to address the issues face by the *I-Taukei* communities. I invite you to carefully scrutinize the evidence given by the witnesses, to see whether the defence has pointed out or adduced any evidence to suggest that this article actually falls into one or few of those exceptions. In doing that, you can take into consideration the answers given by Mr. Waqabaca in his caution interview.

177. The prosecution presented in evidence, the record of the caution interview of Mr. Waqabaca. The defence did not challenge the truthfulness of the answers recorded in the caution interview.
178. It is for you to decide whether the content of the caution interview is truthful, and what weight you give to them as evidence. It is for you to decide whether you consider the whole of the caution interview or part of it or none of it as truthful and credible. You must consider all other evidence adduced during the course of the hearing, in deciding the truthfulness and the reliability of the confessions and its acceptability.
179. I invite you to consider question 68 of the caution interview and its answer. The learned counsel for the prosecution, during his closing address suggested that, one sentence in this answer confirmed the intention of Mr. Waqabaca. However, you have to read this answer in its entirety, in order to understand the meaning of it. As I said before, you must then consider this answer with all other evidence adduced in order to decide whether you can rely on this answer as truthful and credible evidence.
180. In this article, Mr. Waqabaca has said that he has given a copy of this petition to the Hon Attorney General. There is no evidence to suggest otherwise. IP Nadolo said that he did not conduct an investigation to confirm whether Mr. Waqabaca had actually given the Hon Attorney General such a petition. These facts must be taken into

consideration with all other evidence presented during the trial in order to determine the meaning of this article

181. Moreover, you may recall that the Permanent Secretary in his evidence said that there is a historical issue pertaining to the *i-Taukei* land ownership in Serua, Lodoní, Namená and Dawasamu as stated in paragraph six (06) of this article.
182. If you accept that this article is not seditious on the ground that it suggests to have a National reconciliation in order to remove the issues which has a tendency to create instability in future then the meaning and the intention of this article falls in one or few of the four exceptions I mentioned above. If then the case of the prosecution is failed and you must find the accused are not guilty for these offences.
183. Even though you do not accept, but still have doubts whether this article is seditious or not, on the ground that it suggests to have a National reconciliation in order to remove the issues which has a tendency to create instability in future, making the meaning and the intention of this article, may or may not, fall in one or few of the four exceptions, still the case of the prosecution is failed and you must find all the accused not guilty for these offences.
184. Even if you reject the version of the defence or has no doubts about it, that does not mean that the interpretation of the article, as alleged by the prosecution is true. Still you have to see whether the prosecution has proven beyond reasonable doubt whether this article states, if taken into consideration in its entirety, that Muslims are land-grabbing monsters who rape, murder, and abuse children and also suggests that unless the readers of *Nai Lalakai* take action, these Muslim monsters would take over Fiji just as they have done in Bangladesh.
185. If you have any doubt that the meaning of this article is not the same as alleged by the prosecution, then the case of the prosecution is failed and you must find the accused not guilty for these offences.

186. If you find that the only meaning of this article, if taken into consideration in its entirety, that Muslims are land-grabbing monsters who rape, murder, and abuse children and that unless the readers of *Nai Lalakai* take action, these Muslim monsters would take over Fiji just as they have done in Bangladesh, you must then proceed to consider whether this article has a capacity or tendency to promote feelings of ill-will and hostility between Muslims and non-Muslims populations of Fiji.

Feelings of ill-will and Hostility

187. Ill-will means animosity or bitterness. Hostility means enmity or antagonism. You have to adopt an objective test in order to determine whether this article, if taken as a whole has the tendency to promote the feelings of ill-will or hostility between the Muslims and non-Muslims population of Fiji. The test is to look at this article objectively through the eyes and mind of a reasonable, sensible and fair-minded *i-Taukei* reader.

188. I will now take your attention to the appropriate direction which would assist you to properly determine whether this article has the tendency to promote feelings of ill-will and hostilities thus making it a seditious article. The feelings of ill-will and hostilities between different classes of the population become seditious according to the circumstance and the context under which it was written or published. For an example, a man wrote a letter and published it in a newspaper attacking the vegetable farmers in the Western Region, alleging that they are in a conspiracy to keep up the high price of vegetable. Literally, this writing can promote feelings of ill-will or hostilities between two classes of the population, namely the vegetable farmers in Western region and the consumers in Fiji. Depending upon the circumstances or the context it was made, it can be seditious. Therefore, you have to consider the effect that this article has on the intended readership and the extent of which that effect can go. You have to consider whether that effect can go to the extent of affecting the public order or the tranquility of the State. I say so because, as I discussed above, the purpose of this offence is to prevent the unlawful attack on the tranquility of the State.

189. I will now explain you how the feelings of ill-will and hostility between different classes of the population could affect the tranquility of the State or the public order of the State.
190. According to Montevideo Convention on the Rights and Duties of States, the main criteria for the statehood are that:
- i) A defined territory;
 - ii) Permanent population;
 - iii) Government;
 - iv) Capacity to enter into relationship with other State.
191. Accordingly, an animosity, antagonism or hostility among the classes of population could have an effect to the order of the State, depending upon the nature of the classes of the population involved in such an animosity. Moreover, the social, economical, cultural, and demographic context of these classes would assist you in order to determine the degree of the effect of such feelings of ill-will and hostilities. Therefore, you have to take into consideration all of the circumstances that was existed at the time of this article was written and published, in order to determine whether this article has the tendency to promote the feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji with such an effect.
192. Once again I must caution you that you are only allowed to consider the evidence presented by the parties during the course of this hearing, in order to determine the context or the circumstances under which this article was written and published.
193. With these directions, I now invite you to endeavour in determining the meaning of this article and then determine whether it has a tendency to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji. When you deal with the article, you must not pause upon an objectionable or strong word, sentence or a passage. Such strong words or language should not influence you. You must take into consideration the whole article in its entirety. You must look at this article in a free, fair

and liberal spirit. You must deal with this article in a spirit of freedom and not through the eyes of narrow criticism.

194. Any person in this country can lawfully express his opinion on any public matter, however, distasteful, however, repugnant to others, as long as he stays within lawful limitation stipulated by the laws of the country. He can state his opinion freely with his arguments. He can persuade others to share his view. He may criticize any politician or attack policies and projects implemented by the government. He can warn the government or the executive of a particular course.
195. However, he could not use the language calculated to promote feelings of ill-will and hostility between the classes of the population and to create public disorder and disturb the tranquility of the state.
196. Once again I recommend you to look at this article with an objective test and do not focus merely on one word, a sentence or a passage, but the whole article in a free, fair and liberal view.
197. If you find that this article has no tendency to promote feelings of ill-will and hostility as alleged by the prosecution, the prosecution case is failed and you must conclude that these five accused are not guilty for these offences.
198. If you find that this article may or may not have a tendency to promote feelings of ill-will and hostility as alleged by the prosecution, still you must conclude that these five accused are not guilty for these offences.
199. If you find beyond reasonable doubt, that the only conclusion that you can reach is that this article has a tendency to promote feelings of ill-will and hostility as alleged by the prosecution, you can conclude that this is a seditious article.
200. If you are satisfied beyond reasonable doubt that this article is a seditious article, you can then deem that the writer Mr. Waqabaca, the publisher Mr. Arts and the printer Fiji Times Limited have intended the natural consequence which would naturally follow

from the conduct of the writing, publishing and the printing of this seditious article. This is not a presumption that can be taken as true, unless the contrary is proven by the defence on the balance of probability. It is proper for the fact finder to form an inference as such, unless there are no other possible inferences that could create a doubt about the existence of such seditious intentions.

201. I must advise you that it is still the onus of the prosecution to prove beyond reasonable doubt that this is the only indisputable inference that the three accused who wrote, published and printed this seditious article respectively, had intended the natural consequence which would naturally follow from the conduct of the writing, publishing and the printing of the article.

Mr. Hank Arts

202. I now invite you to consider whether you can deem that Mr. Arts and the Fiji Times Limited by publishing and printing this seditious article has only intended the natural consequence which would naturally follow from the conduct of the writing, publishing and the printing of the article or are there any other possible inference as well.
203. The fourth Accused, though he did not adduce any evidence, maintains a position that he never saw or read this article that was published. Mr. Wesley and three witnesses of the third accused in their respective evidence said that Mr. Arts normally has no influence on the editorial matters. He cannot read or speak *i-Taukei* language. The prosecution relies on the employment contract of Mr. Arts as a circumstantial evidence to prove that he knew about this article before it was published.
204. According to the evidence given by Mr. Wesley, Mr. Arts is the person who sets the tone for the entire process. The managers of all the department come under his authority, including the Editor-in-Chief. Mr. Wesley further said that Mr. Arts relies on him in relation to the matters pertaining to the editorial department. Mr. Arts is the person who manages everything, in order to publish the *Nai Lalakai* newspaper and carries it to the public readership. As per his duties as stated in his contract, his role as the publisher is to engage in publishing newspapers.

205. Moreover, the defence adduced evidence to establish that the Fiji Times Limited is very much concerned about its editorial standard and had made all possible efforts to avoid legal dispute in publishing.
206. Mr. Maharaj and Mr. Ravai in their respective evidence said that it was Mr. Ravula who entered this article to Pon grass system and edited it twice before it was sent for graphic and printing. Moreover, the caution interview of Mr. Arts states that he cannot speak or read *i-Taukei* language. It was further confirmed by Mr. Wesley and Ms. Unaisi. Having taken into consideration all of these evidence, do you think that you have any evidence to establish that this article has ever gone to Mr. Arts, or Mr. Arts have ever came to know about this article before it was published in *Nai Lalakai*. You cannot find a man guilty for an offence without satisfying beyond reasonable doubt whether he has the necessary knowledge or intention to conduct that alleged act.
207. Having considered all of these evidence, you must now determine whether you can positively and conclusively form an inference that Mr. Arts intended the natural consequence of his conduct of publishing this edition of *Nai Lalakai*, containing this seditious article or you could form some other inferences as well, suggesting otherwise or creating doubts about the above conclusion.
208. Having considered all of these evidence, if you are satisfied or have any doubts that Mr. Arts had no intention to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji, you must find Mr. Arts not guilty for this offence as charged.
209. If you find that you can safely form undeniable and indisputable inference that Mr. Arts had published this article in *Nai Lalakai* on the 27th of April 2016, with an intention to promote feelings of ill-will and hostility between Muslims and non-Muslims population of Fiji, you must find him guilty for this offence.

Fiji Times Limited

210. Now you have to proceed to consider whether Mr. Arts is a high Managerial agent of the Fiji Times. If you are satisfied that he is a high managerial agent of the Fiji Times, and has expressly, tacitly, or impliedly authorized or permitted the printing of this seditious article in the *Nai Lalakai* edition dated 27th of April 2016 with an intention to promote feelings of ill-will and hostility between non-Muslims and Muslims population of Fiji, you must find the Fiji Times Limited is guilty for the offence as charged under count five.

Mr. Fred Wesley

211. Mr. Fred Wesley is being charged for aiding and abetting Mr. Arts to publish this seditious publication. If you are satisfied that the prosecution has presented evidence to establish beyond reasonable doubt that Mr. Wesley with an intention to aide or abet Mr. Arts did not performs his contractual duty, that is to assist Mr. Arts to maintain the editorial standards and also prevent Mr. Arts in publishing seditious article. Then you can find him guilty for the offence that he is being charged.
212. I invite you to consider these evidences, when you consider the charge that Mr. Wesley is being charged. Mr. Wesley in his evidence said that he never saw or came to aware about this article. The evidence of Mr. Ravai confirms that it was Mr. Ravula who entered this article into the Pon grass system and sent for the printing.
213. Moreover, I take your attention to the last few question put to Mr. Wesley by the learned counsel for the prosecution, which I reproduce as follows:

Q. I'm coming towards the end, Mr. Wesley. The point I've got to is where I'm going to suggest my case to you. You might not agree with it. Now, what I'm suggesting, Mr. Wesley, is this, that there is not a snowball's chance in hell, if I can put it like that, that you would have allowed a letter to be published in Nai Lalakai without knowing what it said. You simply wouldn't have allowed it?

- A. *If I did not know what it said, yes, your Lordship.*
- Q. *You're agreeing with me?*
- A. *You asked me, your Lordship, whether I would allow a letter to run if I did not know what it said?*
- Q. *Yes.*
- A. *Yes, I wouldn't allow it.*
- Q. *So, you agree with me and the obvious reasons are it's simply too risky, for the reasons you've told us about, isn't it?*
- A. *Your Lordship, I've said this a couple of times, your Lordship. Before I agree on a letter that needs to run, I will either, if it was with the *Nai Lalakai* I would expect the translation, then I would refer it up to the lawyers, your Lordship, before I would ever run the letter.*
- Q. *You see, Mr. Wesley, what I am suggesting to you is that you did know very well the content of the letter published in the *Nai Lalakai* on the 27th of April 2016 before it was published?*
- A. *No, your Lordship.*
- Q. *And what I'm suggesting is that you've been largely truthful in your evidence but on this specific issue, with your knowledge, you are not telling the truth to this Court?*
- A. *I am telling the truth, your Lordship.*
- Q. *The reason you're not telling the truth is because you want to cover it up because you know very well that you made a mistake to allow that to be published?*
- A. *Your Lordship, I have no knowledge of the letter, your Lordship.*
- Q. *Thank you, Mr. Wesley, I have no further questions.*

214. While putting the prosecution case to Mr. Wesley, the learned counsel for the prosecution suggested to Mr. Wesley that he made a mistake by letting this article to be published and now he is lying in order to cover it up. If you accept the version of the prosecution that Mr. Wesley made a mistake by letting this article to be published, obviously you can conclude that Mr. Wesley had no intention to aid and abet Mr. Arts in publishing this article.

Mr. Ravula

215. Mr. Ravula is being charged for aiding and abetting Mr. Arts to publish this seditious publication. If you are satisfied that the prosecution has presented evidence to establish beyond reasonable doubt that Mr. Ravula with an intention to aide or abet Mr. Arts did not performs his contractual duty, that is to assist Mr. Arts to maintain the editorial standards and also prevent Mr. Arts in publishing seditious article. Then you can find him guilty for the offence that he is being charged.
216. Moreover, if you are satisfied that it was Mr. Ravula who has actually entered this article to the Pon grass system and send for the publication, you can consider whether you can find him guilty beyond reasonable doubt for the offence of publication of this article, though you have no evidence to satisfy that he aided and abetted Mr. Arts in publishing this article.

Final Directions

Mr. Waqabaca

217. Having considered all the evidence presented during the course of the hearing, if you find that the prosecution has proven beyond reasonable doubt that Mr. Waqabaca has committed the offence as charged, you must find him guilty for the offence as charged.
218. If you find that the prosecution has failed to prove beyond reasonable doubt that Mr. Waqabaca has committed the offence as charged, you must find him not guilty for the offence as charged.

Mr. Anare Ravula

219. If you find that the prosecution has proven beyond reasonable doubt that Mr. Anare Ravula has committed the offence as charged, you must find him guilty for the offence as charged.

220. If you find that the prosecution has failed to prove beyond reasonable doubt that Mr. Ravula has committed the offence as charged, you must find him not guilty for the offence as charged.

Mr. Fred Wesley

221. If you find that the prosecution has proven beyond reasonable doubt that Mr. Fred Wesley has committed the offence as charged, you must find him guilty for the offence as charged.

222. If you find that the prosecution has failed to prove beyond reasonable doubt that Mr. Fred Wesley has committed the offence as charged, you must find him not guilty for the offence as charged.

Mr. Hank Arts

223. If you find that the prosecution has proven beyond reasonable doubt that Mr. Arts has committed the offence as charged, you must find him guilty for the offence as charged.

224. If you find that the prosecution has failed to prove beyond reasonable doubt that Mr. Arts has committed the offence as charged, you must find him not guilty for the offence as charged.

The Fiji Times Limited

225. Likewise, if you find that the prosecution has proven beyond reasonable doubt that Fiji Times Limited has committed the offence as charged, you must find it guilty for the offence as charged.

226. If you find that the prosecution has failed to prove beyond reasonable doubt that Fiji Times Limited has committed the offence as charged, you must find it not guilty for the offence as charged.

Conclusion

227. Madam assessors and Gentleman assessor, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinions. You will be asked individually for your opinion and will not require to give reasons for your opinion. When you have reached to your opinion, you may please inform the clerks, so that the court could reconvene.
228. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?




R.D.R.T. Rajasinghe
Judge

At Suva
18th May 2018

Solicitors

Office of the Director of Public Prosecutions for the State
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R Patel Lawyers for Accused 2
Munro Leys for Accused 3 & 4
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