IN THE HIGH COURT OF FIJIAT SUVA

In the matter of an appeal under section 246(1) of the Criminal Procedure Act 2009.

FICAC

Appellant

CASE NO: HAA. 50 of 2017
[MC Suva, Crim. Case No. 01 of 2017]

Vs.

MAHENDRA REDDY

Respondent

Counsel	:	Mr. R. Aslam & Mr. Savumiramira for Appellant
		Mr. D. Sharma for Respondent
Hearing on	:	14 May 2018
Judgment on	:	22 June 2018

JUDGMENT

1. The respondent was charged before the Magistrate Court with one count of bribery and one count of undue influence contrary to section 140 (2) and section 141 of the Electoral Act No. 11 of 2014 respectively. The charges were as follows;

FIRST COUNT

Statement of Offence

BRIBERY: *contrary to section 140 (2) of the Electoral Act No. 11 of 2014.*

Particulars of Offence

MAHENDRA REDDY, *on or about the 8th day of May 2017 at Rakiraki in the Western Division, in order to influence the vote of* ***WAISEA LEBOBO,*** *the Manager of Ra High School, directly conferred or offered to confer a benefit namely a steady water source for the Ra High School.*

SECOND COUNT

Statement of Offence

UNDUE INFLUENCE: *contrary to section 141 of the Electoral Act No. 11 of 2014.*

Particulars of Offence

MAHENDRA REDDY, *on or about the 8th day of May 2017 at Rakiraki in the Western Division, interfered with the free exercise or performance of a political right of one* ***WAISEA LEBOBO****, that is relevant to the 2018 Election.*

2. After trial, the Learned Magistrate found the respondent not guilty of both the above charges and the respondent was accordingly acquitted on 01/12/17. Being aggrieved, the appellant assails the said decision of the Learned Magistrate on the following grounds of appeal;

   (a) That the Learned Magistrate erred in law and facts by deciding that the promise made by the Respondent appear to fall squarely within the statutory defence.

   (b) That the Learned Magistrate erred in law and fact by deciding that the intended benefit was not for personal benefit of PW1, Waisea Lebobo, but for the Ra High School and surrounding villages and settlements as basis to decide that the actions of the Respondent was a promise of a public action.

   (c) That the Learned Magistrate erred in law and facts, and misconceived by stating that the contention of the State was that the words in particular "this government will not look after you if you go on TV" constituted undue influence.

   (d) That the Learned Magistrate erred in law and facts by falling to consider and analyze all the words uttered by the Respondent in totality and in particular the most relevant words "So we will watch next year and after the election, if you are with us, don't worry,..."would constitute undue influence that would hinder or interfere with Waisea Lebobo exercising his political right in the 2018 General Election.

   (e) That the Learned Magistrate erred in law and facts by stating that State needed to offer further circumstantial evidence to strengthen the basis of the charges.

   (f) That the Learned Magistrate erred in law and facts by failing to consider and analyze all evidence available against the elements of the offences objectively.

   (g) That the Learned Magistrate erred in law and facts by deciding that the State has not provided any evidence as to how the exercise of Waisea Lebobo's political rights has been hindered or interfered with by the Accused.

   (h) That the Learned Magistrate erred in law by failing to consider the Political Rights available for Waisea Lebobo under the 2013 Constitution of the Republic of Fiji.

Facts in brief

3. According to the submissions made on behalf of the appellant before this court and according to the written submissions filed before the magistrate court it is clear that both the charges are based on an answer the respondent who was the Minister of Education at that time gave in response to a question posed to him by one Waisea Lebobo, the first prosecution witness ("PW1"), during a ceremony at Ra High School on 08th May 2017.

4. There was no clear evidence on the exact question that was asked by PW1. PW1 had initially stated in his evidence that he cannot exactly remember the question he asked, but had stated that he *"did raise the issue of the water"*. Then he says *"I have often raised in the other meetings. As usual, when the Minister sees me, I always ask questions about the water. I asked what he is doing about the issue raised before with the water"*. He further says, *"That is usual – when we meet the Minister or the Prime Minister – we raise issues. The problem with the water, There is a major problem with water shortage. The water shortage affect the school"*.

5. With regard to the response given by the respond, PW1 initially says that *"I can't clearly recall the response to my question that date – only some of the words I can recall. As far as I can recall – Dr. Reddy – told me don't go to the media – because I had clearly said some issues to him and I put it to the media. Dr. Reddy answered relates to the water – if I am with them next election – then water will be given. That is what I recalled"*.

6. However, in the cautioned interview statement that was tendered as P(5) by the appellant the respondent agrees that he was asked by a manager of one of the schools in Ra on the need of their school to have a steady water source (Q.58). In Q.61 it was put to the respondent that he made the following statement in answer to the question posed by the aforementioned manager where the respondent had answered *"I think that is true"*;

> *"next year after election but you should not go on TV and say this government is not doing anything, this government is not good, if you are doing that we are not going to look after you. So we will watch next year and after the elections if you're with us, don't worry. Ok tamana vinaka."*

7. In the written submissions filed before this court the appellant submits at paragraph 1.7 that the respondent made the following statement as the answer to the question posed. There is a slight variation from what is stated in the cautioned interview where the first two words and the last word are repeated. The statement reads;

> *"Next year, next year, after election .... but you should not go on TV and say this government is not doing anything, this government is not good: if you are doing that, we are not going to look after you. So we will watch next year and after the elections if you are with us, don't worry. OK tamana vinaka vinaka."*

8. According to the submissions filed on behalf of the respondent, the answer the respondent gave was as follows;

> *"Next year next year after budget... but you should not go on TV and say this government is not doing anything .. this government is not good.. You stop doing that and we will look after you. So we will watch next year and after the elections, if you are with us, don't worry. ok tamana vinaka."*

9. Two significant differences can be noted between the version submitted by the respondent and that of the appellant. The first difference is, as noted in the first line in the appellant's version, the respondent had said "after election"; but the respondent submits that he said "after budget". The second difference as noted in the third and fourth lines of the two versions above is, according to the appellant, the respondent had said *"if you are doing that, we are not going to look after you"*; but according to the respondent what he said was *"You stop doing that and we will look after you"*. For the reason that the prosecution case was heavily if not entirely based on the statement made by the respondent, it was crucial to ascertain the exact words spoken by the respondent. The Learned Magistrate in his judgment however, appear to have accepted what was submitted by the appellant in the written submissions as the answer given by the respondent.

10. It is pertinent to note that the appellant had through the fourth prosecution witness ("PW4") who is said to be a freelance journalist based in Rakiraki had tendered as

P(3) a DVD that contains footage of the response of the respondent in question. Since there was no consensus among the parties on the said response, I took steps to view the said footage. I noted that the question asked by PW1 to which the answer that is the subject matter of this case was given is not recorded in the said footage. After the conclusion of what it seems like the formal speech made by the respondent what is captured in that footage is the respondent giving the aforementioned answer but in a different setting. PW4 had stated in his evidence that he did not record the question due to the storage capacity of his device. From the said footage recorded in P(3), what I could gather is that the respondent had stated;

> *"next years .. next years .. after election [... make] the budget... but you should not go on TV and say this government is not doing anything, this government is not good, you stop doing that.. we will look after you, ok... So we will watch in next year after the elections if you are with us, don't worry, ok tamana .. vinaka, vinaka"*

11. The respondent is seen smiling when he is making the above statement. According to the answers given by PW1 in his evidence he had previously raised the issue regarding water because of the school children. PW1 had stated that after hearing the response from the respondent, he thanked him and joked to the others that they will get the water. He had also stated that he was asked by the respondent to write a letter to be taken to Suva during the grog session.

12. When the submissions were made the appellant joined certain grounds together and formed four sets stating that the grounds were joined given the close link to the issues raised. I will also deal with the grounds accordingly.

Grounds A and B

13. The above grounds relates to the first count of Bribery under section 140(2) of the Electoral Act. Having considered the two grounds, I find that there is only one issue raised on both grounds. That is, whether the Learned Magistrate erred by deciding that the conduct of the respondent fell within the scope of the defence provided

under section 140(3) of the Electoral Act. This issue is raised in ground A and the contents of ground B appears to be the erroneous reasoning according to the appellant which led the Learned Magistrate to come to the aforementioned conclusion pertaining to the defence under section 140(3) of the Electoral Act.

14. Section 140(2) of the Electoral Act reads thus;

> Any person who, in order to influence or affect any—
>
> (a) vote of another person;
>
> (b) candidature of another person; or
>
> (c) support of, or opposition to, a candidate or a political party by another person,
>
> gives or confers, or promises or offers to give or confer directly or through any other person, any property or benefit of any kind to that other person or to a third party, commits an offence and shall be liable upon conviction to a fine not exceeding $50,000 or to a term of imprisonment not exceeding 10 years, or to both.
>
> (3) This section does not apply in relation to a declaration of public policy or a promise of public action.

15. The elements the prosecution should prove in order to bring home a charge under section 140(2) of the Electoral Act could be identified as follows;

a) The accused;
b) gave or conferred/ or promised or offered to give or confer, to another person;
c) any property or benefit of any kind;
d) in order to influence or affect any vote/ candidature/ support of, or opposition to, a candidate or a political party, by that other person.

16. According to the relevant provisions; the giving, conferring or the promise or offer to give or confer could be either directly or through any other person. Moreover, the above section does not apply in relation to a declaration of public policy or a promise of public action.

17. The act of giving or the conferring of the property or the benefit should be done with the intention of influencing or affecting any vote/ candidature/ support of, or opposition to, a candidate or a political party by that other person. The prosecution is not required to prove that there was in fact an influence on the other person or that the other person was affected as provided in the above section.

18. In this case, according to the relevant particulars, the allegation was that the respondent directly conferred or offered to confer a steady water source for the Ra High School as a benefit to PW1 in order to influence PW 1's vote. The Learned Magistrate found the respondent not guilty of count one as he decided that the statement made by the respondent can be described as a promise of a public action and therefore falls within the defence provided under section 140(3) of the Electoral Act.

19. The appellant extensively argued that the said statement should not be regarded as a promise of a public action for a number of reasons *inter alia*;

    a) A public promise cannot be politically biased to favour a limited group who are willing to support him and cannot be coupled with a direct or indirect threat;
    b) The statement of the accused had a *quid pro quo* effect;
    c) It was coupled with a warning that the witness should not criticize the government on TV;
    d) The promise had nothing to do with the function the respondent attended which was the official launching of a hand book of the Ministry of Education;
    e) The respondent had stated in his cautioned interview that the statement was made on the spur of the moment and a promise of a public action cannot be made in such a way;
    f) The respondent was not the person responsible to action the request;
    g) If the statement was a promise of a public action , the respondent did not have to apologise later as he had admitted in his cautioned interview;
    h) Given the suggestion on behalf of the respondent during the cross-

examination of the prosecution witnesses that there was laughter when the respondent made the statement and that it was taken lightheartedly, the statement cannot be a promise of a public action.

20. Before, I deal with the issue whether the Learned Magistrate erred by arriving at the conclusion that the conduct of the respondent came within the purview of section 140(3) of the Electoral Act, I consider it is necessary to examine the evidence available on the main elements of the offence.

21. According to the evidence presented before the Learned Magistrate, it was PW1 who asked a question about water from the respondent. As I have stated before, there was no clear evidence as to the exact question that was asked. The admission in the cautioned interview in relation to question 58 is only about the nature of the question asked.

22. At least the word 'water' is not found in the answer which is the subject matter of this case where the allegation is that 'a steady water source for the Ra High School' was offered as a benefit by making that statement or giving that answer. In my view, it makes it more difficult to ascertain what exactly was meant by an answer of such a nature as the one that is said to have been given in this case without having the benefit of knowing the exact question to which that answer was given.

23. The answer given by the respondent can be broken down to three parts.

24. The first part of the answer refers to a period of time. According to the appellant's submissions the time provided by the respondent is 'next year after election' and this is the time given in relation to the question asked by PW1 regarding water.

25. But according to exhibit P(3), the respondent talks about the time the budget will be prepared. He says something to the effect that, 'next year after election there will be the budget'. The respondent does not complete the sentence meaningfully, but then goes into a different issue, the issue of criticizing the government on TV which I consider as the second part of his answer or the statement. It is difficult to gather

from this part of the answer that anything was offered or a promise was given.

26. In the second part of the answer the respondent initially says "*you should not go on TV and say this government is not doing anything, this government is not good*". What the respondent said immediately thereafter is in dispute. According to the appellant's submission which the Learned Magistrate seems to have accepted, the respondent had said "*if you are doing that, we are not going to look after you*". According to the submissions of the respondent he said "*you stop doing that and we will look after you.* Again according to P(3) what could be gathered is "*you stop doing that.. we will look after you, ok*". It is clear that what is recorded in P(3) is more in line with what was submitted on behalf of the respondent. One would find that the version as stated in the appellant's submission is more of a warning or a threat but what is heard in P(3) is more of a request and an assurance. I would not however rule out that these words can also be interpreted to mean that 'we will not look after you unless you stop doing that'. Nevertheless, even in this second part, there is no clear promise in relation to water. The words "we will look after you" entails a very broad meaning.

27. Then the third part of the answer which is not in dispute is "*So we will watch next year and after the elections if you are with us, don't worry, ok tamana .. vinaka, vinaka*". The question I would ask is, can an irresistible inference be drawn that by uttering the aforementioned words, the respondent offered to give or confer a steady water source for the Ra High School? I am not convinced that the words in this part of the answer would satisfy beyond reasonable doubt that the respondent made a promise in relation to providing water.

28. Though it can be argued that the entire answer given by the respondent and especially when he said "we will look after you" and "don't worry", would suggest that whatever the requested made by PW1 will be provided by the government, if PW1 is with the government after the election in the following year; that is not the only inference that could be drawn from that answer. One can argue that the respondent had given an evasive answer in an attempt not to commit himself for anything, in that, by saying "we will look after you" or "don't worry" the

respondent had in fact avoided giving a direct answer to the issue raised by PW1 and the respondent has not promised to carry out a particular task or to provide what was requested by PW1.

29. The statement made by the respondent considered in its entirety and given the position the respondent held as a Government Minister, may be viewed as unwise and inappropriate. But I am unable to accept that the said statement constitutes a conferring or an offer to confer a benefit within the meaning of section 140(2) of the Electoral Act in the form of a steady water source to the Ba High School.

30. As I have pointed out, the evidence adduced by the prosecution does not establish beyond reasonable doubt that the respondent conferred or offered to confer a steady water source for the Ra High School. However, even if one assumes that, by giving that answer the respondent did make a promise to provide water to the Ra High School or the said answer led PW1 to assume that the respondent made such promise, in my view, that promise does fall within the purview of a promise of a public action. Providing water to a public school is indeed a public action.

31. In order to establish the offence on the first count the prosecution should also prove beyond reasonable doubt that the offer to confer a benefit was made in order to influence the vote of PW1. Given the fact that the answer which is the subject matter of this case was an impromptu answer given in response to a question asked by PW1 in front of an audience and considering the words used by the respondent, the contention that the only and the irresistible inference that could be drawn from that answer is that the respondent intended to influence the vote of PW 1 through that answer, is not convincing.

32. In light of the foregoing, I find that grounds A and B are devoid of merit.

Grounds C & D

33. These two grounds are relevant to the second count which is framed under section 141 of the Electoral Act. The said section reads thus;

Undue influence

141. Any person who hinders or interferes with the free exercise or performance by any other person, of any political right or duty that is relevant to an election commits an offence and shall be liable upon conviction to a fine not exceeding $50,000 or to a term of imprisonment not exceeding 10 years, or to both.

34. Accordingly, the elements could be discerned as follows;
    a) The accused;
    b) Hindered or interfered;
    c) with the free exercise or performance of any political right or duty by any other person;
    d) that political right or duty is relevant to an election.

35. Ground C reads thus;

    That the Learned Magistrate erred in law and facts, and misconceived by stating that the contention of the State was that the words in particular "this government will not look after you if you go on TV" constituted undue influence

36. In the written submissions filed before this court at paragraph 4.2, the appellant states thus;

    4.2 The Prosecution respectfully submits that the learned magistrate's understanding of the Prosecution's case has been tainted with a grave misconception of primary evidence available as to which portion of the statement of the Accused in fact allegedly caused hindrance or interference. ***The learned magistrate was of the view that the relevant portion in particular was "this government will not look after you if you go on TV". This was not the case*** *and that was* ***not the main portion*** *of the statement* ***the Prosecution relied upon to show an inference of hindrance or interference.*** [Emphasis added]

37. Paragraph 3.18 of the closing submissions filed by the appellant is reproduced below. The same content is found in the written submissions filed by the appellant

on the application for no case to answer at paragraph 4.16;

> *3.18 The type of coercion by the Accused provides a text book example of undue influence as quoted above in* ***Hudson v Entsch*** *(supra). As per Rogers on Elections, undue influence could constitute by compelling or frightening the witness (PW1) into voting or abstaining from voting otherwise than he freely wills. The* ***wordings*** *of the answer of the Accused* ***especially,*** *stating that* ***'but you should not go on TV and say this government is not doing anything, this government is not good, if you are doing that, we are not going to look after you....' creates an inevitable fear in the mind*** *of PW1 that if he does not support the Accused or his party, his need for water would not be fulfilled.* [Emphasis added]

38. Having reproduced the above paragraph from the written submissions filed on behalf of the appellant, I do not see the necessity of saying anything more regarding the allegation made in ground C, apart from stating that the Learned Magistrate was not misconceived when he said in his judgment that;

> *"The state contends that those words* ***particularly*** *the veiled threat that "this government will not look after you if you go on TV" constituted undue influence that would hinder or interfere with Waisea Lebobo exercising his political rights in the 2018 General Election."* [Emphasis added]

39. Ground D reads thus;

> *That the Learned Magistrate erred in law and facts by falling to consider and analyze all the words uttered by the Respondent in totality and in particular the most relevant words "So we will watch next year and after the election, if you are with us, don't worry,..."would constitute undue influence that would hinder or interfere with Waisea Lebobo exercising his political right in the 2018 General Election.'*

40. I am unable to agree with the appellant that the Learned Magistrate had failed to consider all the words uttered by the respondent in totality. In his discussion on the second count, the Learned Magistrate had referred to the full version of the statement submitted by the appellant.

41. The appellant had raised a second issue on the same ground that is related to the above issue that was discussed, in the sentence found immediately after the words that are quoted from the respondent's answer. That is on the inference to be drawn had the Learned Magistrate considered all the words of the statement in question and in particular the words the appellant highlights now as the most relevant words. This additional issue is in fact again raised in ground H and G.

42. The appellant points out that the Learned Magistrate had contradicted himself when he said that *"[t]here is no conclusive evidence as to how a statement made on or about 8th May 2017 will adversely interfere with this registered voter exercising his political rights in a yet to be declared General Election scheduled some time in 2018"* because the Learned Magistrate had also made a finding that *"Waisea Lebobo is clear that the promise by the Accused as Minister at the time in question caused him to change his political allegiance."*

43. I have gone through the evidence of Waisea Lebobo (PW1) and I note that he had given an answer during his examination in chief to the effect that he changed his political allegiance on the question of water. Again there is an answer during re-examination *"We change our party to get water"*. Therefore, I cannot find fault with the Learned Magistrate's aforementioned finding. However, there is another answer of PW1 during examination in chief where he had stated that he did not change allegiance. During cross-examination he had stated that *"No undue influence put on me to put on that day – election date – On the day of election – I will go – register – cast my vote on my own – On that day – I decide who I vote for"*.

44. It could be understood from PW1's evidence that he was clear in his mind that this change of political allegiance he mentioned, had nothing to do with his decision on casting his vote on the day of election. In other words, according to PW1, it did not occur to him that the respondent intended to influence him on his decision regarding his vote on the next election.

45. Under the heading '**interference with the free exercise or performance of a political right**' in paragraphs 3.6 to 3.9 of the closing submissions filed before the

Learned Magistrate, the appellant discusses about the rights stipulated under section 23(1) of the 2013 Constitution which reads thus;

(1) Every citizen has the freedom to make political choices, and the right—
  (a) to form or join a political party;
  (b) to participate in the activities of, or recruit members for, a political party; and
  (c) to campaign for a political party, candidate or cause.

46. In paragraph 3.9 the appellant says that "*in assessing whether the political rights of the PW1 has been interfered with, the court may inevitably have to consider the above political rights and freedom enshrined in the Constitution*". The same submission is found in the written submissions filed on the no case to answer application in paragraphs 4.6 to 4.9. Therefore, it is clear that the appellant's claim is that the respondent had interfered with one or more of the above rights.

47. Therefore, according to the prosecution case with regard to the second count as stated in the above paragraphs, the political right that was alleged to have been interfered with had nothing to do with the vote of PW1.

48. The allegation on the first count is that the respondent offered a bribe to influence PW1's vote and therefore the alleged intention of the respondent in making the statement in question in relation to the first count was to influence PW1's vote. Though the right to vote is clearly a political right under section 23(3)(b) of the Constitution, the case theory on the second count is that by making the same statement the respondent intended to interfere with a political right of PW1 which is not the right to vote but some other political right. Therefore the appellant seems to be alleging that the respondent formed two different intentions when he made the statement in question in reply to the question posed by PW1.

49. Be that as it may, having gone through the evidence, in particular, the answer which is the subject matter of this case, I agree with the Learned Magistrate's conclusion that there is no conclusive evidence of any political right of PW1 being

interfered with by the respondent either in general or relevant to the 2018 election.

50. The appellant had also raised an issue on the import of the words 'that is relevant to an election' under section 141 of the Electoral Act. The Learned Magistrate in his judgment had expressed his view at one point that there were no specific provisions that limited the time the two offences the respondent was charged with can be committed. Based on this observation made by the Leaned Magistrate, the appellant argues that the Learned Magistrate had again contradicted himself when he said in his judgment subsequently that " . . . in a yet to be declared General Election scheduled some time in 2018".

51. I do not agree with the contention that an offence under section 141 of the Electoral Act can only be committed during the period between the issuance of the writ of election and the day of the election. However, the prosecution should be able to prove a sufficient nexus between the alleged act of interference and an election to the extent that it is proved beyond reasonable doubt that the political right or the duty that was hindered or interfered with was relevant to a particular election. In certain cases, given the nature of the evidence with regard to the alleged hindrance or the interference, the fact whether the election in question was declared or not may become a relevant or a material consideration in deciding whether the relevant political right or duty 'was relevant to an election'.

52. Given the available evidence in the case at hand especially the statement of the respondent in question, I cannot find any fault with the Learned Magistrate's conclusion to the effect that there was no conclusive evidence on any interference of PW1's political rights relevant to 2018 General Elections which was not declared at the material time.

53. Grounds C and D should fail.

Grounds E & F

54. On ground E the appellant alleges that "*the Learned Magistrate erred in law and facts*

by stating that State needed to offer further circumstantial evidence to strengthen the basis of the charges".

55. On ground F, the appellant submits that *the Learned Magistrate erred in law and facts by failing to consider and analyze all evidence available against the elements of the offences objectively".*

56. The purported statement that the appellant had reproduced in ground E in fact is only a part of a paragraph found in the impugned judgment that consists of a single sentence. The relevant paragraph reads thus;

> *"That being the case the State needed to offer further circumstantial evidence to strengthen the basis of the charges."*

57. In the preceding paragraphs the Learned Magistrate discusses the explanations given by the respondent in his cautioned interview as to why he made the statement that is in question. It is pertinent to note that that the Learned Magistrate had commenced the aforementioned sentence by saying *"That being the case".* Therefore, in my reading, the Learned Magistrate had done nothing more than emphasizing that the evidence adduced by the prosecution was insufficient to bring home the charges in view of the explanations given by the accused in the cautioned interview.

58. The appellant also argues that the ruling given by the Learned Magistrate on the no case to answer application and the judgment is inconsistent for the reason that the Learned Magistrate had stated in his judgment that *"the State has not provided any evidence as to how the exercise of Waisea Lebobo's political rights has been hindered or interfered with by the accused"*, though the Learned Magistrate initially found that there was a case for the accused to answer after the conclusion of the prosecution case.

59. There is some merit in this argument raised by the appellant. In deciding whether there is a case for an accused to answer on a particular charge, a magistrate is

required to ask himself/herself two questions. First question is, whether there is credible and reliable evidence on each element of the offence and, the second question is, whether the evidence presented by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal would safely convict the accused on that evidence. [***Moidean v Reginam*** (1976) 22 FLR 206]

60. Therefore, when a magistrate decides that there is a case to answer on a particular charge, that magistrate is in fact making a finding that there is relevant and admissible evidence on all the elements of the charge and that evidence is not discredited as a result of the cross-examination and is not manifestly unreliable to the extent that a reasonable tribunal would not safely convict on that evidence.

61. Therefore, a magistrate cannot be heard to say in the final judgment that there is no evidence on a particular element of a charge that he had previously decided that there is a case to answer. However, this does not necessarily mean that when an accused does not adduce evidence after a magistrate finds that the accused has a case to answer on a particular charge, the accused should be convicted of that charge for the reason that there was a case to answer on that charge. In order to find an accused guilty of a charge a court should be satisfied that all the elements of the offence have been proved beyond reasonable doubt. But a magistrate is not required to consider at the no case to answer stage whether the elements have been proved beyond reasonable doubt.

62. However, in the instant case, though the Learned Magistrate had initially stated that "State has not provided any evidence", in the following sentence he uses the words "there is no **conclusive** evidence . . ." It appears that the purpose of the said subsequent sentence is to further clarify the position which the Learned Magistrate had attempted to explain in the preceding sentence. In my view, by saying that there is no 'conclusive evidence', the Learned Magistrate simply highlights that the evidence adduced is insufficient to prove the charge beyond reasonable doubt and I would agree with that conclusion.

63. Grounds E and F should fail.

Grounds G & H

64. The above grounds reads thus;

> *That the Learned Magistrate erred in law and facts by deciding that the State has not provided any evidence as to how the exercise of Waisea Lebobo's political rights has been hindered or interfered with by the Accused.*
>
> *That the Learned Magistrate erred in law by failing to consider the Political Rights available for Waisea Lebobo under the 2013 Constitution of the Republic of Fiji.*

65. The issues raised in these two grounds have already been sufficiently dealt with in this judgment especially under grounds C and D.

66. With regard to Ground H, I would agree with the appellant to the extent that the Learned Magistrate should have indicated in his judgment what he regarded as 'political rights' with regard to the second count. However, the conclusion of the Learned Magistrate on the second count is the same conclusion I arrived at after considering the provisions of the Constitution relied on by the appellant.

67. All in all these two grounds should fail.

68. In the circumstances, I would dismiss this appeal and affirm the judgment of the Learned Magistrate.

HIGH COURT OF FIJI SUVA

Vinsent S. Perera
JUDGE

Solicitors:

Fiji Independent Commission Against Corruption for the appellant
R. Patel Lawyers, Suva for the respondent