

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 85 of 2017

[CRIMINAL JURISDICTION]

STATE

V

1. NEMANI KEAVALI
2. TURI LESUBULA

Counsel : Ms. U. Tamanikaiyaroi and E. Samisoni for State
Ms. S. Hazelman for 1st Accused
Ms. L. Ratidara for 2nd Accused

Hearing on : 01st - 02nd October 2018

Ruling on : 02nd October 2018

VOIR DIRE RULING


1. The prosecution intends to rely on the cautioned interview statement of the second accused as evidence against the said accused.
2. The second accused had submitted the following grounds as his grounds of objections on the admissibility of his cautioned interview statement;
 1. *Turi Lesubula's confession was induced by an untrue representation made by the interviewing officer and the charging officer, Detective Constable number 4321 Asaeli Rauli and PC 5041 Peni. The untrue representation being that if he admitted to the*

offence he would be made a state witness.

2. *Turi Lesubula was not cautioned before and during the record of interview.*
 3. *Turi Lesubula was not explained that he had the right to see a lawyer before the commencement of the record of interview.*
 4. *Turi Lesubula was not explained that he could have a lawyer present during his record of interview.*
 5. *There was a breach of his rights under the section 13 and section 14 of the Constitution of Fiji, the Judges Rules and Articles 9(2), 10(1) and 14(3)(g) of the International Covenant on Civil and Political Rights during his interview.*
3. According to the evidence of the officer who conducted the cautioned interview, the officer who recorded the charge statement and the cautioned interview tendered as VDPE3; the answers recorded in the said statement were given voluntarily by the second accused and all relevant rights were given to him.
 4. The second accused during his cross-examination admitted that he was explained about his right to consult a lawyer but denied that he refused to exercise the said right. He agreed that he was cautioned throughout his interview.
 5. The second accused did not give evidence on how his rights under the Constitution or any other rights were violated.
 6. There is no requirement to inform the accused that he could have a lawyer present during the cautioned interview: what is required is to inform an accused his right to consult a lawyer. Moreover, when an accused does not wish to exercise that right, there is no logic in informing that accused that he can have a lawyer present during the interview.
 7. There were inconsistencies in the evidence given by the second accused and I also note that his evidence was not consistent with the grounds of objections that were filed challenging the admissibility of the cautioned interview statement.

8. In the first ground of objection it is submitted that the confession was induced by an undue representation, that is, the second accused would be made a state witness if he admit to the offence. However, in his evidence the second accused said that the answers in his cautioned interview are the answers of the police officers, implying fabrication and thereby contradicting the position taken in the said ground.
9. All in all, I am unable to accept the version of the second accused in relation to VDPE3.
10. I find that the evidence adduced by the prosecution has established beyond reasonable doubt that answers recorded in VDPE3 were given by the accused voluntarily and that those answers were not obtained in an unfair manner.
11. In the circumstances, I rule that VDPE3 is admissible in evidence.




Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for State
Legal Aid Commission for 1st Accused and 2nd Accused