

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC NO.129 of 2014

**STATE**

**V**

**PENIASI CEDRECA SUKANAKONIFEREDI**

Ms. S. Navia with Ms. S. Naibe and Ms. P. Lata for the State  
Mr. E. Sailo with Mr A. Turuva for the Accused.

Dates of Trial : 13,14, 18, 19 February 2019  
Date of this Summing up : 19 February 2019

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**SUMMING UP**

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- 1.] Madam and Gentlemen assessors. It is now my duty to sum up to you. In doing so, I will direct you on matters of law which you must accept and act on. You must apply the law as I direct you in this case.
  
- 2.] As far as the facts of this case are concerned, what evidence to accept, what weight to put on certain evidence, which witnesses are reliable, these are matters entirely for you to decide for yourselves. So if I express any opinion on the facts, and I will, it is entirely a matter for you whether you accept what I say or form your own opinions. In other words you are masters and the judges of facts.

- 3.] Counsel for the prosecution and the defence have made submissions to you about how you should find the facts of this case, They have the right to make these comments because it is part of their duties as counsel. However, you are not bound by what counsel for either side has told you about the facts of the case. If you think that their comments appeal to your common sense and judgment, you may use them as you think fit. You are the representatives of the community in this trial and it is for you to decide which version of the evidence to accept or reject. As far as Mr. Sailo's submissions to you are concerned, I direct you to ignore his references to an earlier raid. That raid is irrelevant to these charges. We are dealing with what was in the office in March 2014.
- 4.] You will not be asked to give reasons for your opinions, but merely your opinions themselves, and you need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me and I can assure you that I will give them great weight when I come to deliver my judgment.
- 5.] On the issue of proof, I must direct you as a matter of law that the onus or burden of proof lies on the prosecution to prove the case against the accused. The burden remains on the prosecution throughout the trial and never shifts. There is no obligation upon the accused to prove his innocence. Under our system of criminal justice an accused person is presumed to be innocent until he or she is proved guilty.
- 6.] The standard of proof is one of proof beyond reasonable doubt. This means that before you can find the accused guilty of the offence charged, you must be satisfied so that you are sure of his guilt. If you have a reasonable doubt about the guilt of the accused, then it is your duty to express an opinion that the accused is not guilty. It is only if you are satisfied so that you feel sure of the guilt of the accused that you can express an opinion that he is guilty.

- 7.] Your opinions must be based only on the evidence you have heard in the courtroom and upon nothing else. You are not to think about what other evidence there could have been, nor are you to speculate on any matter not presented to you as fact.
- 8.] The Accused faces three counts laid under the Illicit Drugs Control Act 2004, one of our laws that criminalises any possession of illicit drugs, any dealing in illicit drugs without a licence from the relevant authorities, and any possession of substances or equipment that could be used in the manufacture of illicit drugs.
- 9.] You have the charges before you on a document that we call an information.
- 10.] The first count is unlawful possession of 3.617 kilograms of methamphetamine.
- 11.] To find this count proved the State must make you sure beyond reasonable doubt the following elements.
- 1) that it was indeed this accused whom I shall call Peniasi, who
  - 2) was in possession of that amount of methamphetamine
  - 3) without lawful authority.
- 12.] There can be no doubt as to the identity of the accused. You have heard evidence that it was he who took the Border Police to the premises of Energy Supplements Fiji Ltd. It is not part of the defence case that we have the wrong man in the dock.
- 13.] There is no evidence before you that Peniasi had any lawful authority to have what he did in that workshop and the Law says that it is for the accused to prove to you that he had that authority to possess the drugs.
- 14.] The concept of "possession" is common to all three counts that the accused has been charged with. It is not a straight forward notion and has been the subject of much legal argument and judgments of Judges

both here in Fiji and in England where we look for guidance in complex legal issues.

- 15.] I direct you to apply this definition to the word "possession". The State must prove to you that the drug (or chemical in Count 2 or equipment in Count 3 ) was in the custody of Peniasi and subject to his control. He must also know that all the items were there in the premises.
- 16.] I don't think you will have any trouble with that second aspect. He knew that the goods were there because he took the Police there and showed them
- 17.] To determine the custody and control aspect you will look at all the circumstances leading up to and including the Police Raid. Was Peni in charge of these goods? Did he have control over them? Did he have the capacity to go there and deal with them in any way he wished? Move them? Sell them? You might want to consider that at the time of the raid there was no other person at Energy Supplements, only he had the key and we have not heard of anyone else that had access. You might also consider that at the time he was a Director of the company.
- 18.] You can still be in possession legally even if you don't own the goods. Custody and control are the defining characteristics of possession, not ownership.
- 19.] Whats more, if somebody is in possession, he is presumed to know that the methamphetamine was there . An accused cannot say I didn't know it was methamphetamine or I didn't know it was a controlled chemical and I didn't know it was controlled equipment. It is up to him to prove to you that he wasn't in control of all the items. Has he done that?

20.] For the second and third charges the State must prove to you the following:

- 1) that it was again this accused, who
- 2) without lawful authority
- 3) was in possession of 1.989 kilos of pseudoephedrine (Count 2) and
- 4) a single punch tablet press machine (Count 3).

21.] The law helps us here.

22.] I direct you that pseudoephedrine is a controlled chemical and that the tablet press machine is a piece of controlled equipment. Those are findings you don't have to make.

### 23.] The Evidence

1. The Prosecution called only 8 witnesses and made one witness available for the Defence to cross examine.
2. The State evidence came to us in 2 parts. There was the evidence relating to what was known of Peniasi's connection to the premises and secondly there was the evidence of the experts who tested and analysed the items seized.
3. Livai the security officer told us that Energy rented offices or space on the ground floor of the HLB building near the airport. He could see the door of the offices from his booth and he would see Peni and only Peni come and go from the office. No one else would come in and out ; there were no customers or clients seen to visit. Livai identified the accused as Peni, having seen him go in and out and having seen him in Sabeto where they both live.
4. The Investigating Officer in charge of this case told us that the accused told him that he had been working for Energy since 2010 – he was alone and the only one in Fiji. His work was to send pills and tablets in response to orders by skype. The Inspector said that they were taken to

the workshop by Peni to look at the office and contents. The inside looked more like a warehouse he said with tables, cabinets, equipment, chemicals and utensils. Peni said "this is where I work alone". Peni was arrested, the premises locked and a Police guard stationed outside. The next day, the Police analysis people came to identify the contents and to start initial testing on them. They took 3 days to do this producing 48 boxes and packages of exhibits.

5. Madam and Gentlemen, there was a lot of evidence given about the transport of all the exhibits to Koronivia, Totogo Police Station and Border Police station. This was necessary to prove to the Court that the drugs taken from Energy were not tampered with in any way and that they were the drugs produced in Court and the subject of these charges.
6. This is referred to in legal terms as the "chain of evidence". The officer produced the pill punching machine which we all looked at on the back of the truck and which you have a photo of as exhibit P.17.
7. The Registrar of Companies (retired) told us about the documents filed in the Companies Office by Energy Supplements. He produced the particulars of Directors of the company which showed that the accused Peniasi was a Director of the company on the 25<sup>th</sup> March 2014. The company had earlier changed its name (in September 2007 from Acacia Holdings Ltd. He said that a Director is responsible for the day to day running of a company.
8. Dianne Carrol worked for the landlord of tenants at HLB house in 2013 and 2014. In respect of Energy Supplements, all her dealings for rent, electricity etc. were done with the accused. She said that the offices were usually locked but if open he would be there. He was the only one she dealt with. If she couldn't get the rent from Peniasi, she would email Stanley Leon who was overseas and who we know from Mr. Ram was the other director of the company. She said that Peniasi would be dressed casually and as far as she knew he was an employee.

9. At the request of the defence, the prosecution made Mohammed Harun available for cross examination. He told us that he is a chartered accountant based in Nadi. He helped to set up Energy Supplements for Mr. Stanley Leon who was the original Director. He bought a "shelf company" and changed the name to Energy. At the beginning Mr Leon was a 99% shareholder. That all changed he said in 2013 when Peniasi was appointed a Director. A lot of the staff left but Peniasi was an employee and the only one around.
- 24.] Well assessors, that was the end of the prosecution case.
- 25.] You heard me explain to the accused what his rights in defence are and he elected to give sworn evidence. Now I must direct you that in giving evidence the accused does not have to prove anything. The fact that he gives evidence does not relieve the State from proving their case to you so that you are sure. Even if you don't believe a word he says does not make him guilty if the State have not proved their case beyond reasonable doubt. of the Company.

As you know Peniasi decided to give evidence. He told us that he is 44 years old, lives in Sabeto with his wife and 2 children and he has finished Form 3 education. He is a Methodist and says that he is an elder minister in the church and has been for the last 8 years. He started working for Energy in 2010 when he was invited by a Mr. George Reid, who employed his wife as a house girl, to join the company. He was employed as a labourer. One day Mr. Reid asked him to sign a document. He was too busy to read it and found out after 2 weeks that he was one of two directors of the company. In 2010 there were only George and himself. In 2012 George left Fiji and he was in sole charge. George told him to look after the company because he was the only person left in Fiji. He found out from the Police that Stanley Leon was the other Director: but he had never met him. He was paid \$840 per fortnight But he had no shares. When George left he explained to Peniasi about the tablets. Some were bath salts for skin diseases, some were for body building and some were plant Feeders. He was told to look after the tablets and wait for orders to come in


from Stanley on email. He would assemble the orders and post them off to the customers.

- 26.] On the 22<sup>nd</sup> March 2014 he went to the Border Police Station on the request of Insp. Vikash. He was questioned about what is in the office and he agreed to take the Police there and show them what was inside. They went – the accused saying that it was he, PC Mara and a lady PC – in contradiction to Insp. Vikash. It is for you to decide whose version you want to accept if you even find it is important. Peni says he opened the door with the key (the only key) and he showed them everything. The tablets the chemicals, the creams. Powders were also there. George had prepared 1,000s of pills before he left for NZ but he didn't say anything about the powders.
- 27.] He didn't know that any of the tablets contained illicit drugs. George had hidden everything from him for 4 years. He never explained the use of the tablet punching machine nor had he seen it used.
- 28.] The company's banker was the ANZ. The office had only one account with that bank and he, the accused, was the sole signatory to the account. He wrote cheques for rent, electricity, stamps and food for the family. He paid the rent with money coming into the account from Stanley Leon.
- 29.] In 2010 his home was a modest tin house and he was still in that house in 2014.
- 30.] In the office he used to wear casual clothes.
- 31.] In cross-examination he admitted that he was aware of all the items that were in the office.
- 32.] Well Madam and Gentlemen, that was the end of the defence case and that was the end of all the evidence.
- 33.] You will take it all into consideration when you are considering the opinions that you will deliver to me individually.



- 34.] The only real issue for you to decide in this case is to decide if Peniasi had full custody and control of all the items in the office. If you find that then the law says that he is guilty. If you find that he was not in full custody and control of the items you will find him not guilty.
- 35.] Remember it doesn't matter whether he knew that they contained illicit drugs or whether he knew that pseudo ephedrine is a controlled chemical or whether he knew that the machine was controlled equipment.
- 36.] You may leave us now to deliberate. Please let a member of my staff know when you are ready and I will reconvene the Court.
- 37.] However first I ask counsel if they wish me to add or alter any direction in this summing up.



  
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Paul K. Madigan  
Judge.

19<sup>th</sup> February 2019  
At High Court Lautoka