

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 57 of 2022

STATE

V

MALAKAI LUVENITOGA

Counsel : Ms. Sheenal Swastika for the State
Ms. Benita Kumari with Mr. Alifereti Waqavakatoga for the Accused

Date of Trial : 5 February 2025

Closing Submissions : 7 February 2025 and 13 February 2025

Judgment : 4 March 2025

Order : 7 March 2025

ORDER AFTER SPECIAL VERDICT

[1] As per the Information filed by the Director of Public Prosecutions (DPP), the accused, Malakai Luvenitoga, is charged with the following offence:

Statement of Offence

ATTEMPTED MURDER: Contrary to Section 44 (1) and 237 of the Crimes Act 2009.

Particulars of Offence

MALAKAI LUVENITOGA, on the 14th day of April 2022, at Lautoka, in the Western Division, attempted to murder one **URAIA VOTA**.

- [2] The accused pleaded not guilty to the charge and the ensuing trial was concluded within one day. Thereafter, the Learned Counsel for the Defence and the State made their closing submissions in that order.
- [3] On 4 March 2025, having considered all the evidence in its totality, this Court found that the accused has established and discharged on a balance of probability that he was suffering from a mental impairment, namely schizophrenia, on 14 April 2022, and as a result that he was not criminally responsible for his actions at the time. Accordingly, this Court found the accused not guilty of the charge of Attempted Murder by reason of his mental impairment.
- [4] Section 105 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), provides that where Court has made a finding that the accused was suffering from a mental impairment at the time of the offending, the Court shall make a special finding (special verdict) that he is not guilty of the offence by reason of the said mental impairment (insanity). The section is re-produced below:

105. — (1) The court shall make a special finding that an accused person is not guilty of an offence by reason of insanity if —

(a) any act or omission is charged against any person as an offence; and

(b) it is given in evidence on the trial of the person for that offence that he or she was insane so as not to be responsible for the actions at the time when the act was done or the omission was made, and

(c) it appears to the court that the accused person did the act or made the omission charged but was insane at the time when it was done or made.

(2) When a special finding is made under sub-section (1) the court shall order that the accused is —

(a) to be confined in a mental hospital, prison, a declared mental health facility or other suitable place for safe custody; and

(b) to be dealt with in accordance with any law dealing with mental health.

- [5] Both Counsel for the State and the Defence have addressed Court on this matter. Both Counsel have submitted that it is in the best interest of the accused and the community that he be confined at St. Giles Hospital.

- [6] From the evidence adduced in the case and the submissions made by both Counsel, I am of the opinion that the accused needs continuous psychiatric treatment, rehabilitation and supervision. He needs to continue taking his medications to remain in a stable state of mind.
- [7] Accordingly, in accordance with the provisions of Section 105 (2) of the Criminal Procedure Act, I make order for the accused Malakai Luvenitoga to be confined at St. Giles Hospital for safe custody, until he is fit to be released under the provisions of the Mental Health Act No. 54 of 2010 (Mental Health Act).
- [8] A copy of this Order and the Judgment delivered in these proceedings is to be served on the Medical Superintendent of the St. Giles Hospital.




Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 7th Day of March 2025

Solicitors for the State:

Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused:

Office of the Legal Aid Commission, Lautoka.