

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No: HAC 145 of 2023

State –v- Ilaisa Waqalutu

Temo Ledua

Solomone Udrenacakaunivalu

Pita Dobui

Rupeni Tuinaro Cama

For the State: Mr. Tuivuya L. and Mr. Takalaivuna A.

For the 1st Accused: Mr. Cakau J.

For the 2nd Accused: Mr. Navuni W.

For the 3rd Accused: Mr. Navuni W.

For the 4th Accused: Mr. Emasi I.

For the 5th Accused: Mr. Doidoi R.

Date of Hearing: 12th December 2024

Date of Ruling: 31st January 2025

RULING ON PRELIMINARY OBJECTIONS

1. The Accused persons are jointly charged with Rape and Aiding and Abetting the offence of Rape. A major part of the evidence against them emanates from DNA evidence.
2. They have all pleaded not guilty to the charges and Accused 1 Ilaisa Waqalutu and Accused 4 Pita Dobui have both filed Voir Dire challenges, primarily with respect to the DNA test.

Voir Dire Grounds for Ilaisa Waqalutu

- (i) That the Accused is objecting to the admissibility of DNA test results.
- (ii) The samples taken were not voluntarily given by the Accused.
- (iii) That it was given by him through pressure, duress and force by the Police while he was in Police custody.
- (iv) That the Accused was not properly advised of the impact of the DNA test on his case when it goes for Trial.
- (v) This was a breach of his rights under section 11 (3) of the Constitution of the Republic of Fiji.

Voir Dire Grounds for Pita Dobui

- (i) Mr. Dobui is challenging the admissibility of the DNA evidence on the ground that it was obtained through assaults, threats and undue influence from officers present at the Valelevu Police Station to which he recalls their face.
- (ii) Mr. Dobui was also kept for more than 48 hours at the station before his DNA was taken. He could no longer take the assaults, threats and oppressive environment and systemically wore down that he agreed to have DNA sample taken.
- (iii) Mr. Dobui was assaulted in the presence of Temo Ledua who was also beaten in the same room on Level One of the Valelevu Police Station.
- (iv) Mr. Dobui is challenging the admissibility of the DNA evidence on the ground that it was obtained through assault, threats and undue influence from the most senior officer who is of Fijian of Indian descent who punched Mr. Dobui at the Valelevu Police Station on the day.
- (v) Mr. Dobui was slapped on the back of the head by the same junior officer who was assaulting him earlier in the presence of the witnessing officer WDC 3366 Pritika.
- (vi) Mr. Dobui was not informed the nature, purpose and the consequence of the DNA testing, more importantly that the result of the DNA testing could be used in evidence against him at the Trial.

The Accused requests amongst the statements of the arresting officers and Fiji Forensic Lab for copies of the following: -

- Any documents to or from the Police Officers/Forensic Teams pertaining to their movement, request for collection, collection and sampling of DNA from Mr. Dobui.
- The cell book diary for the Valelevu Police Station from 22 April 2023 till the date he was released from detainment.

- The report book entries for the Valelevu Police Station from 22 April 2023 till the date he was released from detainment.
- The meal book for the Valelevu Police Station from 22 April 2023 till the date he was released from detainment.
- The investigation Diary for the Valelevu Police Station from 22 April 2023 till the date he was released from detainment.
- The vehicle running sheet for the Valelevu Police Station from 22 April till the date he was released from detainment.
- The Exhibit Register at the Forensics Lab from the time the DNA sample of Mr. Dobui was brought to the Forensic Lab.
- Statements of the Forensic Lab officers that took part in the buccal swab DNA processing of our client Mr. Dobui.
- He also requests a copy of the final DNA report.

The State may also serve any voir dire disclosures relevant to the named Accused relevant to this case. The Accused reserves his rights to add more grounds upon identification of the concerned Police officers or assailants.

3. The voir dire and Trial was fixed for 9th to 13th of December 2024 however this has since been vacated since the State filed further voir dire disclosures and this required the vacation of the Trial date.
4. The 1st Accused Ilaisa Waqalutu raised a preliminary objection to the Certificate of the DNA report setting out the DNA findings and wanted a ruling on the same before the matter proceeded to a voir dire hearing.
5. The person who had prepared the Certificate had set out her designation as Technical Assistant. On this basis he challenged the report on the basis that this report could not be accepted by the Court as a report under section 133 of the Criminal Procedure Act 2009.
6. The State objected, maintaining that the officer who conducted the analysis of the DNA and compiled the report and analysis was a different officer and he was a qualified and experienced forensic biologist.

7. The Court then directed the Accused and the State to file submissions in support of their respective cases. The parties both agree that this preliminary objection will be dealt with on the submissions.

The submissions for the 1st Accused

8. The 1st Accused submits that a Technical Assistant is not authorised by statute to submit evidence for a court to accept as prima facie evidence.
9. Section 133 (1) of the Criminal Procedure Act 2009 provides as follows: -

“Admission of signed plan or report

133. — (1) Any plan, report, photograph or document purporting to have been made or taken in the course of an office, appointment or profession by or under the hand of any of the persons specified in sub-section (3), may be given in evidence in any trial or other proceeding under the provisions of this Decree, unless the person shall be required to attend as a witness by —

- (a) the court; or
- (b) the accused person, in which case the accused person shall give notice to the prosecutor not less than 14 clear days before the trial or other proceeding.”

10. Section 133 (3) then sets out the following persons who can tender reports into Court as provided by this section: -

“133 (3). The following persons shall be the persons to whom this section shall apply —

- (a) medical practitioners and medical officers;
- (b) Government analysts and chemists and laboratory superintendents employed by the Government;
- (c) registered and Government land surveyors;
- (d) examiners of weights and measures;
- (e) veterinary officers, livestock officers and veterinary assistants;
- (f) the officer in charge of the Criminal Records Office;
- (g) engineers holding a degree in any relevant engineering discipline;
- (h) authorised examiners appointed under the provisions of the Land Transport Act;

- (i) dental practitioners and dental officers;
- (j) survey technical assistants employed by the Government;
- (k) police photographers; and
- (l) scientists holding a degree in science relevant to botany, chemistry, microbiology or any other scientific discipline relevant to forensics.”

11. The 1st Accused further submits that the Medicinal Products Act 2011, at sections 44 and 45 describes the authorised personnel to conduct and deliver results pertaining to the analysis. Section 45 (3) provides that “no person shall be approved as an additional Approved Analyst if he or she does not possess the prescribed qualifications.”

12. The 1st Accused submits that the officer conducting the DNA test for the Accused person did not fit into any of the categories set out at section 133 of the Criminal Procedure Act 2009. The person is neither a Government Analyst; Chemist, :Laboratory Superintendent or Scientist holding a degree in science relevant to Botany, Chemistry, Microbiology or any other scientific discipline relevant to forensics.

13. The 1st Accused therefore requests that this Honourable Court reject the Certificate of the DNA report conducted by a Technical Assistant as he is not a suitable person who can prepare such a report.

14. Those were the submissions for the 1st Accused.

Submissions for the State

15. The State submits that the DNA report which the 1st Accused refers to was prepared by Mr. Nacanieli Gusu and not Ms. Masilina Sesenicagi, the technical assistant.

16. The DNA report disclosed to the Accused is normally prepared by a qualified and experienced Forensics Biologist and in this case, it was prepared by the Forensic Biologist, Mr. Nacanieli Gasau.

17. The State submits that the documents prepared by Ms. Masilina Sesenicagi signified her role in receiving the DNA samples and recording and tracking the movements of

the same. This evidence will assist in terms of the chain of custody of these samples collected from the Accused.

18. The State humbly prays that the assertion made by the defence to exclude the DNA report and/or the certificate prepared by Ms. Masilina be rejected and rule that the State be allowed to tender in the DNA report prepared by Mr. Nacanieli Gusu and the certificate prepared by Ms. Masilina Sesenicagi.

19. Those were the submissions of the State.

20. In ruling on the preliminary object raised by the 1st Accused, section 133 is relevant.

21. In terms of who may tender a report which the Court can accept, section 133 (3) has set out an exhaustive list of who may tender a report into Court.

22. Such officers include: -

- (a) medical practitioners and medical officers;
- (b) Government analysts and chemists and laboratory superintendents employed by the Government;
- (c) registered and Government land surveyors;
- (d) examiners of weights and measures;
- (e) veterinary officers, livestock officers and veterinary assistants;
- (f) the officer in charge of the Criminal Records Office;
- (g) engineers holding a degree in any relevant engineering discipline;
- (h) authorised examiners appointed under the provisions of the Land Transport Act;
- (i) dental practitioners and dental officers;
- (j) survey technical assistants employed by the Government;
- (k) police photographers; and
- (l) scientists holding a degree in science relevant to botany, chemistry, micro-biology or any other scientific discipline relevant to forensics.”

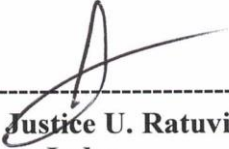
23. The report relied on by the State was prepared by Nacanieli Sugu, (B.Sc.) Forensic Biologist. I find that he falls into section 133 (3) (l) of the Criminal Procedure Act and he is allowed to come to Court and explain his findings.

24. The report is therefore proper evidence to be admitted, however this is subject to the voir dire challenges that have been mounted by the two Accused.

25. The preliminary objection therefore fails and we will now proceed to arranging for the voir dire challenge.

So ordered.





Mr. Justice U. Ratuville
Puisne Judge

cc: -Office of the Director of Public Prosecutions
-Legal Aid Commission
-Vosarogo Lawyers
-Law Solution.