

THE STATE

v

1. **ELIKI SERUVATU**
2. **ALIVERETI SIVO**
3. **TEVITA MISIDANI**
4. **NEMANI ADROTE**

[HIGH COURT, 1994, (Tuivaga CJ), 17 October]

Revisional Jurisdiction

Customary law-theft followed by reconciliation-Criminal Procedure Code (Cap 21) Section 323-Constitution 1990 Section 100(3).

The accused were convicted of theft and fined. In the exercise of its revisional jurisdiction the High Court discussed the place of Fijian customary law, set aside the fines and substituted binding over.

No cases were cited.

High Court review of sentences imposed in the Magistrates Court.

Ms. L. Laveti for the Complainant
V. Narayan and *A. Seru* for the Respondents

Tuivaga CJ:

On 23 June 1994 the Kadavu Magistrate's Court entered convictions against the respondents on their own pleas and imposed sentences in the following cases:

Criminal Case No. 11/94 - against Elik Seruvatu and Alivereti Sivo for theft of 12 plants of yaqona valued at \$120.00, the property of Jona Waqa who were each sentenced to pay a fine of \$70 in default 70 days' imprisonment, out of which \$120 by way of compensation was ordered to be paid to Jona Waqa.

Criminal Case No. 12/94 - against Elik Seruvatu and Alivereti Sivo for stealing 6 plants of yaqona valued at \$110, the property of Filipe Sau who were each sentenced to pay a fine of \$70 in default 70 days' imprisonment, out of which \$110 by way of compensation was ordered to be paid to Filipe Sau.

The Court below also ordered that 8kg of yaqona and \$10 cash which was recovered during police investigation be returned to Filipe Sau.

Criminal Case No. 15/94 - against Elik Seruvatu, Alivereti Sivo, Tevita Misidani and Nemani Adrote for stealing 700 dalo plants valued at \$1500, the property of Navitalai Sorovi and who were each sentenced to pay a fine of

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A \$380, in default 18 months' imprisonment, out of which \$1500 by way of compensation was ordered to be paid to Navitalai Sorovi.

B On 30 June 1994 the Roko Tui Kadavu wrote to the Chief Justice requesting if these cases could be reviewed on the grounds (i) that the fines imposed were too heavy for villagers such as the respondents and (ii) that as a result of the presentation of yaqona by the respondents to the wronged people pursuant to Fijian custom and tradition reconciliation over the incidents had been effected. In these circumstances the Roko and all concerned have pleaded this Court to exercise its revisional powers in relation to the sentences passed on the respondents in recognition of the traditional reconciliation that had been reached.

C Letters testifying to the reconciliation of the parties have also been received and placed on the file.

The reconciliation was made possible through resort being made to Fijian custom and tradition. The use of Fijian custom and tradition to promote social harmony and goodwill is a feature of native communal life that should be encouraged. This is important because police presence is not usually available to maintain law and order among Fijian rural communities.

D The Constitution recognises this by the provision of section 100(3) which makes Fijian customary law formally part of the laws of Fiji. The effect of this is that Fijian custom and tradition is now for the first time recognised constitutionally as part of the legal culture of Fiji. However the proviso to the exercise of such powers is that the application of customary law should not be repugnant to the general principles of humanity. That is to say customary law must not be inhuman in concept and application.

E Given the circumstances relating to these cases and the need to give effect to Fijian custom and tradition where relevant and justified this Court is satisfied that revision of the sentences imposed in the Court below in these cases would not only be in order but would be in the public interest.

F Accordingly the sentences imposed by the Court below are to be set aside and in lieu thereof the following sentences are substituted, namely in -

G Kadavu Criminal Case No. 11 of 1994 - Eliko Seruvatu and Alivereti Sivo are each ordered to enter into his own recognizance in the sum of \$55 to keep the peace and be of good behaviour for a period of 12 months.

Kadavu Criminal Case No. 12 of 1994 - Eliko Seruvatu and Alivereti Sivo are each ordered to enter into his own recognizance in the sum of \$55 to keep the peace and be of good behaviour for 12 months.

Kadavu Criminal Case No. 15 of 1994 - Eliko Seruvatu, Alivereti Sivo, Tevita Misidani and Nemani Adrote are each ordered to enter into his own recognizance

in the sum of \$55 to keep the peace and to be of good behaviour for a period of 12 months.

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At the time of signing the bond, all four respondents must be told plainly and clearly of the consequences to them if they breach any of the conditions of their bond.

(Sentences varied.)

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