IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 016 OF 2024

IN THE MATTER of an Appeal from the Sentencing Decisions of the Resident Magistrate at the Suva Magistrate Court on 28 March 2024 against the Respondents.

BETWEEN : **THE STATE**

APPELLANT

AND : **JOSAIA VOREQE BAINIMARAMA**

FIRST RESPONDENT

AND : **SITIVENI TUKAITURAGA QILIHO**

SECOND RESPONDENT

Counsels : **Ms. L. Tabuakuro and Ms. N. Tikoisuva for State.**

: **Mr. D. Sharma and Ms. G. Fatima for the First and Second Respondents.**

Date of Hearing : 2 May, 2024.

Date of Judgment : 9 May, 2024.

JUDGMENT AND SENTENCE

1. On the 19th June 2023, the following charges were put to both respondents, in the presences of their counsels:

> ***"FIRST COUNT***
> ***Statement of Offence***
>
> ***ATTEMPTED TO PERVERT THE COURSE OF JUSTICE:*** *Contrary to section 190 (e) of the Crimes Act 2009.*
>
> ***Particulars of Offence***
> *JOSAIA VOREQE BAINIMARAMA sometime between July 2020 and September 2020 at Suva in the Central Division, attempted to pervert the course of justice by telling Sitiveni Tukaituraga Qiliho, the Commissioner of Police of the Republic of Fiji to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019.*
>
> ***SECOND COUNT***
> ***Statement of Offence***
>
> ***ABUSE OF OFFICE:*** *Contrary to section 139 of the Crimes Act 2009*
>
> ***Particulars of Offence***
>
> *SITIVENI TUKAITURAGA QILIHO on the 15th day of July 2020 at Suva in the Central Division being employed in the civil service as the Commissioner of Police of the Republic of Fiji, directed the Director of Criminal Investigations Department Serupepeli Neiko and Inspector Reshmi Dass to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, in abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of University of the South Pacific which is the Complainant in CID/HQ PEP 12/07/2019."*

2. What transpired thereafter were summarized and contained in a judgment this court delivered in Criminal Appeal No. HAA 036 of 2023 on 14 March 2024, at the Suva High Court. This judgment must be read in conjunction with the above judgment, because they involved the same parties, the same criminal proceeding and the same legal outcomes.

3. In Suva High Court Criminal Appeal No. HAA 036 of 2023, the State appealed against the acquittals of both respondents in the Suva Magistrate Court on 12

October 2023, of the charges mentioned in paragraph 1 hereof. On 2 November 2023, the State filed their Petition of Appeal. The appeal was heard on 29 February 2024, after the parties' written and verbal submissions.

4. On 14 March 2024, in Criminal Appeal No. HAA 036 of 2023, in paragraphs 65, 66 and 67, this court made the following orders and directions:

> *"65. Pursuant to section 256 (2) (a) of the Criminal Procedure Act 2009, given the reasons explained above:*
>
> *(i) This court finds that the learned Magistrate had erred in fact and in law when she found the first respondent not guilty and acquitted him of the offence of Count No. 1: Attempted to Pervert the Course of Justice, contrary to section 190 (e) of the Crimes Act 2009;*
>
> *(ii) This court finds the first respondent guilty and is convicted of the offence of Count No. 1: Attempted to Pervert the Course of Justice, contrary to section 190 (e) of the Crimes Act 2009;*
>
> *(iii) This court finds that the learned Magistrate had erred in fact and in law when she found the second respondent not guilty and acquitted him of the offence of Count No. 2: Abuse of Office, contrary to section 139 of the Crimes Act 2009;*
>
> *(iv) This court finds the second respondent guilty and is convicted of the offence of Count No. 2: Abuse of Office, contrary to section 139 of the Crimes Act 2009.*
>
> *66. Pursuant to section 256 (2) (b) and (e) of the Criminal Procedure Act 2009:*
>
> *(i) This Court orders that this matter be brought before Resident Magistrate S. Puamau on 18 March 2024 at 9.30am, at the Suva Magistrate Court, for her to abide the decision of the High Court above mentioned and pronounce the 1st and 2nd respondent guilty as charged and convict them accordingly; and*
>
> *(ii) The 1st and 2nd respondent to file their plea in mitigation and sentence submissions by 20 March 2024, at the Suva Magistrate Court before 4pm.*

(iii) *The State to file their sentence submission at the Suva Magistrate Court by 20 March 2024 before 4pm.*

(iv) *Resident Magistrate S. Puamau to hear the Sentence hearing on 21 March 2024 at 9.30am.*

(v) *The Resident Magistrate to pass Sentence on the two respondents on 28 March 2024 at 9.30am.*

(vi) *Since the Suva Magistrate Court is a court of summary jurisdiction, and since this case started on 10 March 2023, and since section 15 (3) of the 2013 Constitution required cases to be decided within a reasonable time, the above timetable is to be followed strictly.*

67. *I order so accordingly."*

5. On 28 March 2024, in 38 pages, the learned Magistrate sentenced the two respondents. From page 1 to page 21, she made her sentencing remarks on the first respondent. In paragraph 47 of her sentencing remarks, she said, *"...For the reasons set out above, I grant to the first Defendant an absolute discharge pursuant to section 15 (1) (j) of the Sentencing and Penalties Act 2009..."*. From page 22 to 37, the learned Magistrate made her sentencing remarks on the second respondent. In paragraph 86 of her sentencing remarks, she said, *"...I fine Mr. Qiliho $1,500...this fine is to be paid within 30 days in default 30 days imprisonment. Upon payment of the fine of $1,500, this court will invoke Section 15 (1) (f) of the Sentencing and Penalties Act 2009 without recording a conviction..."*

6. The State was not happy with the above sentencing orders. It filed its petition of appeal on the same date, that is, on 28 March 2024. It filed four grounds of appeal:

*"8. **THAT** being dissatisfied with the Sentence delivered by the learned Magistrate, the Appellant wishes to appeal upon the following grounds:*

***(a)** That the sentence imposed by the learned Magistrate against both Respondents are manifestly lenient and in breach of sentencing principles, case laws and tariff set in other similar matters and offences; and*

(b) *The learned Magistrate erred in law and fact when she made a finding that there were no aggravating factors against the Respondents; and*

(c) *The learned Magistrate erred in law and in fact in considering irrelevant factors in sentencing the Respondents; and*

(d) *The learned Magistrate erred in law and in fact when she made a finding that there was no victim and that the offending was a technical breach by both Respondents."*

7. The State asked the High Court to *"quash the sentence passed in the Magistrate Court and to pass such other sentences warranted in law"* pursuant to section 256 (3) of the Criminal Procedure Act 2009.

8. The case was called on 3 April 2024 to timetable the appeal against the sentence. The appellant was to file and serve their submission by 10 April 2024, while the respondents were to file and serve their submissions by 24 April 2024. The Court heard the parties on 2 May 2024, and the appeal judgment/sentence would be delivered on 9 May 2024. The court had read all the papers submitted by the parties. It will now consider the appeal grounds. When critically examining the four appeal grounds, in my view, it would be appropriate to deal with Appeal Ground 8 (c) first, because it will affect the sentencing done by the learned Magistrate.

Appeal Ground No. 8 (c): The learned Magistrate erred in law and in fact in considering irrelevant factors in sentencing the Respondents;

9. As shown in paragraph 4 hereof, the High Court, as a superior court to the Magistrate Court, had made certain orders and directions expressed in paragraph 65, 66 and 67 of Suva High Court Criminal Appeal No. HAA 036 of 2023. The orders and directions mentioned in paragraph 4 hereof were binding on the Magistrate Court and the learned Magistrate. Resident Magistrate Seini Puamau, as a matter of law, as a judicial officer in a subordinate court, was bound by the orders and directions mentioned in paragraph 4 hereof. Yet in paragraphs 1 and 2 of her

sentencing remarks on the two respondents, delivered on 28 March 2024, she only acknowledged and mentioned that the two respondents, were found guilty of the charges mentioned in paragraph 1 hereof, on appeal. She completely ignored the fact that the High Court had also convicted the two respondents of the charges they faced.

10. What is the legal effect of the learned Magistrate ignoring the fact that the High Court, in Criminal Appeal No. HAA 036 of 2023, had found both respondents guilty and convicted them of the charges mentioned in paragraph 1 hereof. It was often said that when judicial officers proceed to sentencing offenders, it was largely the process of exercising a judicial discretion. In the leading case of **House** v **The King** [1936] 55 C.L.R., 499 to 508, the High Court of Australia said as follows:

> *"...The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred."*

11. In my view, by ignoring the fact that the High Court had convicted both respondents of the charges they faced on 14 March 2024, the learned Magistrate had acted on a wrong principle, that is, not following the binding decision and directions of a superior court, that is, the High Court of the Republic of Fiji. Furthermore, she had allowed herself to be guided by irrelevant matters, that is, re-examining the facts as shown from paragraphs 3 to 4 (1st respondent) and paragraphs 48 to 54 (2nd

respondent) in her sentencing remarks. Even though she was the trial Magistrate, as a matter of law, she was obliged to view and see the facts in the way the High Court had decided in Criminal Appeal No. HAA 036 of 2023, given the fact that the Magistrate Court was subordinate to the High Court.

12. Furthermore, the learned Magistrate had not taken into account some material consideration. The High Court, having found both respondents guilty and convicted them of the charges mentioned in paragraph 1 hereof, on 14 March 2024, the options available to the learned Magistrate, in terms of section 15 (1) of the Sentencing and Penalties Act 2009, were manifestly limited. In granting the first respondent an absolute discharge pursuant to section 15 (1) (j) of the Sentencing and Penalties Act 2009 on 28 March 2024, the learned Magistrate had not taken into account a material consideration that this option was not available to her given that the High Court had convicted the first respondent on the same offence on 14 March 2024. Furthermore, by invoking a section 15 (1) (f) of the Sentencing and Penalties Act 2009 a fine of $1,500 without recording a conviction on the second respondent, the learned Magistrate had also not taken into account a material consideration that this option was not available to her given that the High Court had convicted the second respondent on the same offence on 14 March 2024.

13. Given the above, I am of the view that the learned Magistrate erred in law and in fact in considering irrelevant factors when sentencing the respondents. On Appeal Ground No. 8 (c), in my view, the State succeeds. Because of the above, the sentences the learned Magistrate issued on 28 March 2023 against both respondents were null and void. It was equivalent to both respondents not been sentenced at all. Consequently, this court accedes to the State's request to quash the learned Magistrate's sentences on the two respondents on 28 March 2024, and the sentences are quashed accordingly.

Appeal Grounds No. 8 (a), (b) and (d):

14. In my view, given the State succeeding on Appeal Ground No. 8 (c), it was unnecessary to consider Appeal Grounds No. 8 (a), (b), and (d). It would be a waste of the Court's time and resources to deal with those appeal grounds. We will therefore consider the appropriate sentence for the two respondents, given that they had been found guilty and convicted of the charges they faced, by the High Court, on 14 March 2024.

Sentence

15. In Suva High Court Criminal Appeal No. HAA 036 of 2023, this court after considering the totality of the evidence tendered by the State and the Respondents, as recorded in the Magistrate Court record, accepted the evidence of the State witnesses and their version of events (see paragraphs 37, 38, 57, 58, 59, 60, 61 and 62 of Criminal Appeal No. HAA 036 of 2023). The Court, after analyzing the evidence, rejected the two respondent's version of events. It rejected their denials.

16. On Count No.1, as mentioned in paragraph 1 hereof, this court accepted that the first respondent, between July and September 2020, at Suva in the Central Division, attempted to pervert the cause of justice by telling the second respondent, the Commissioner of Police of the Republic of Fiji, to stay away from the USP investigations that was reported under CID/HQ PEP 12/07/2019. On Count No. 2, also as mentioned in paragraph 1 hereof, this court accepted that the second respondent, on 15 July 2020, at Suva in the Central Division, being employed in the civil service as the Commissioner of Police of the Republic of Fiji, directed the Director of Criminal Investigation Department Serupepeli Neiko and Inspector Reshmi Dass to stop investigation into the police complaint involving CID/HQ PEP 12/07/2019, in abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of University of the South Pacific which is the complainant in CID/HQ PEP 12/07/2019.

17. As a result of the above finding, the High Court found both respondents, guilty as charged and convicted them accordingly on 14 March 2024. This was after the High Court quashed their acquittals in the Suva Magistrate Court on 12 October 2023.

18. For the offence of *"Attempt to pervert the cause of justice,"* section 190 (e) of the Crime Act 2009 reads as follows:

> *"...A person commits a summary offence if he or she...*
>
> ***(e)*** *In any way obstructs, prevents, perverts or defeat, or attempts to obstruct, prevent, pervert or defeat the cause of justice.*
>
> *Penalty – Imprisonment for 5 years..."*

19. In **State v Waqanivatu,** Criminal Case HAC 220 of 2012, High Court, Lautoka, on 23 February 2018, His Lordship Mr. Justice P. Madigan observed that:

> *"...There is very little precedent to guide a sentencing court for this offence, but the relatively low maximum would suggest a term in the range of 12 to 36 months. Attempts to prevent a witness from giving true evidence would attract terms at the low end of that band but more sophisticated attempts to subvert the judicial process would attract sentences at the higher end of the band."*

20. The State provided a review of the case laws on the offence to the Magistrate Court as follows:

Case	***Details of Offence***	***Sentence***
Abhay Singh v. State *[2007] FLR 105*	*Accused, a lawyer, attempted to influence a witness at trial.*	*6 months imprisonment*
Baleinamoto v. State *[2022] FJHC 448; HAA014.2021 (28 July 2022)*	*Accused, a police officer, attempted to interfere with a police investigation against her former boyfriend.*	*6 months imprisonment*
FICAC v. Mohammed & Others *[2015] FJHC 479; HAC349.2013 (24 June 2015)*	*Accused, a businessman, used a staff member to make a false declaration in relation to a fraud investigation.*	*12 months imprisonment*
State v Waqanivatu-Sentence *[2018] FJHC 101; Criminal Case no. 220 of 2013 (23 February 2018)*	*Accused, a police officer, attempted to get a rape victim to recant.*	*18 months imprisonment*

21. The above authorities seemed to establish a tariff between 6 to 18 months imprisonment.

22. In this case, the aggravating factors were as follows:

(1.) **Breach of the Public Trust.** At the material time, the first respondent was the Prime Minister of Fiji. He was the head of the Cabinet and the government of the Republic of Fiji. In his oath as Prime Minister, taken before His Excellency the President at State House on 20 November 2018, he said the following:

> *"...I, **Josaia Voreqe Bainimarama**, being appointed as Prime Minister, swear that I will be faithful and bear true allegiance to the Republic of Fiji and that I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji and all other laws of Fiji; and I solemnly and sincerely promise to hold my office with honour, dignity and integrity, to be a true and faithful counsellor, not to divulge any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability.*
>
> *So help me, God!"*

In his oath of Allegiance, before His Excellency the President on the same date, he said the following:

> *"...I, **Josaia Voreqe Bainimarama**, swear that I will be faithful and bear true allegiance to the Republic of Fiji, according to law, and I will obey, observe, uphold and maintain the Constitution of the Republic of Fiji.*
>
> *So help me, God!"*

The above oath of office and allegiance speak for themselves. The oaths required the first respondent to *"obey, observe, uphold and maintain the Constitution...and all other laws of Fiji,"* 24 hours 7 days a week. The oaths were a promise by the first respondent to protect the people and the nation of Fiji 24 hours 7 days a week, however, within the four corners of the law. By telling the second respondent, the Commissioner of Police, between July and September 2020, at Suva in the Central

Division, to stay away from the USP investigation that was reported under CID/HQ PEP 12/07/2019, was certainly a breach of the above oaths and the public trust.

I disagree with the learned Magistrate's sentencing comments that your offending was technical in nature and trivial. Your words, actions, comments, orders and directions, as the Prime Minister of the Republic of Fiji, at the material time, carried great weight with the leaders of the various government departments and government statutory bodies. It carried great weight with the members of Cabinet. Without violating the principle underpinning the concept of the separation of powers between the Legislature, the Executive and the Judiciary, the Judiciary is constitutionally bound to speak on the violation of the law, and air its views publicly, for the sake of transparency and accountability.

It was not right for you to tell the second respondent to stay away from investigating the alleged mismanagement of taxpayer's fund at the University of the South Pacific by top senior officials, who appear to be citizens of Fiji. The second respondent was the Commissioner of Police. The second respondent's brief as Police Commissioner was guided by section 5 of the Police Act 1965. It was mandatory for the second respondent to prevent and detect crimes and enforce the criminal law of the Republic of Fiji. The police were investigating the USP mismanagement of funds at the time.

The police had sought the Director of Public Prosecution's assistance. He had recommended the caution interview of the suspects. By telling the second respondent to stay away from the USP investigation, you have in a sense effectively sabotaged the police investigation. To this day, the investigation had not been completed. Your action was inconsistent with the oath of your office.

23. The mitigating factors were as follows:

(i) At the age of 70 years old, this was your first offence.

(ii) I have taken on board the character references provided on your behalf, to the Magistrate Court, by two former President of the Republic of Fiji, Ratu Epeli Nailatikau and Major General (Retired) Mr. J. K. Konrote, and the former Commander of the Republic of Fiji Military Force and present Member of Parliament, Hon Mr. Viliame Naupoto. They certainly spoke highly of you and I have read their references carefully.

(iii) I had also taken note of your doctor's medical report, that is, the report prepared by Doctor Joji Malani.

24. In sentencing you, I am guided by section 4 (1) of the Sentencing and Penalties Act 2009, that is, to punish you in a manner which is just in all the circumstances; to protect the community; to deter others from committing similar offences and to signify that the court and community denounce what you did in Count No. 1.

25. I start with a sentence of 6 months imprisonment. For the aggravating factor, I add 2 ½ years making a total of 3 years imprisonment. For all the mitigating factors, I deduct 2 years, leaving a balance of 1 year imprisonment.

26. On Count No. 1, I sentence you to 1 year imprisonment.

27. I move on to consider the second respondent's case. He was found guilty and convicted of the offence of *"abuse of office".* Section 139 of the Crimes Act 2009 reads as follows:

> ***"139*** *A person commits an indictable offence which is triable summarily if, being employed in the civil service, the person does or directs to be done, in abuse of the authority of his or her office, any arbitrary act prejudicial to the rights of another.*
>
> *Penalty – 10 years imprisonment*
>
> *If the act is done or directed to be done for gain –*
>
> *Penalty – 17 years imprisonment."*

28. In **FICAC** v **Ana Laqere & Others**, Criminal Case No. HAC 056 of 2014, High Court, Suva, on 10 May 2017, His Lordship Mr. Justice Rajasinghe reviewed previous cases on *"abuse of office"*, that is, **Naiveli** v **The State**, Criminal Appeal No. 2 of 1992, Court of Appeal; **State** v **Kunatuba**, Criminal Case No. HAC 018 of 2006, High Court, Suva; **State** v **Sorovakatini**, Criminal Case No. HAC 018 of 2005, High Court, Suva; **State** v **Bola**, Criminal Case No. HAC 029 of 2005, High Court, Suva and **FICAC** v **Mau**, Criminal Case No. HAC 089 of 2010, High Court Suva.

29. His Lordship Mr. Justice Rajasinghe continued as follows in **FICAC** v **Ana Laqere & Others** (supra):

> *"24 In view of the above sentencing precedents, it appears that the courts of Fiji have considered the level of authority and trust reposed in the position held by the accused, and the level of prejudice caused to the victim in sentencing. If the level of authority and trust, and the prejudice caused are high, the court could go to the higher starting point and vice versa.*
>
> *25. I would like to adopt the same approach in setting an appropriate tariff, allowing the sentencing court to determine the appropriate starting point based on the level of culpability and the prejudice/harm caused. Accordingly, I find a tariff limit of one (1) year to twelve (12) years would adequately serve the above purpose. The sentencing court could consider the following ranges of starting point based on the level of culpability and the harm caused;*

	High Level of Culpability	Medium Level of Culpability	Lesser Level of Culpability
High Level of Harm/Prejudice with gain	8-12	6-10	4-8
Medium Level of Harm/Prejudice either with medium level gain or without gain	6-10	4-8	2-6
Lesser Level of harm/Prejudice either with less gain or without gain	4-8	2-6	1-4

26. *In order to determine the level of culpability, the court could consider the following factors; however, this is not an exhaustive list. They are:*

   i) The level of contribution or the influence made by the accused in the commission of the offence,

   ii) The level of authority, trust and the responsibility reposed in the position held by the accused,

   iii) Has the accused influenced or pressured others to involve in the offence,

   iv) Nature and the manner in which the offence was committed or planned,

   v) Number of victims,

   vi) Whether the accused involved in the offence through force, coercion, exploitation or intimidation,

   vii) Not motivated by personal gain,

   viii) Opportunistic "one-off" offence with little or no planning,

27. *The level of harm/prejudice can be determined by considering the level of gain and the impact on the victim."*

30. I adopt Mr. Justice Rajasinghe's suggested tariff abovementioned. Given the facts of this case, I set the sentencing tariff between 2 to 6 years imprisonment.

31. The aggravating factors in this case were as follows:

(i) **Breach of the Public's Trust.** At the material time, the second respondent was the Commissioner of Police of the Republic of Fiji. By virtue of section 129 (3) of the Constitution, he commands the Fiji Police Force and is responsible for its administration, organization, deployment and its control, and in those matters, he is not subject to anyone's control. He is the top police officer and it is his task to lead the police maintain law and order. By virtue of section 5 of the Police Act 1965, he leads the police in preserving the peace, protecting life and property, prevent and detect crime and to enforce the criminal law of this country. However, when he, on 15 July 2020, at Suva in the Central Division, directed the Director of the Criminal

Investigations Department Serupepeli Neiko and Inspector Reshmi Dass to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, he was certainly abusing his office, which was an arbitrary act, prejudicial to the rights of USP. What he did was a direct violation of section 5 of the Police Act 1965 and as such, was a breach of the public trust in him.

(ii) By acceding to the first respondent's request to stay away from the USP investigations reported in CID/HQ PEP 12/07/2019, the second respondent violated his constitutional independence as guaranteed by section 129 (5) of the 2013 Constitution.

32. The mitigating factors were as follows:

(i) At the age of 55 years old, this was his first offence;

(ii) I have taken on board your character reference provided by the Hon Leader of the Opposition Mr. Inia Seruiratu and the former Commander of the RFMF and current Member of Parliament Hon Mr. Viliame Naupoto. They attested to the fact that you have served your country well in the Republic of Fiji Military Force, when you joined in 1988. They said you also worked hard in the police, but for this offence. It was recognized that you were a hard working family man.

33. I start with a sentence of 2 years imprisonment. For the aggravating factors, I add 2 years, making a total of 4 years imprisonment. For the mitigating factors, I deduct 2 years leaving a balance of 2 years imprisonment.

34. For Count No. 2, I sentence the second Respondent to 2 years imprisonment.

35. As required by section 4 (1) of the Sentencing and Penalties Act 2009, the purpose of the above sentence was to punish you in a manner which was just in the circumstances; to protect the community, to deter others from committing the same

offence and to signify that the court and community denounce what you did in Count No. 2.

36. In summary, the first respondent is sentenced to 1 year imprisonment, while the second respondent is sentenced to 2 years imprisonment. Both sentences are to take effect immediately.

37. Both respondents have 30 days to appeal to the Court of Appeal.

38. Before I leave this case, given the first respondent's health conditions, I order and direct that the Commissioner of Prison and/or his nominee, with his/her medical team, to meet and work out a medical care plan, with the first respondent's doctor, and/or Doctor Joji Malani, to map out the first respondent's continued use of the CPAP machine therapy, the use and charging of his mobile phone for his pace maker recording, continued medication and other medical issues of concern raised by the first respondent's doctor, while he is in the State's custody. Although he will be in the State's custody, he is to be treated humanely. Both parties are at liberty to raise any medical care issues with the Court, at any time, on a three days notice.

39. I order so accordingly.

Salesi Temo
Acting Chief Justice

Solicitor for the Appellant: Office of the Director of Public Prosecution, Suva
Solicitor for the Respondents: R. Patel Lawyers, Suva