

**IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]**

CRIMINAL CASE NO: HAC 324 of 2016

STATE

V

1. IFEREIMI VASU

2. PENIASI KURIVITU KUNATUBA

Counsel: Ms. Francis Puleiwai with Mr. Darren Hickes for the State
Mr. Filimoni Vosarogo with Mr. Joji Cakau for the 1st Accused
Ms. Vani Ravono with Ms. Naomi Raikaci for the 2nd Accused

Dates of Trial: 14-18, 21-25, 29 & 31 October and 1, 4-6, 8, 12-15, 18-20, 22 & 25-28
November and 2 December 2019

Closing Addresses: 3 December 2019

Summing Up: 11 December 2019

SUMMING UP

Madam Assessors and Gentleman Assessor,

[1] It is now my duty to sum up the case to you. We have reached the final stage of the proceedings before us. The presentation of evidence is over and it is not possible to hear any more evidence. You should not speculate about evidence which has not been given and must decide the case on the evidence which you have seen and heard. The Counsel for the State and the two accused have addressed you on the evidence. After

their addresses, it is my duty to sum-up the case to you. You will then retire to consider your opinions.

- [2] As the Presiding Judge, it is my duty to ensure that the trial is conducted fairly and according to law. As part of that duty, I will direct you on the law that applies. You must accept the law from me and apply all directions I give to you on matters of law.
- [3] It is your duty to decide questions of fact. But your determinations on questions of fact must be based on the evidence before us. In order to determine questions of facts, first you must decide what evidence you accept as truthful, credible and reliable. You will then apply relevant law, to the facts as revealed by such evidence. In that way you arrive at your opinions.
- [4] Please remember that I will not be reproducing the entire evidence in this summing up. During my summing up to you, I may comment on the evidence; if I think it will assist you, in considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the evidence. You should ignore any comment I make on the facts unless it coincides with your own independent reasoning.
- [5] In forming your opinions, you have to consider the entire body of evidence placed before you. In my attempt to remind you of evidence in this summing up, if I left out some items of evidence, you must not think that those items could be ignored in forming your opinions. You must take all evidence into consideration, before you proceed to form your opinions. There are no items of evidence which could safely be ignored by you.
- [6] After I have completed this summing up, you will be asked to retire to your retiring room to deliberate among yourselves so as to arrive at your opinions on the charges against the two accused. Upon your return to Court, when you are ready, each one of you will be required to state his or her individual opinion orally on the charges against the two accused, which opinion will be recorded. Your opinions could preferably be a unanimous one, but could also be a divided one. You will not be asked for reasons for your opinions. I am not bound to conform to your opinions. However, in arriving at my judgement, I assure you, that I shall place much reliance upon your opinions.
- [7] I have already told you that you must reach your opinions on evidence, and only on evidence. I will tell you what evidence is and what is not.
- [8] In this case, the evidence is what the witnesses said from the witness box, the documents tendered as prosecution and defence exhibits, any admissions made by the parties by way of agreed facts (which includes the further agreed facts). Furthermore, certain statements of the prosecution witnesses were agreed by all parties to be tendered by consent.

- [9]** If you have heard, or read, or otherwise came to know anything about this case outside this Courtroom, you must exclude that information from your consideration. The reason for this exclusion is, what you have heard outside this Courtroom is not evidence. Have regard only to the testimony, the exhibits and the agreed facts presented before you since this trial began. Ensure that no external influence plays any part in your deliberations.
- [10]** A few things you have heard in this Courtroom are also not evidence. This summing-up is not evidence. Statements, arguments, questions and comments by the Counsel are not evidence either. A thing suggested by a Counsel during a witness's cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as true. The opening submission made by State Counsel and closing submissions made by State Counsel and Defence Counsel on behalf of the two accused are not evidence. They were their arguments, which you may properly take into account when evaluating the evidence; but the extent to which you do so is entirely a matter for you.
- [11]** As I already indicated to you, a matter which will be of primary concern to you is the determination of the credibility of witnesses, basically the truthfulness and reliability of their evidence. It is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and correctly recalls the facts about which he or she has testified.
- [12]** Many factors may be considered in deciding what evidence you accept. I will mention some of these general considerations that may assist you.
- [13]** You have seen how the witnesses' demeanour in the witness box when answering questions. How were they when they were being examined in chief, then being cross-examined and then re-examined? Were they forthright in their answers, or were they evasive? How did they conduct themselves in Court? In general what was their demeanour in Court? But, please bear in mind that many witnesses are not used to giving evidence in a Court of law and may find Court environment stressful and demanding.
- [14]** You may also have to consider the likelihood or probability of the witness's account. That is whether the evidence of a particular witness seems reliable when compared with other evidence you accept? Did the witness seem to have a good memory? You may also consider the ability, and the opportunity, the witness had to see, hear, or to know the things that the witness testified about. These are only examples. You may well think that other general considerations assist. It is, as I have said, up to you how you assess the evidence and what weight, if any, you give to a witness's testimony.
- [15]** In assessing the credibility of a particular witness, it may be relevant to consider whether there are inconsistencies in his or her evidence. This includes omissions as

well. That is, whether the witness has not maintained the same position and has given different versions with regard to the same issue. This could be in relation to the testimony of the witness given in Court vis a vis the evidence of other witnesses or in comparison to any previous statement made by that witness.

- [16] This is how you should deal with inconsistencies and omissions. You should first decide whether that inconsistency or omission is significant. That is, whether that inconsistency or omission is fundamental to the issue you are considering. If it is, then you should consider whether there is any acceptable explanation for it. You may perhaps think it obvious that the passage of time will affect the accuracy of memory. Memory is fallible and you might not expect every detail to be the same from one account to the next. If there is an acceptable explanation for the inconsistency or omission, you may conclude that the underlying reliability of the account is unaffected.
- [17] However, if there is no acceptable explanation for the inconsistency or omission, which you consider significant, it may lead you to question the reliability of the evidence given by the witness in question. To what extent such inconsistency or omission in the evidence given by a witness influence your judgment on the reliability of the account given by that witness is for you to decide. Therefore, if there is an inconsistency or omission that is significant, it might lead you to conclude that the witness is generally not to be relied upon; or, that only a part of his or her evidence is inaccurate. In the alternative, you may accept the reason he or she provided for the inconsistency and consider the witness to be reliable.
- [18] Madam Assessors and Gentleman Assessor, I must make it clear to you that I offer these matters to you not by way of direction in law but as things which in common sense and with knowledge of the world you might like to consider in assessing whether the evidence given by the witnesses are truthful and reliable.
- [19] Having placed considerations that could be used in assessing credibility and reliability of the evidence given by witnesses before you, I must now explain to you, how to use that credible and reliable evidence. These are directions of the applicable law. You must follow these directions.
- [20] When you have decided the truthfulness and reliability of evidence, then you can use that credible and reliable evidence to determine the questions of facts, which you have to decide in order to reach your final conclusion, whether the two accused are guilty or not of the two charges. I have used the term "*question of fact*". A question of fact is generally understood as what actually had taken place among conflicting versions. It should be decided upon the primary facts or circumstances as revealed from evidence before you and of any legitimate inference which could be drawn from those given sets of circumstances. You as Assessors, in determining a question of fact,

should utilise your commonsense and wide experience which you have acquired living in this society.

- [21] It is not necessary to decide every disputed issue of fact. It may not be possible to do so. There are often loose ends. Your task is to decide whether the prosecution has proved the elements of the two offences charged.
- [22] In determining questions of fact, the evidence could be used in the following way. There are two concepts involved here. Firstly, the concept of primary facts and secondly the concept of inferences drawn from those primary facts (also known as circumstantial evidence). Let me further explain this to you. Some evidence may directly prove a thing. A person who saw, or heard, or did something, may have told you about that from the witness box. Those facts are called primary facts.
- [23] But in addition to facts directly proved by the evidence or primary facts, you may also draw inferences – that is, deductions or conclusions – from the set of primary facts which you find to be established by the evidence. This is also referred to as circumstantial evidence. If you are satisfied that a certain thing happened, it may be right to infer that something else also occurred. That will be the process of drawing an inference from facts. However, you may only draw reasonable inferences; and your inferences must be based on facts you find proved by evidence. There must be a logical and rational connection between the facts you find and your deductions or conclusions. You are not to indulge in intuition or in guessing.
- [24] In order to illustrate this direction, I will give you a very simple example. Imagine that when you walked into this Court room this afternoon, you saw a particular person (say wearing a dark blue shirt) seated on the back bench. Now he is not there. You did not see him going out. The fact you saw him seated there when you came in and the fact that he is not there now are two primary facts. On these two primary facts, you can reasonably infer that he must have gone out although you have not seen that. I think with that example you will understand the relationship between primary fact and the inferences that could be drawn from them.
- [25] Then we come to another important legal principle. You are now familiar with the phrase burden of proof. It simply means who must prove the case. That burden rests entirely on the prosecution to prove the guilt of the two accused.
- [26] This is because the accused are presumed to be innocent. They may be convicted only if the prosecution establishes that they are guilty of the offences charged. It is not the two accused's task to prove their innocence.
- [27] I have said that it is the prosecution who must prove the allegation. Then what is the standard of proof or degree of proof, as expected by law?

- [28] For the prosecution to discharge its burden of proving the guilt of the two accused, it is required to prove it beyond any reasonable doubt. This means that in order to convict the accused, you must be sure that the prosecution has satisfied beyond any reasonable doubt every element that goes to make up the offences charged. A reasonable doubt is not any doubt or a mere imaginary doubt but a doubt based on reason. The doubt must only be based on the evidence presented before this Court.
- [29] It is for you to decide whether you are satisfied beyond reasonable doubt that the prosecution has proved the elements of the two offences, in order to find the two accused guilty. If you are left with a reasonable doubt about guilt, your duty is to find the two accused not guilty. If you are not left with any such reasonable doubt, then your duty is to find the two accused guilty.
- [30] You should disregard all feelings of sympathy or prejudice, either towards the prosecution or the defence. No such emotion should have any part to play in your decision. You must approach your duty dispassionately, deciding the facts upon the whole of the evidence. You must adopt a fair, careful and reasoned approach in forming your opinions.
- [31] Let us now look at the charges contained in the Amended Information [As you would recall the Second Count was amended by the prosecution, on 8 November 2019], filed by the Fiji Independent Commission Against Corruption (FICAC), against the two accused:

FIRST COUNT

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Decree No. 44 of 2009.

Particulars of the Offence (b)

IFEREIMI VASU, between 11th July 2013 and 27th December 2014, at Suva, in the Central Division, whilst being employed in the Public Service as the Commissioner Fiji Corrections Service, in abuse of the authority of his office, did arbitrary acts for the purpose of gain, namely facilitating and approving the purchasing of goods to the amount of FJ\$ 131,683.33 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service, which were acts prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors.

SECOND COUNT

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Decree No. 44 of 2009.

Particulars of the Offence (b)

PENIASI KURIVITU KUNATUBA, between 31st October 2012 and 31st March 2014, at Suva, in the Central Division, whilst being employed in the Public Service as the Director Corporate Service and Acting Deputy Commissioner Fiji Corrections Service, in abuse of the authority of his office, did arbitrary acts for the purpose of gain, namely facilitating and approving the purchasing of goods to the amount of FJ\$ 60,345.65 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service, which were acts prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors.

- [32] As you would have observed the First Count of Abuse of Office is against the 1st Accused; while the Second Count of Abuse of Office is against the 2nd Accused.
- [33] Section 139 of the Crimes Act No. 44 of 2009 (Crimes Act) defines the offence of Abuse of Office in the following manner: *“A person commits an indictable offence which is triable summarily if, being employed in the public service, the person does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another.”*
- [34] The Section provides that the maximum penalty for Abuse of Office simpliciter is 10 years imprisonment. However, if the act is done or directed to be done for *gain* the maximum penalty is enhanced to 17 years imprisonment.
- [35] Therefore, in order for the prosecution to prove the First Count, they must establish beyond reasonable doubt that;
- (i) The 1st Accused;
 - (ii) During the specified time period (in this case between 11 July 2013 and 27 December 2014);
 - (iii) At Suva, in the Central Division;
 - (iv) Whilst being employed in the public service as the Commissioner of the Fiji Corrections Service;
 - (v) Did arbitrary acts;
 - (vi) In abuse of the authority of his office;

- (vii) The acts were done intentionally;
- (viii) Which acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors; and
- (ix) The acts were done for the purpose of gain.

[36] Similarly, in order for the prosecution to prove the Second Count, they must establish beyond reasonable doubt that;

- (i) The 2nd Accused;
- (ii) During the specified time period (in this case between 31 October 2012 and 31 March 2014);
- (iii) At Suva, in the Central Division;
- (iv) Whilst being employed in the public service as the Director Corporate Service and Acting Deputy Commissioner of the Fiji Corrections Service;
- (v) Did arbitrary acts;
- (vi) In abuse of the authority of his office;
- (vii) The acts were done intentionally;
- (viii) Which acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors; and
- (ix) The acts were done for the purpose of gain.

[37] Let me now elaborate on each of the above elements together in respect of the two counts.

[38] The first element is concerned with the identity of the person who committed the offence. The prosecution should prove beyond reasonable doubt that it was the 1st Accused (in respect of Count One) and that it was the 2nd Accused (in respect of Count Two) and no one else who committed the offence.

[39] The second element relates to the specific time period during which the offence was committed. The third element relates to the place at which the offence was committed. The prosecution should prove these elements beyond reasonable doubt.

[40] The fourth element is that the 1st and 2nd Accused were persons employed in the public service. In the First Count it is stated that the 1st Accused held the position of "Commissioner of Fiji Corrections Service" during the specified time period during which the offence was committed. Similarly, in the Second Count it is stated the 2nd Accused held the position of "Director Corporate Service and Acting Deputy Commissioner for the Fiji Corrections Service" during the specified time period during which the offence was committed. The prosecution should prove these elements beyond reasonable doubt.

- [41] The fifth element is that the two accused did arbitrary acts. It has been held that an arbitrary act is an unreasonable act, a despotic act, an unaccountable act, an act which is not guided or founded by acceptable rules and regulations, or by correct reasons or by reasonable judgment, but an act done according to the personal whims and fancies of the accused.
- [42] Let me give you an example, which does not arise from the facts of this case. In the banking sector, all banks have certain procedures to be followed by bank officers and staff prior to approving of loans to its customers. However, if one officer decided to lend money to a customer ignoring the established procedures, such as, calling for and accepting of a duly completed application form, assessment of the creditworthiness and repayment ability of the customer, not obtaining proper security or guarantee prior to the loan being granted, such acts would constitute an arbitrary act. The bank officer did not follow the established rules and procedures. His decision to act as such was not founded on proper and acceptable reasons and judgment as a bank officer. It was merely based on his own decision.
- [43] The sixth element is that the two accused did the arbitrary acts in abuse of the authority of their office. When someone abuses the authority of his office, he must use his position to fulfil an unlawful or illegitimate agenda or for some reason which is not a proper reason according to established institutional procedure. As you may observe, the fifth and sixth elements are more or less interconnected.
- [44] The next element is that the arbitrary acts in abuse of the authority of their office should have been carried out or done by the accused intentionally. The law provides that a person has intention with respect to conduct if he or she means to engage in that conduct.
- [45] It is not possible to have direct evidence regarding an accused's state of mind as no witness can look into the accused's mind and describe what it was at the time of the alleged incident. However, you can deduce the state of mind of the accused from the facts and circumstances you would consider as proved.
- [46] The eighth element is that the acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors. A person is prejudiced, if his or her interests are put at a disadvantage. It is a general phenomenon that all the public servants, Government Departments and Ministries are expected to manage the Government's financial system in an efficient and accountable manner without waste or fraud. This is because Government money is public money. Hence, if a public officer intentionally performs arbitrary acts, in abuse of the authority of his office, it would prejudice the rights of the Government of Fiji and the public.
- [47] It must be remembered that the prosecution need not prove that actual prejudice was caused. It is sufficient for the prosecution to prove beyond reasonable doubt that the

acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors.

- [48] The final element that the prosecution has to prove is that the arbitrary acts in abuse of the authority of their office, was done by the two accused for gain. So you are also required to consider whether the two accused acted for gain. There are different types of gain. Gain could be financial gain or political gain. It could be personal gain or could be gain obtained for others.
- [49] In this case, the arbitrary acts, done for the purpose of gain, in abuse of the authority of his office, by the 1st Accused, has been categorized as facilitating and approving the purchasing of goods to the amount of FJ\$ 131,683.33 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service.
- [50] Likewise, the arbitrary acts, done for the purpose of gain, in abuse of the authority of his office, by the 2nd Accused, has been categorized as facilitating and approving the purchasing of goods to the amount of FJ\$ 60,345.65 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service.
- [51] If you are satisfied that the prosecution has established all the above elements beyond reasonable doubt, in respect of the First Count, then you must find the 1st Accused guilty of Abuse of Office in respect of the said count.
- [52] If you find that the prosecution has failed to establish any of these elements in relation to the charge beyond reasonable doubt, then you must find the 1st Accused not guilty of Abuse of Office in respect of the First Count.
- [53] If you are satisfied that the prosecution has established all the above elements beyond reasonable doubt, in respect of the Second Count, then you must find the 2nd Accused guilty of Abuse of Office in respect of the said count.
- [54] If you find that the prosecution has failed to establish any of these elements in relation to the charge beyond reasonable doubt, then you must find 2nd Accused not guilty of Abuse of Office in respect of the Second Count.
- [55] However, if you find that the prosecution has proved all elements of the charges beyond any reasonable doubt, except the final element that the two accused acted for gain, still there is an offence made out. That is the offence of Abuse of Office simpliciter. If the prosecution proves beyond reasonable doubt that the two accused acted for gain that would be an aggravated form or more serious form of Abuse of Office.
- [56] These are some of my directions on law and I will now briefly deal with the evidence presented before this Court.

[57] In terms of the provisions of Section 134 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”), the prosecution and the defence have agreed to tender the following statements of witnesses by consent, but subject to cross examination of the said witnesses:

1. Sakiusa Veiwili - Statement dated 17/08/15 (6 pages);
2. Ronal Kumar – Statement dated 17/08/15 (6 Pages);
3. Abhi Ram Charan – Statement dated 28/07/15 (5 pages)
4. Semiti Tikoduadua – Statement dated 19/03/19 (3 pages); and
5. Makelesi Tunisau – Two (2) Statements dated 20/03/19 (4 pages) and 24/06/19 (5 pages) respectively.

[58] Since the prosecution and the defence have agreed to tender the above statements of witnesses by consent, Section 134(1) of the Criminal Procedure Act provides that the said written statements are admissible as evidence to a like extent as oral evidence to the like effect by the person making the statement.

[59] In terms of Section 134(6) of the Criminal Procedure Act it is stated: *“So much of any statement as is admitted in evidence under this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.”*

[60] Section 134(5) of the Criminal Procedure Act states:

“(5) Notwithstanding that a written statement made by any person may be admissible as evidence under this section —

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the court may of its own motion, and shall on the application of any party to the proceedings, require that person to attend before the court and give evidence or to submit to cross-examination.”

[61] In terms of the provisions of Section 135 of the Criminal Procedure Act, the prosecution and the defence have consented to treat the following facts as *“Agreed Facts”* without placing necessary evidence to prove them:

AGREED FACTS PERTAINING TO THE FIRST ACCUSED

1. **THAT** the 1st Accused person in this matter is Ifereimi Vasu (hereinafter referred to as the 1st accused), 58 years old of Quarters 66, Ratu Sukuna Road, Suva.
2. **THAT** the 1st accused held the position of “Commissioner of Prison and Corrections Service” for the Fiji Corrections Service (hereinafter referred to as the “FCS”) during the time period material to this case.
3. **THAT** the 1st accused was a person employed in the public service within the meaning of section 4(1) of the Crimes Decree No. 44 of 2009 at all times relevant to the information of this case.

AGREED FACTS PERTAINING TO THE SECOND ACCUSED

1. **THAT** the 2nd Accused person in this matter is Peniasi Kurivitu Kunatuba (hereinafter referred to as the 2nd accused), 62 years old of Shri Raman Place, Namadi Heights, Suva.
2. **THAT** the 2nd accused held the position of “Director Corporate Service and Acting Deputy Commissioner” for the Fiji Corrections Service (hereinafter referred to as the “FCS”) during the time period material to this case.
3. **THAT** the 2nd accused was a person employed in the public service within the meaning of section 4(1) of the Crimes Decree No. 44 of 2009 at all times relevant to the information of this case.

FURTHER AGREED FACTS FOR 1ST ACCUSED AND 2ND ACCUSED

Naboro Mart Limited

1. **THAT** the Naboro Mart Limited (hereinafter referred to as “NML”) is a limited liability company incorporated under the Companies Act on the 24th October 2011.
2. **THAT** on the same date, NML was issued with Certificate No. RCBS2011L5529 by the Registrar of Companies then Mr. Abhi Ram Charan.

3. **THAT** the Shareholders and Directors of NML are Mr. Ifereimi Vasu (1st Accused), Mr. Apimeleki Taukei, Akuila Buliivoro aka Akuila Namakadre and Lusiana Lului.
4. **THAT** Lusiana Lului not only was she the Director of NML, she was also appointed as the Secretary for NML on the 12th of October 2011.
5. **THAT** the above mentioned Directors referred to paragraph 3 did not pay any subscription nor are they entitled to Directors fees or paid any remuneration as stated in the Articles of Association.
6. **THAT** Mr Akuila Bulivono Namakadre was the Deputy Commissioner at the Fiji Corrections Service (hereinafter referred to as “FCS”) from February 2012 to September 2012 before he went on tour on duty for 1 year.
7. **THAT** on the 20th of September 2012, Mr Namakadre handed over his files and documents before he left on tour on duty. He provided a handover statement.
8. **THAT** the NML was registered for the welfare of the Corrections Officers through the Fiji Corrections Service Welfare (hereinafter referred to as “FCS Welfare”).
9. **THAT** nature of business of NML is to provide the following:
 - i. To carry out business as general merchants in the retail and wholesale of general merchandise, initially for household food items;
 - ii. To carry on the business of retailing agricultural products and for possible exports later.
 - iii. To carry on the business of operating an internet shop for research purposes;
 - iv. To carry on the business of bill payments for various utilities in conjunction with a commercial bank; and
 - v. To carry on the business of carries by land within the Suva Navua corridor
10. **THAT** the NML belongs to the FCS Welfare.

Small Business Units

11. **THAT** the Small Business Units (hereinafter referred to as “SBU”) was known initially as Prisons Industry when it started in 1996 until 2007.
12. **THAT** the Prison Industry was solely established to rehabilitate the Prisoners and also to ensure food security in all FCS Institutions across Fiji including Naboro.
13. **THAT** the name Prison Industry was changed to Enterprise.
14. **THAT** in 2007 when Mr. Iovane Naivalurua was appointed as the FCS Commissioner, he changed the name of the Enterprise to Small Business Unit (hereinafter referred to as “SBU”)
15. **THAT** Mr. Naivalurua and his team negotiated with the Government for the funding to be given for SBU to operate the 6 different units.
16. **THAT** the Government through the Ministry of Finance (Known then) now Ministry of Economy had provided about FJ\$200,000 to the SBU’s to assist in its operations in 2009.
17. **THAT** the SBU’s consists of 6 units which were all based in Naboro namely:
 - i. Piggery
 - ii. Bakery
 - iii. Joinery
 - iv. Poultry
 - v. Farming
 - vi. Tailor
18. **THAT** the Nasinu prison later on then ran a fish farm unit and the female prison also ran a tailor unit.
19. **THAT** a SBU team was formed, formerly known as Enterprise team through the directive of the Commissioner Mr. Naivalurua to look after the overall function of the SBU’s.
20. **THAT** a Business Development Manager (hereinafter referred to as “BDM”) was appointed to oversee the daily operations of the SBU.
21. **THAT** Mr. Pene Mario was appointed the BDM from 09th of May 2013 – 02nd December 2013 who took over the post from Ms. Salote Panapasa.

22. **THEREAFTER** on the 03rd December 2013, Mr. Sakiusa Veiwili was appointed the BDM assuming the same role from Mr. Pene Mario.
23. **THAT** Mr. Apete Tavo assume the role of the BDM from Mr. Sakiusa Veiwili in August of 2014.
24. **THAT** the TMA clerks were namely Mr. Ronal Kumar and Mr. Junior Bali.
25. **THAT** Mr. Ronald Kumar was based at HQ while Mr. Bali was based in Naboro.
26. **THAT** the Staff Officer at Enterprise (hereinafter referred to as “SOE”) namely Ifereimi Nakitorotoro was also part of the TMA Team who was also appointed by the Commissioner then Mr. Naivalurua to supervise the officers within each unit as to how they carry out their functions.
27. **THAT** Mr. Nakitorotoro was directly reporting to the BDM.
28. **THAT** Anitivasa Radrokai also came in as part of the TMA team as a TMA Clerk under the leadership of Apete Tavo as the BDM.
29. **THAT** the following minutes are agreed to by the Accused but subject to cross examination
30. **THAT** the following minutes were prepared and signed by TMA Clerk Mr. Ronal Kumar.
 - i. PE25 – Minutes dated 30/01/13 addressed to DCS for payment to NML on pending five (5) Purchase Orders (PO) from 2012.
 - ii. PE25 (PO91151 – 004685) Minute dated 31/10/12 addressed to DCS for purchase of Washing Soap.
 - iii. PE32 – Minute dated 10/09/13 addressed to COMCOR for purchase of Bakers Flour.
 - iv. PE33 – Minute dated 25/02/14 addressed to BDM for purchase of rice.
 - v. PE37 - Minute dated 15/03/13 addressed to DCP through BDM for payment to NML
 - vi. PE40 – Minute dated 12/06/13 addressed to DCOMCOR for payment to NML.
 - vii. PE41 – Minute dated 17/06/13 addressed to DCOMCOR for payment to NML

- viii. PE46 – Minute dated 04/09/13 addressed to COMCOR through AO for approval for payment.
 - ix. PE47 - Minute dated 03/10/13 addressed to COMCOR through DCOMCOR and through DCOMCOR and through AO for payment to NML.
31. **THAT** the following minutes were prepared and signed by TMA Clerk Junior Bali.
- i. PE30 – Minute dated 10/07/13 addressed to COMCOR ufs BDM and AO for purchase of 200 bags Bakers Flour.
 - ii. PE31 – Minute dated 07/08/13 addressed to COMCOR for purchase of Bakers Flour and Rice.
 - iii. PE42 – Minute dated 10/07/13 addressed to COMCOR through BDM and AO for (AP) payment to NML.
 - iv. PE43 – Minute dated 10/07/13 addressed to COMCOR through BDM and AO (AP) payment to NML.
 - v. PE44 – Minute dated 31/07/13 addressed to COMCOR FOR (AP) payment to NML for Bran.
 - vi. PE45 – Minute dated 31/10/13 addressed to COMCOR for (AP) payment to NML for Tarpauline.
32. **THAT** the following minutes were prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro:
- i. PE25 – (PO91151 – 004695) Minute dated 26/10/12 addressed to DCS for plastic wrapper.
 - ii. PE25 – (PO91151 – 004696) Minute dated 01/11/12 addressed to DCS for poultry feeds – Mill mix
 - iii. PE26 – Minute dated 02/04/13 addressed to COMCOR through BDM for Bakery – Bakers Flour and Ingredients.
 - iv. PE27 – Minute dated 04/06/13 addressed to DCOMCOR through BDM for root crops, Veg, Digging Fork.
 - v. PE28 - Minute dated 14/06/13 addressed to COMCOR through BDM for Bakery – Bakers Flour.
 - vi. PE29 - Minute dates 03/05/13 addressed to DCC through BDM for Gumboots – Poultry/ COMM Veg.

- vii. PE38 – Minute dated 19/03/13 addressed to DCC through BDM for Piggery – Mill Mix.
 - viii. PE39 – Minute date 22/03/13 addressed to AO through BDM for Naboro Mini Mart.
33. **THAT** the following minutes were signed by Sakiusa Veiwili in his term as the BDM namely:
- i. PE34 – Minute dated 25/04/14 addressed to COMCOR for the Purchase of Rice for piggery.
 - ii. PE35 – Minute dated 28/05/14 addressed to COMCOR for the Purchase of Piggery Feeds – loose rice.
 - iii. PE48 – Minute dated December 13 addressed to COMCOR through BDM for the payments for items bought from NML.
 - iv. PE54 – Minute dated 22/01/14 addressed to COMCOR through CLO for Purchase of Rice for Piggery.
34. **THAT** the following minutes were signed by Mr. Apete Tavo in his term as the BDM namely:
- i. PE36 – Minute dated 24/08/14 addressed to COMCOR through CLO for the Purchase of 50kg Long Grain Rice for Pig Feed - \$21,000
 - ii. PE50 – Minute dated 04/11/14 addressed to COMCOR through CLO and SAO for the payment to NML LTD - \$4,695.20
35. **THAT** the following minute was prepared and signed by Mr. Anitivasa Radrokai namely:
- i. PE51 – Minute dated 23/12/14 addressed to COMCOR through CLO and BDM for (AP) – Payment to NML LTD – 6,913.93

[62] Just for the record, it may be mentioned that the Further Agreed Facts makes reference to all the transactions that are the subject matter of this case, except to PE 49. However, it is to be noted that PE 49 is part of the Agreed Bundle of Documents.

[63] Since the prosecution and the defence have consented to treat the above facts as “Agreed Facts” and “Further Agreed Facts” without placing necessary evidence to prove them you must therefore, treat all the above facts as proved beyond reasonable doubt.

Case for the Prosecution

[64] In support of their case, the prosecution led the evidence of the following 12 witnesses:

1. Jainan Prasad – Former Senior Procurement Officer at the Ministry of Finance.
2. Abdul Rasheed – Former Senior Accounts Officer at the Fiji Corrections Service.
3. Sakiusa Veiwili - Business Development Manager at Fiji Corrections Service (from December 2013 to July 2014).
4. Ronal Kumar – TMA Clerk at Fiji Corrections Service.
5. Abhi Ram Charan – Former Registrar of Companies.
6. Nandu Naidu – Manager Operations Punjas, Suva Branch.
7. Pene Mario – Business Development Manager at Fiji Corrections Service (from May to December 2013).
8. Iferemi Nakitorotoro – Staff Officer Enterprise at Fiji Corrections Service.
9. Akuila Bulivono Namakadre - Former Deputy Commissioner at Fiji Corrections Service.
10. Iliesa Lutu – Former Deputy Permanent Secretary to the Public Service Commission.
11. Semiti Tikoduadua – Chief Investigator FICAC.
12. Makelesi Tunisau – Financial Investigator FICAC.

[65] You would realise that 6 of the above witnesses were employees of FCS during the time period material to this case: Abdul Rasheed, Sakiusa Veiwili, Ronal Kumar, Pene Mario, Iferemi Nakitorotoro and Akuila Bulivono Namakadre.

[66] In terms of the provisions of Section 135 of the Criminal Procedure Act, Agreed Bundle of Documents was admitted between the Prosecution and the 1st Accused; and the

Prosecution and the 2nd Accused. Based on the said Agreed Bundle of Documents the following documents were tendered to Court by consent of both the prosecution and defence, and are marked as Prosecution Exhibits **PE 1 to PE 54** respectively:

PE 1	Appointment Letter of Lt. Colonel Ifereimi Vasu as Commissioner of Prisons and Corrections Service, dated 7 th January 2011.
PE 2	Acting Appointment Letter of Lt. Colonel Ifereimi Vasu as Commissioner of Fiji Corrections Service, dated 3 rd March, 2014.
PE 3	Agreement of Service between Government of the Republic of the Fiji Islands and Mr. Ifereimi Vasu, dated 7 th February 2011.
PE 4	Appointment Letter of Mr. Peniasi Kunatuba as Director Corporate Services of Fiji Corrections Service, dated 10 th February 2010.
PE 5	Appointment Letter of Mr. Peniasi Kunatuba as Acting Deputy Commissioner of Fiji Corrections Service, dated 25 September 2012.
PE 6	Extension Letter of Contract of Mr. Peniasi Kunatuba as Director Corporate Services, dated 23 rd January 2013.
PE 7	Extension Letter of Re – Engagement for Mr. Peniasi Kunatuba as Director Corporate Services, dated 31 st December 2013.
PE 8	Minutes of FCS Welfare Committee Meeting on 21 st October 2011.
PE 9	Minutes of FCS Welfare Committee Meeting on 22 nd July 2011.
PE 10	Certificate of Registration of Naboro Mart Limited under the Companies Act on 24 th October 2011.
PE 11	Notice of Situation of Registered Office of any Change Therein for Naboro Mart Ltd, dated 13 th September 2011.
PE 12	Particular of Directors and Secretaries and of any changes therein for Naboro Mart Limited, dated 13 th October 2011.
PE 13	Declaration of Compliance with the requirements of the Companies Act on application for Registration of a Company for Naboro Mart Limited, dated 20 th October 2011.
PE 14	Memorandum of Association for Naboro Mart Ltd, dated 24 th September 2011.
PE 15	Articles of Association for Naboro Mart Ltd, dated 24 th September 2011.
PE 16	Fiji Corrections Service Financial Manual 2013, dated 13 th June 2013.
PE 17 PE 17(I)	Financial Management Act 2004, Procurement Regulations 2010. Financial Management Act 2004 - Procurement (Amendment) Regulations 2012.
PE 18	Technical Evaluation Committee (TEC) meeting minutes of the

	meeting held at Fiji Procurement Office, dated 3 rd October 2012.
PE 19	Approved list of suppliers for Tender No: CTN 146/2012 – Contract for Supply of General food items for Government.
PE 20	Ministry of Finance letter Re: Tender CTN 146/2012 – Supply of General Food items for Government, dated 16 th November 2012.
PE 21	Fiji Corrections Service letter to Chief Procurement Officer, Re: Purchase of Bakers Flour and Rice from Naboro Mini Mart, dated 12 th August 2013.
PE 22	Punjas letter to the Acting Director of Fiji Procurement Office, Re: Govt. Tender No. CTN 146/2012 - Contract for general food items, dated 19 th August 2013.
PE 23	Ministry of Finance Memorandum to Commissioner of Fiji Corrections Service, Re: Complaint by Punjas & Sons Limited on Standing Offer Contract, dated 23 rd September 2013.
PE 24	Email printout sent from Jainan T. Prasad to Abdul Rasheed, Subject: Complaint by Punjas, dated 25 th September 2013.
PE 25	Fiji Corrections Service Payment Voucher, Voucher No. 66918, Cheque No. 743, paid to Naboro Mini Mart, amounting to \$17,622.40.
PE 26	Fiji Corrections Service Payment Voucher, Voucher No. 68909, Cheque No. 832, paid to Naboro Mini Mart, amounting to \$13,745.00.
PE 27	Fiji Corrections Service Payment Voucher, Voucher No. 70589, Cheque No. 911 (3/5), paid to Naboro Mini Mart, amounting to \$1,948.50.
PE 28	Fiji Corrections Service Payment Voucher, Voucher No. 70671, Cheque No. 920 (1/2), paid to Naboro Mini Mart, amounting to \$12,960.00.
PE 29	Fiji Corrections Service Payment Voucher, Voucher No. 70672, Cheque No. 920 (2/2), paid to Naboro Mini Mart, amounting to \$966.50.
PE 30	Fiji Corrections Service Payment Voucher, Voucher No. 71715, Cheque No. 970 (1/2), paid to Naboro Mini Mart, amounting to \$12,860.00.
PE 31	Fiji Corrections Service Payment Voucher, Voucher No. 72411, Cheque No. 1002, paid to Naboro Mini Mart, amounting to \$15,335.00.
PE 32	Fiji Corrections Service Payment Voucher, Voucher No. 73230, Cheque No. 1029, paid to Naboro Mini Mart, amounting to \$12,860.00.
PE 33	Fiji Corrections Service Payment Voucher, Voucher No. 77528, Cheque No. 113, paid to Naboro Mini Mart, amounting to

	\$5,200.00.
PE 34	Fiji Corrections Service Payment Voucher, Voucher No. 79174, Cheque No. 153 (2/2), paid to Naboro Mini Mart, amounting to \$6,344.00.
PE 35	Fiji Corrections Service Payment Voucher, Voucher No. 79530, Cheque No. 166 (2/2), paid to Naboro Mini Mart, amounting to \$21,000.00.
PE 36	Fiji Corrections Service Payment Voucher, with Cheque No. 301 (2/5), paid to Naboro Mini Mart, amounting to \$21,000.00.
PE 37	Fiji Corrections Service Payment Voucher, Voucher No.68341, Cheque No. 814, paid to Naboro Mini Mart, amounting to 1,693.60.
PE 38	Fiji Corrections Service Payment Voucher, Voucher No. 68453, Cheque No. 822, paid to Naboro Mini Mart, amounting to \$1,380.00.
PE 39	Fiji Corrections Service Payment Voucher, Voucher No. 68541, Cheque No. 828, paid to Naboro Mini Mart, amounting to \$720.00.
PE 40	Fiji Corrections Service Payment Voucher, Voucher No. 70594, Cheque No. 911 (2/5), paid to Naboro Mini Mart, amounting to \$1,380.00.
PE 41	Fiji Corrections Service Payment Voucher, with Cheque No. 911 (1/5), paid to Naboro Mini Mart, amounting to \$129.65.
PE 42	Fiji Corrections Service Payment Voucher, Voucher No. 71410, Cheque No. 953 (1/2), paid to Naboro Mini Mart, amounting to \$2,196.47.
PE 43	Fiji Corrections Service Payment Voucher, Voucher No. 71409, Cheque No. 953 (2/2), paid to Naboro Mini Mart, amounting to \$245.00.
PE 44	Fiji Corrections Service Payment Voucher, Voucher No. 71799, Cheque No. 970 (2/2), paid to Naboro Mini Mart, amounting to \$395.00.
PE 45	Fiji Corrections Service Payment Voucher, Voucher No. 71862, Cheque No. 979, paid to Naboro Mini Mart, amounting to \$695.00.
PE 46	Fiji Corrections Service Payment Voucher, Voucher No. 72648, Cheque No. 1012, paid to Naboro Mini Mart, amounting to \$13,593.09.
PE 47	Fiji Corrections Service Payment Voucher, Voucher No. 73972, Cheque No. 1055, paid to Naboro Mini Mart, amounting to \$7,236.90.
PE 48	Fiji Corrections Service Payment Voucher, Voucher No. 76244, Cheque No. 082 (1/2), paid to Naboro Mini Mart, amounting to \$2952.11.

PE 49	Fiji Corrections Service Payment Voucher, Voucher No. 79078, Cheque No. 1162, paid to Naboro Mini Mart, amounting to \$3,408.59.
PE 50	Fiji Corrections Service Payment Voucher, with Cheque No. 301 (5/5), paid to Naboro Mini Mart, amounting to \$4,648.24.
PE 51	Fiji Corrections Service Payment Voucher, with Cheque No. 348, paid to Naboro Mini Mart, amounting to \$6,913.93.
PE 52	Punjas & Sons letter to Government Tender Board with attachments.
PE 53	Email printout from Nandu Naidu to David Low sent on 6 March 2013 with attachment.
PE 54	Fiji Corrections Service Payment Voucher, Voucher No. 76735, Cheque No. 096, paid to Naboro Mini Mart, amounting to \$2,600.00.

[67] In addition to the above, during the course of the trial the prosecution tendered the following exhibits:

PE 55	Fiji Corrections Service Finance Manual 2011.
PE 56	Fiji Corrections Service Finance Manual 2013.
PE 57	Public Service Commission General Orders – 2011 Edition.
PE 60	Letter dated 24 th June 2013 from DCOMCOR to COMCOR RE: Enterprise Position Description
PE 61	Agreement between the Government of Fiji duly represented by the Ministry of Finance through the Fiji Procurement Office and Punjas & Sons Limited.
PE 62	Caution Interview Statement of Peniasi Kunatuba.
PE 63	Caution Interview Statement of Ifereimi Vasu.
PE 64	Government of Fiji Gazette Notification, dated Friday 23 rd November 2012, RE: Tender No. CTN146/2012 for Supply of General Food Items For Government.
PE 65	Finance Circular, dated 11 th March 2013. Appendix I – Proforma Finance Manual 2013.
PE 66	Government of Fiji Gazette Supplement, dated Monday 31 st December 2012 – Commerce (Price Control) (Wheat Products Ex-Factory) (No.2) Order 2012.

[68] Evidence of Jainan Prasad

- (i) *He is currently employed at the United Nations Children’s Fund (UNICEF) in Suva as a Supply and Logistics Associate.*
- (ii) *Prior to this, he worked at the Ministry of Finance (now Ministry of Economy) since 2010, as a Senior Procurement Office, in the Tender Unit. As the Senior Procurement Officer he was managing the Government procurement tender process for the whole of the Government.*
- (iii) *He testified that he was specifically in charge of managing standing order tenders. His job responsibilities included, inter – alia, identification of the need of a tender and drawing up specifications, calling of tenders, evaluations of tenders, advising on the awarding of tenders and managing contracts.*
- (iv) *The witness said that the law that governs the Tender process in Fiji is guided by the Procurement Regulations 2010 (hereinafter Procurement Regulations) [Prosecution Exhibit PE 17]. The said Regulations were made in terms of the powers conferred by Section 81 of the Financial Management Act 2004, and came into force on 1 August 2010 (Regulation 1(2)).*
- (v) *The Procurement Regulations (Regulation 2) defines the “procurement” to mean the overall process of acquiring goods, civil works and services which includes all the functions from the identification of needs, selection and solicitation of sources, preparation and award of contract and all phases of contract administration and management through to the end of the services, contracts or the disposal of the asset.*
- (vi) *Regulation 3 of the Regulations sets out the Guiding Principles of Procurement in the following terms:*
 - “3.-Any procurement of goods, services or works shall be issued so as to promote the following principles:*
 - (a) value for money;*
 - (b) maximise economy and efficiency and the ethical use of Government resources;*
 - (c) promote open and fair competition amongst suppliers and contractors;*
 - (d) promote the integrity of, fairness and public confidence in the procurement process; and*

(e) achieve accountability and transparency in the procedures relating to procurement.”

(vii) The witness referred to Regulation 9 of the Procurement Regulations which establishes the Government Tender Board.

“9. - (1) This section establishes the Government Tender Board.

(2) The Board is constituted with authority to approve all procurement of goods, services and works valued at \$30, 001 and more.

(viii) The witness confirmed that for Procurement of goods, services and works below \$30,000 the Permanent Secretaries may delegate procurement authorities within their respective Ministries or Department s. This is confirmed in Regulation 27 of the Procurement Regulations.

“27 (1) The Procurement authorities delegated to Permanent Secretaries and the Board when procuring goods, services or works are as follows-

<i>Responsibility Authority</i>	<i>Procurement Limits</i>
<i>Permanent Secretaries</i>	<i>\$30,000 and less</i>
<i>Government Tender Board</i>	<i>\$30,001 and more</i>

(2) The Permanent Secretaries may delegate procurement authorities within their respective Ministries or Department s but in doing so, must have regard for the level of skills and experience of officers and must ensure that each officer does not exceed his or her limits.

(3) Each delegation of procurement authority shall be documented in the Ministries or Department s Finance Manual.

(ix) Where procurement of goods, services or works would be less than \$30,000 Regulation 29 would become applicable.

“29 (1) A minimum of three competitive quotes must be obtained for the procurement of goods, services or works valued at \$100 and more but \$30,000 and less.

(2) Where the procurement of goods or services costs less than \$100, competitive quotes may be received verbally but must be documented and signed by the officer receiving the quotes.”

- (x) *Jainan Prasad testified to the amendments that were affected by virtue of the Procurement (Amendment) Regulations 2012 [Prosecution Exhibit PE 17 (I)]. By this Amendment Regulations 9(2), 27 (1) and 29 of the Principal Regulations were amended. The limit of \$30,000 stated in Regulation 9 and Regulation 27 has been amended to read \$50,000. Accordingly, the approval of the Government Tender Board is now required only for goods, services or works which is over \$50,000. If it is below \$50,000 the Permanent Secretaries may delegate procurement authorities within their respective Ministries or Departments.*
- (xi) *Similarly, the upper limit of \$30,000 stated in Regulation 29 has also been increased to \$50,000, while the lower limit of \$100 has been increased to \$1,000. Accordingly, a minimum of three competitive quotes must be obtained for the procurement of goods, services or works valued at \$1,000 and more but \$50,000 and less. Where the procurement of goods or services costs less than \$1000, competitive quotes may be received verbally but must be documented and signed by the officer receiving the quotes.*
- (xii) *The Procurement (Amendment) Regulations 2012 has introduced a new sub-regulation to Regulation 29, which is Regulation 29 (3). Regulation 29 (3) states as follows:*
- “(3) A Permanent Secretary or Head of Department may waive the requirement to obtain competitive quotes for the procurement of goods, services or works below the value of \$50,000.00 where-*
- (i) there is only one supplier capable of supplying the goods services or work in Fiji;*
- (ii) there is a binding annual contract with the supplier;*
- (iii) a supplier has been nominated by an aid agency which is funding at least 50% of the procurement; or*
- (iv) it is for the expeditious supply or specialised, technical services from a supplier who has previously provided services to Government and has through that engagement created or used its intellectual property or working knowledge to deliver the services procured.”*
- (xiii) *The witness also explained as to what is meant by Common Used Goods and Services and the establishment of Standing Offer Contracts. Regulation 35 provides as follows:*

“35- (1) Where the Director identifies any goods or services that are required for the benefit of more than one Department , the Director may, in respect of up to one year, call a tender for the supply of goods, services or works to meet the requirements of those Department s for that year and enter into a standing offer contract.

(2) If the Director is satisfied that it would be more advantageous to obtain tenders for the supply of such goods or services to meet those requirements over a longer period than one year, the Director may call for tenders for the supply of such goods and services to meet those requirements over such long period.

(3) Permanent Secretaries must ensure that all standing offer contracts executed by the Fiji Procurement Office on behalf of Government pursuant to sub regulations (1) and (2) are complied with at all times.

- (xiv) Regulation 2 defines “common used goods and services” to mean goods and services that are used by one or more Department s and for which the Director may enter into a standing offer contract. A “standing offer contract” has been defined to mean a contract for the supply of goods or services where the supplier has agree to supply specified goods or services to Government for a specify period and at a pre-determine price.*
- (xv) Regulation 36 stipulates the qualifications that are required of potential bidders (Suppliers and Contractors) in order for them to participate in procurement proceedings.*
- (xvi) The witness next testified to the minutes of the Technical Evaluation Committee (TEC) meeting held at Fiji Procurement Office, on 3 October 2012, where decisions were made in respect of Tender No: CTN 146/2012, which was the contract for the supply for the Whole of Government [Prosecution Exhibit PE 18].*
- (xvii) The witness testified at length as to the Approved List of Suppliers for Tender No: CTN 146/2012 – Contract for Supply of General Food Items for Government [Prosecution Exhibit PE 19] and the Ministry of Finance letter Re: Tender CTN 146/2012 – Supply of General Food items for Government , dated 16th November 2012 [Prosecution Exhibit PE 20].*
- (xviii) As per PE 20, which is addressed to Ministries and Head of Department s, it is stated that the Government Tender Board at its meeting No: 24/2012, held on 26 October 2012, approved Tender CTN 146/2012, for 2 years, to various companies as per the attached list (the Approved List of suppliers).*

- (xix) *It is further stated that Ministries and Department s are not required to take three competitive quotes but place their LPO's directly to the approved contractors on 'as and when' required basis and also liaise first with the approved contractors in regards to their respective delivery plans prior to issue of Purchase Order.*
- (xx) *PE 20 also reminds officers and reiterates what is set out in Regulation 35 of the Procurement Regulations that they are obliged to procure from Government contractors.*
- (xxi) *The contents of PE 20 were formalised in Government Gazette, No. 134, dated Friday 23rd November 2012 [Prosecution Exhibit PE 64]. The Approved List of Suppliers for Tender No: CTN 146/2012 – Contract for Supply of General Food Items for Government, was also attached to the said Gazette notification.*
- (xxii) *The witness also made reference to Prosecution Exhibit PE 61, which is the Agreement between the Government of Fiji (duly represented by the Ministry of Finance through the Fiji Procurement Office) [the "Clients"] and Punjas & Sons Limited [the "Supplier"]. The agreement was entered into on 14 November 2012 and is valid for two years.*
- (xxiii) *The contract provides that the General Food Items will be ordered by the Client or an Agency as and when required as shown in the Schedule 1.1 (the List of General Food Items which has been awarded to Punjas & Sons Limited to supply) and the prices shown will remain fixed and are not subject to change during the duration of the Agreement.*
- (xxiv) *Jainan Prasad further testified to the complaint received by Fiji Procurement Office from Punjas & Sons Limited. This was to the effect that the Fiji Corrections Service (FCS) has failed to honour the Government Tender (CTN 146/2012) and has stopped purchasing bakers flour from Punjas for the past three months.*
- (xxv) *The witness stated that on receipt of the complaint (on or around August 2013), he had notified the FCS. Pene Mario, the Business Development Manager (BDM) at the time had sent an explanation on behalf of FCS, dated 12 August 2013 [Prosecution Exhibit PE 21].*
- (xxvi) *A formal complaint in this regard had been made to the Acting Director Fiji Procurement Office by Mr. Nandu Naidu, dated 19th August 2013 [Prosecution Exhibit PE 22].*

(xxvii) *Based on the above complaint, Jainan Prasad, on behalf of the Permanent Secretary for Finance, submitted a Memorandum to the Commissioner Fiji Corrections Service. This was dated 23 September 2013 [Prosecution Exhibit PE 23]. This Memorandum was attached to an email sent by the witness to Abdul Rasheed (Accounts Officer) and Pene Mario [Prosecution Exhibit PE 24 (I)]. The witness testified to the remaining email correspondence in this regard – the reply sent to him by Abdul Rasheed [Prosecution Exhibit PE 24 (II)] and his response thereto [Prosecution Exhibit PE 24 (III)].*

(xxviii) *In his email in reply the witness has stated inter-alia that the contract with Punjas & Sons Limited is an Agreement and enforceable by law which is legally binding and if a party does not carry out its part, they could be subject to legal challenge. He has also stated thus: “Your office is hereby advised to follow the standing offer contract and make an immediate stop of buying from non-contractors. Similar precedent should be set for any other/future procurements.”*

[69] Evidence of Abdul Rasheed

- (i) *Currently, he is working at the Ministry of Youth and Sports as Senior Co-ordinator Finance. He joined the Ministry of Youth and Sports on 1 August 2016.*
- (ii) *Prior to that, he was working at the Fiji Corrections Service (FCS) from October 2012 to July 2016.*
- (iii) *Prior to joining FCS, the witness had worked at the Ministry of Finance (MOF) from May 2012 to October 2012, as an Assistant Accounts Officer, with the MOF Financial Management Information System (FMIS).*
- (iv) *At the time of joining the FCS in October 2012, he held the post of Accounts Officer and was based at the Headquarters in Suva. Around the end of 2013, he was promoted by the Commissioner as Senior Accounts Officer. His roles and responsibilities included the managing of the Finance Section, supervising the Finance Section staff, doing monthly reports which was done through the Director Corporate Services (DCS) to the Commissioner of Corrections, convening meetings, doing timely reconciliations and reports to the MOF and also consolidating with the assistance of other heads of FCS, the annual budget. He also ensured that the Finance Manual of the FCS and the subsequent regulations are adhered to and the payment processes are in line with what the Finance Manual of the FCS spells out.*
- (v) *The witness testified that at the time he joined FCS, the 1st Accused was the Commissioner of Corrections and the 2nd Accused was the DCS and also the*

acting Deputy Commissioner of Corrections, since Akuila Namakadre was on tour of duty overseas.

- (vi) The witness said that in the years 2013 and 2014, the 1st Accused continued to function as the Commissioner of Corrections (after his contract expired in 2014, he was Acting as Commissioner of Corrections). In the years 2013 and 2014, the 2nd Accused continued to function as DCS and as Deputy Commissioner (until Akuila Namakadre resumed duties).*
- (vii) He testified to the structure of the FCS at the time he joined. The Administration and Finance Department s were reporting directly to the DCS. Then it goes to the Deputy Commissioner and then Commissioner.*
- (viii) The witness testified at length to the various provisions of the Fiji Corrections Service Finance Manual 2011 (Prosecution Exhibit PE 55) and the Finance Manual 2013 (Prosecution Exhibit PE 56).*
- (ix) The Finance Manual 2011 came into effect on 19 July 2011, and is comprised of 19 parts. In accordance with the authority given to the Commissioner of FCS under Section 28 (1) (j) of the Finance Management Act 2004, the 1st Accused authorised the issuing of the said Finance Manual for the FCS.*
- (x) Clause 2.2 makes reference to the delegation of Procurement Authorities. Clause 2.2.1 provides that the following officers are delegated authority to procure goods, services and works up to the following limits specified:*

<i>Commissioner of Corrections</i>	<i>-</i>	<i>\$30,000</i>
<i>Deputy Commissioner</i>	<i>-</i>	<i>\$10,000</i>
<i>Superintendent HQ's (SHQ)/Accounts Officer-</i>		<i>\$ 3,000</i>
<i>Supervisors</i>	<i>-</i>	<i>\$ 2,000</i>
<i>Assistant Accounts Officer/Officer in Charge of Correction Institutions.</i>	<i>-</i>	<i>\$ 1,000</i>

- (xi) Clause 2.3 (a), which makes reference to Competitive Procurement states as follows:*

2.3.1 Public tenders must be called for any procurement of goods, services or works valued at \$30,001 or more, unless a Tender Board has approved an exemption in accordance with Procurement Regulation 48 (1).

2.3.2 *Competitive quotes, instead of public tenders, may be called for procurements below \$30,000.*

2.3.3 *Quotations may be received by telephone for the purchase of goods or services estimated to cost less than \$100. These quotes must be recorded and certified by the officer receiving them.*

2.3.4 *Officers found splitting purchase orders to circumvent the need to obtain written quotations (less than \$100) will be liable for surcharge.*

(xii) *Clause 2.5.1 provides that a Local Purchase Order (LPO) shall be issued when procuring any goods, services or works from an organisation within Fiji, unless a contract or agreement has been entered into.*

(xiii) *The witness explained as to what is meant by Trading and Manufacturing Accounts (PART 6 of the Finance Manual). Trading and Manufacturing Activities (TMA's) are operated on a semi commercial basis to increase the returns that are realised from them and to provide goods, services or works more cost effectively.*

(xiv) *The policies and procedures in this part assigned particular responsibilities to the following persons:*

- *Commissioner of Corrections;*
- *The Business Development Manager (BDM);*
- *The Production Supervisor;*
- *TMA Manager;*
- *The Accounts Officer;*
- *The Assistant Accounts Officer;*
- *TMA Accounts Clerk;*
- *The Stock-keeper;*
- *The Credit Officer;*
- *Assistant Marketing Officer;*
- *Stock – taking officers.*

(xv) *Pursuant to the Procurement (Amendment) Regulations 2012 (PE 17(1)), which was gazetted on 12 June 2012, the Finance Manual 2011 had to be amended. Accordingly, the Finance Manual 2013 was issued, and came into force on 13 June 2013.*

- (xvi) *By virtue of the new Finance Manual the procurement limit of the Commissioner of Corrections has been increased from \$30,000 to \$50,000. The procurement limit of the Deputy Commissioner remains the same (\$10,000). The procurement limit of the Accounts Officer has been increased from \$3,000 to \$5,000 (whilst the procurement limit of the SHQ has been reduced from \$3,000 to \$2,000).*
- (xvii) *Clause 2.3 has also been amended. Thus, public tenders must now be called for any procurement of goods, services or works valued at \$50,001 or more, unless a Tender Board has approved an exemption in accordance with Procurement Regulation. Competitive quotes, instead of public tenders, may be called for procurements below \$50,000.*
- (xviii) *Quotations may be received verbally for the purchase of goods or services estimated to cost less than \$1000. These quotes must be recorded and certified by the officer receiving them. Officers found splitting purchase orders to circumvent the need to obtain written quotations (less than \$1000) will be liable for surcharge.*
- (xix) *The witness testified to the Finance Circular No. 05/13, issued by the Permanent Secretary Finance to all Permanent Secretaries and Heads of Department s, dated 11 March 2013 (Prosecution Exhibit PE 65).*
- (xx) *The witness stated that for the Government Sector there are usually three types of funding. The type 1 is operational expenditure, type 2 is trade and manufacturing and the 3 are trust funds.*
- (xxi) *Operational expenditure is the day to day expenditure. For FCS specifically their day to day expenditure, to name a few were: the food ration for the prisoners or the prison institution, the minor servicing and maintenance of buildings, stationeries supplies, office equipment, travelling and maintenance of vehicle fleets, programs and trainings that were scheduled or run by the Yellow Ribbon Program, purchase of staff uniforms, purchase of inmates uniform materials and purchase of medication for inmates.*
- (xxii) *The Small Business Units (SBU) was established from the Trading and Manufacturing Accounts. It is an agreed fact that the SBU's consists of 6 units which were all based in Naboro namely: Piggery, Bakery, Joinery, Poultry, Farming and Tailor.*
- (xxiii) *He testified in detail to the procurement procedure followed at the FCS, in particular in respect of the Small Business Units (SBU). He distinguished between the procedure followed for purchasing of tendered goods or services (goods or services on standard offer contract) and for purchasing of non-tendered goods or services.*

- (xxiv) *If it were tendered goods or services no competitive quotations were required to be obtained. If it were non-tendered goods or services three competitive written quotations were required to be obtained [verbal quotations could be obtained if the goods or services were less than \$100 (Finance Manual 2011) or were less than \$1000 (Finance Manual 2013) respectively. But must be recorded and certified by the officer receiving them].*
- (xxv) *Where there is a need for purchasing of goods or obtaining of services, the need is identified and a Minute (Memo) would be generated seeking approval for the said purchase of goods or services. If the goods or services were on the tendered list then no competitive quotations were required to be obtained. If the goods or services were non-tendered items then three competitive written quotations were required to be obtained and attached to the Minute.*
- (xxvi) *The Minute would be submitted to the officer having the required procurement limit for approval. Once approved the purchase order would be prepared or raised in the name of the supplier. Invoices would be obtained from the supplier and payment voucher will be prepared in the name of the supplier. The payment would then be made out to the said supplier.*
- (xxvii) *The witness testified in detail with regard to all the transactions (the Payment Vouchers and attached documents), which are the subject matter of this case. For ease of reference, I will be stating in parenthesis whether the said transaction, as is the case for the prosecution, relates to the involvement of the 1st Accused or 2nd Accused.*

PE 25 *Fiji Corrections Service Payment Voucher, Voucher No. 66918, Cheque No. 743, paid to Naboro Mini Mart, amounting to \$17,622.40. Original Minute, dated 30 January 2013, prepared by TMA Clerk Ronal Kumar. However, attached to this Payment Voucher are Minutes prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro, on 26 October 2012 and 1 November 2012; and also another Minute from TMA Clerk Ronal Kumar, dated 31 October 2012. [2nd Accused]*

PE 26 *Fiji Corrections Service Payment Voucher, Voucher No. 68909, Cheque No. 832, paid to Naboro Mini Mart, amounting to \$13,745.00. Original Minute, dated 2 April 2013, prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro. [2nd Accused]*

PE 27 *Fiji Corrections Service Payment Voucher, Voucher No. 70589,*

Cheque No. 911 (3/5), paid to Naboro Mini Mart, amounting to \$1,948.50. Original Minute, dated 4 June 2013, prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro. **[2nd Accused]**

PE 28 Fiji Corrections Service Payment Voucher, Voucher No. 70671, Cheque No. 920 (1/2), paid to Naboro Mini Mart, amounting to \$12,960.00. Original Minute, dated 14 June 2013, prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro. **[2nd Accused]**

PE 29 Fiji Corrections Service Payment Voucher, Voucher No. 70672, Cheque No. 920 (2/2), paid to Naboro Mini Mart, amounting to \$966.50. Original Minute, dated 3 May 2013, prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro. **[2nd Accused]**

PE 30 Fiji Corrections Service Payment Voucher, Voucher No. 71715, Cheque No. 970 (1/2), paid to Naboro Mini Mart, amounting to \$12,860.00. Original Minute, dated 10 July 2013, prepared by TMA Clerk Junior Bale. **[1st Accused]**

PE 31 Fiji Corrections Service Payment Voucher, Voucher No. 72411, Cheque No. 1002, paid to Naboro Mini Mart, amounting to \$15,335.00. Original Minute, dated 7 August 2013, prepared by TMA Clerk Junior Bale. **[1st Accused]**

PE 32 Fiji Corrections Service Payment Voucher, Voucher No. 73230, Cheque No. 1029, paid to Naboro Mini Mart, amounting to \$12,860.00. Original Minute, dated 10 September 2013, prepared by TMA Clerk Ronal Kumar. **[1st Accused]**

PE 33 Fiji Corrections Service Payment Voucher, Voucher No. 77528, Cheque No. 113, paid to Naboro Mini Mart, amounting to \$5,200.00. Original Minute, dated 24 February 2014, prepared by TMA Clerk Ronal Kumar. **[2nd Accused]**

PE 34 Fiji Corrections Service Payment Voucher, Voucher No. 79174, Cheque No. 153 (2/2), paid to Naboro Mini Mart, amounting to \$6,344.00. Original Minute, dated 25 April 2014, prepared by BDM Sakiusa Veiwili. **[1st Accused]**

PE 35 Fiji Corrections Service Payment Voucher, Voucher No. 79530, Cheque No. 166 (2/2), paid to Naboro Mini Mart, amounting to \$21,000.00. Original Minute, dated 28 May 2014, prepared by BDM Sakiusa Veiwili. **[1st Accused]**

- PE 36 *Fiji Corrections Service Payment Voucher, with Cheque No. 301 (2/5), paid to Naboro Mini Mart, amounting to \$21,000.00. Original Minute, dated 24 August 2014, prepared by BDM Apete Tavo. [1st Accused]*
- PE 37 *Fiji Corrections Service Payment Voucher, Voucher No.68341, Cheque No. 814, paid to Naboro Mini Mart, amounting to 1,693.60. Original Minute, dated 15 March 2013, prepared by TMA Clerk Ronal Kumar. [2nd Accused]*
- PE 38 *Fiji Corrections Service Payment Voucher, Voucher No. 68453, Cheque No. 822, paid to Naboro Mini Mart, amounting to \$1,380.00. Original Minute, dated 19 March 2013, prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro. [2nd Accused]*
- PE 39 *Fiji Corrections Service Payment Voucher, Voucher No. 68541, Cheque No. 828, paid to Naboro Mini Mart, amounting to \$720.00. Original Minute, dated 22 March 2013, prepared by Staff Officer Enterprise (SOE) Ifereimi Nakitorotoro. [2nd Accused]*
- PE 40 *Fiji Corrections Service Payment Voucher, Voucher No. 70594, Cheque No. 911 (2/5), paid to Naboro Mini Mart, amounting to \$1,380.00. Original Minute, dated 12 June 2013, prepared by TMA Clerk Ronal Kumar. [2nd Accused]*
- PE 41 *Fiji Corrections Service Payment Voucher, with Cheque No. 911 (1/5), paid to Naboro Mini Mart, amounting to \$129.65. Original Minute, dated 17 June 2013, prepared by TMA Clerk Ronal Kumar. [2nd Accused]*
- PE 42 *Fiji Corrections Service Payment Voucher, Voucher No. 71410, Cheque No. 953 (1/2), paid to Naboro Mini Mart, amounting to \$2,196.47. Original Minute, dated 10 July 2013, prepared by TMA Clerk Junior Bale. [1st Accused]*
- PE 43 *Fiji Corrections Service Payment Voucher, Voucher No. 71409, Cheque No. 953 (2/2), paid to Naboro Mini Mart, amounting to \$245.00. Original Minute, dated 10 July 2013, prepared by TMA Clerk Junior Bale. [1st Accused]*
- PE 44 *Fiji Corrections Service Payment Voucher, Voucher No. 71799, Cheque No. 970 (2/2), paid to Naboro Mini Mart, amounting to*

\$395.00. Original Minute, dated 31 July 2013, prepared by TMA Clerk Junior Bale. **[1st Accused]**

PE 45 Fiji Corrections Service Payment Voucher, Voucher No. 71862, Cheque No. 979, paid to Naboro Mini Mart, amounting to \$695.00. Original Minute, dated 31 July 2013, prepared by TMA Clerk Junior Bale. **[1st Accused]**

PE 46 Fiji Corrections Service Payment Voucher, Voucher No. 72648, Cheque No. 1012, paid to Naboro Mini Mart, amounting to \$13,593.09. Original Minute, dated 4 September 2013, prepared by TMA Clerk Ronal Kumar. **[1st Accused]**

PE 47 Fiji Corrections Service Payment Voucher, Voucher No. 73972, Cheque No. 1055, paid to Naboro Mini Mart, amounting to \$7,236.90. Original Minute, dated 3 October 2013, prepared by TMA Clerk Ronal Kumar. **[1st Accused]**

PE 48 Fiji Corrections Service Payment Voucher, Voucher No. 76244, Cheque No. 082 (1/2), paid to Naboro Mini Mart, amounting to \$2952.11. Original Minute, dated December 2013, prepared by BDM Sakiusa Veiwili. **[1st Accused]**

PE 49 Fiji Corrections Service Payment Voucher, Voucher No. 79078, Cheque No. 1162, paid to Naboro Mini Mart, amounting to \$3,408.59. Original Minute, dated 19 May 2014, prepared by TMA Clerk Nanise Tokalauvere. **[1st Accused]**

PE 50 Fiji Corrections Service Payment Voucher, with Cheque No. 301 (5/5), paid to Naboro Mini Mart, amounting to \$4,648.24. Original Minute, dated 4 November 2014, prepared by BDM Apete Tavo. **[1st Accused]**

PE 51 Fiji Corrections Service Payment Voucher, with Cheque No. 348, paid to Naboro Mini Mart, amounting to \$6,913.93. Original Minute, dated 23 December 2014, prepared by TMA Clerk Anitivasa Radrokai. **[1st Accused]**

PE 54 Fiji Corrections Service Payment Voucher, Voucher No. 76735, Cheque No. 096, paid to Naboro Mini Mart, amounting to \$2,600.00. Original Minute, dated 22 January 2014, prepared by BDM Sakiusa Veiwili. **[2nd Accused]**

(xxviii) *If I may summarize, the prosecution case is that the FJ\$ 131,683.33 stated in the First Count, which is the charge against the 1st Accused, is made up as follows (16 transactions):*

PE 30- FJ\$ 12860.00

PE 31- FJ\$ 15335.00

PE 32- FJ\$ 12860.00

PE 34- FJ\$ 6344.00

PE 35- FJ\$ 21000.00

PE 36- FJ\$ 21000.00

PE 42- FJ\$ 2196.47

PE 43- FJ\$ 245.00

PE 44- FJ\$ 395.00

PE 45- FJ\$ 695.00

PE 46- FJ\$ 13593.09

PE 47- FJ\$ 7236.90

PE 48- FJ\$ 2952.11

PE 49- FJ\$ 3408.59

PE 50- FJ\$ 4648.24

PE 51- FJ\$ 6913.93

TOTAL FJ\$ 131,683.33

(xxix) *In a like manner, the prosecution case is that the FJ\$ 60,345.65 stated in the Second Count, which is the charge against the 2nd Accused, is made up as follows (12 transactions):*

PE 25- FJ\$ 17622.40

PE 26- FJ\$ 13745.00

PE 27- FJ\$ 1948.50

PE 28- FJ\$ 12960.00

PE 29- FJ\$ 966.50

PE 33- FJ\$ 5200.00

PE 37-	FJ\$ 1693.60
PE 38-	FJ\$ 1380.00
PE 39-	FJ\$ 720.00
PE 40-	FJ\$ 1380.00
PE 41-	FJ\$ 129.65
PE 54-	<u>FJ\$ 2600.00</u>
TOTAL	<u>FJ\$ 60345.65</u>

(xxx) Witness Abdul Rasheed identified the various breaches or irregularities in each of these transactions. The said breaches could be broadly summarised as follows:

1. Purchasing from a non-tendered supplier (mainly 50kg Bakers Flour – which had been awarded to Punjas & Sons Limited and long grain rice - which had been awarded to Flour Mills Fiji (FMF) & Punjas & Company).
2. Not obtaining three competitive written quotations for non-tendered items.
3. Goods being collected prior to the issuing of the purchase orders.
4. In respect of certain transactions no purchase orders have been raised or are available.

(xxxii) The witness testified that it was common practice at FCS that all requests for purchases had to be forwarded to the 1st Accused or 2nd Accused for their approval. This was so even if the request for purchase was within the approval limits of other authorised officers [Like himself (the Accounts Officer), Superintendent HQ's or the Assistant Accounts Officer]. He said there was a direction from the Accused to this effect.

(xxxiii) The witness confirmed that the approval for all 28 transactions, which are the subject matter of this case, had been given by the 1st Accused or 2nd Accused respectively. While agreeing that the 2nd Accused had not specifically stated approved, but only stated "please facilitate" or "please organize", he testified that to his understanding that was sufficient approval from the 2nd Accused, as this was the usual manner in which the 2nd Accused would state his approval.

[70] Evidence of Sakiusa Veiwili

- (i) *The written statement made by this witness, on 17 August 2015, has been tendered to Court in terms of the provisions of Section 134 of the Criminal Procedure Act. As such, this statement is now admissible as evidence.*
- (ii) *Currently he is serving as Assistant Commissioner Operations at FCS. He had joined the Service on 13 July 1986. He had been appointed as BDM by the 1st Accused in December 2013. It is an agreed fact that on the 3 December 2013, Mr. Sakiusa Veiwili was appointed the BDM assuming the same role from Mr. Pene Mario. He had served in this capacity until July 2014.*
- (iii) *As BDM his roles and responsibilities were to oversee the running of the SBU, including the Tailor, Poultry, Piggery, Bakery, Joinery and Farming. The SBU's does their requests through the BDM, who will recommend to Commissioner Corrections through a Minute. The Commissioner Corrections will direct the Accounts or the Logistics to facilitate the request.*
- (iv) *The procurement process followed by the SBU's was as follows: "The procurement process is that the daily request or demand by the Team Leaders to be requested daily. This will be done once the Team Leader will see that the stocks have gone down. Once that is done the request is then put forward to us. Once the request is received then we will locate for three quotations. These quotations were normally from the listed tenderers and the companies. Thereafter, the Minute will be done for recommendation to COMCOR for the request. In this I will sign or endorse on the Minute. These were the procurement process already in place before I joined".*
- (v) *It is an agreed fact that the following Minutes were signed by the witness during his term as the BDM.*

 - i. *PE34 – Minute dated 25/04/14 addressed to COMCOR for the Purchase of Rice for piggery.*
 - ii. *PE35 – Minute dated 28/05/14 addressed to COMCOR for the Purchase of Piggery Feeds – loose rice.*
 - iii. *PE48 – Minute dated December 13 addressed to COMCOR through BDM for the payments for items bought from NML.*
 - iv. *PE54 – Minute dated 22/01/14 addressed to COMCOR through CLO for Purchase of Rice for Piggery.*
- (vi) *The witness was shown each of the above transactions and asked to comment. He testified that the said Minutes were prepared by Junior Bali and that he only signed the said Minutes.*

[71] Evidence of Ronal Kumar

- (i) *The written statement made by this witness, on 17 August 2015, has been tendered to Court in terms of the provisions of Section 134 of the Criminal Procedure Act. As such, this statement is now admissible as evidence.*
- (ii) *Currently, he is carrying out his own business of distribution and sales. He has been running his own business for the past 2 and a half years.*
- (iii) *Prior to this he had been working at the FCS as a Corrections Officer and carrying out the role as TMA Accounts and Reconciliation Officer. He had joined the FCS in April 2011. It is an admitted fact that the witness was a TMA Clerk based at headquarters. In October 2014, the witness was transferred to Korovou Prison as a Data Officer.*
- (iv) *During his time as TMA Accounts and Reconciliation Officer his responsibilities were to issue revenue receipts, issue purchase order, dispatch cheque and wages, prepare weekly, monthly and quarterly reports, prepare weekly briefs, conduct stocktake of SBU's, or liaise with inmates about road sales program, filling of vouchers and other general administration work.*
- (v) *The witness has stated in his written statement: "In terms of facilitation of procurement for FCS Business Enterprise Unit, I used to received requests for purchase, write Minutes, receive Purchase Orders (PO), send PO's for approval through Business Development Manager (BDM), prepare and dispatch PO's and dispatch cheques. I confirm that I am aware of the proper procedures for procurement as outlined in the Government Procurement Regulations. Some of these procedures include obtaining 3 quotations, issue of PO's prior to purchasing item, if the procurement amount is below \$100.00 then 2 verbal quotations will suffice, authority limits of designated approvers".*
- (vi) *It is an agreed fact that the following Minutes were prepared and signed by the witness.*
 - i. *PE25 – Minutes dated 30/01/13 addressed to DCS for payment to NML on pending five (5) Purchase Orders (PO) from 2012.*
 - ii. *PE25 (PO91151 – 004685) - Minute dated 31/10/12 addressed to DCS for purchase of Washing Soap [This is a Minute attached to the payment Voucher PE 25].*
 - iii. *PE32 – Minute dated 10/09/13 addressed to COMCOR for purchase of Bakers Flour.*
 - iv. *PE33 – Minute dated 25/02/14 addressed to BDM for purchase of rice.*

- v. PE37 - Minute dated 15/03/13 addressed to DCP through BDM for payment to NML
- vi. PE40 – Minute dated 12/06/13 addressed to DCOMCOR for payment to NML.
- vii. PE41 – Minute dated 17/06/13 addressed to DCOMCOR for payment to NML
- viii. PE46 – Minute dated 04/09/13 addressed to COMCOR through AO for approval for payment.
- ix. PE47 - Minute dated 03/10/13 addressed to COMCOR through DCOMCOR and through DCOMCOR and through AO for payment to NML.

[72] Evidence of Pene Mario

- (i) Currently, he is working at Kundan Singh Supermarket as Operations Manager. He started working at Kundan Singh in 2016. He is looking after the Finance and Security part of the operations.
- (ii) Prior to this he was working at FCS. He joined FCS in January 2012. He served as Chief Logistics Officer – CLO – from January 2012 to May 2013. In May 2013, he was appointed as Business Development Manager (BDM), by the 1st Accused. He stated that he served as BDM from May 2013 to November 2013. Thereafter, he was posted as Superintendent of Headquarters.
- (iii) It is an agreed fact that Pene Mario was appointed the BDM from 9 May 2013-2 December 2013. He took over the post from Ms. Salote Panapasa.
- (iv) The witness testified as to his roles and responsibilities as BDM. He was shown Prosecution Exhibit PE 60. The said document, which is dated 24 June 2013, is titled FCS Enterprise Position Description, and was issued by the 2nd Accused.
- (v) At para 1.1 of the said document his responsibilities as BDM have been outlined. There is also a Minute on the said document addressed to him by the 1st Accused (dated 26 June 2013), to “Advise your staff of their Responsibilities”.
- (vi) The witness confirmed that Prosecution Exhibit PE 21 was signed by him and addressed to the Chief Procurement Officer at the Ministry of Finance. This letter which is dated 12 August 2013 provides an explanation or justification as to why purchase of Bakers Flour and rice is being done from the Naboro Mini Mart.

- (vii) *The witness confirmed that the email dated 23 September 2013, from Jainan Prasad was addressed to him and Abdul Rasheed [Prosecution Exhibit PE 24(I)]. To the email was attached the Memorandum sent by Prasad to the Commissioner FCS, regarding the complaint by Punjas & Sons Limited on the standing offer contract.*
- (viii) *During the course of his evidence the witness was shown some of the Payment Vouchers and requests (Minutes) for the purchasers which were made during his time as BDM, from 9 May 2013-2 December 2013.*

[73] Evidence of Iferemi Nakitorotoro

- (i) *Currently, he is a Principal Corrections Officer (PCO) serving as Court Liaising Officer at the FCS. He joined the FCS in August 1987. From 1996 to 2013 he worked at the Farming Unit in Naboro.*
- (ii) *The witness said that the Farming Unit became the Enterprise Unit in 2007.*
- (iii) *It is an admitted fact that the Staff Officer at Enterprise (hereinafter referred to as "SOE") namely Ifereimi Nakitorotoro was also part of the TMA Team who was also appointed by the Commissioner then Mr. Naivalurua to supervise the officers within each unit as to how they carry out their functions. Nakitorotoro was directly reporting to the BDM.*
- (iv) *The witness testified that on 28 November 2012, he was called by the 1st Accused to take over from George Speight as Staff Officer Enterprise (SOE). He said he took overall care of the SBU's.*
- (v) *It is an agreed fact that the following Minutes were prepared and signed by the witness.*
 - i. *PE25 – (PO91151 – 004695) Minute dated 26/10/12 addressed to DCS for plastic wrapper [This is a Minute attached to the payment Voucher PE 25].*
 - ii. *PE25 – (PO91151 – 004696) Minute dated 01/11/12 addressed to DCS for poultry feeds – Mill mix [This is a Minute attached to the payment Voucher PE 25].*
 - iii. *PE26 – Minute dated 02/04/13 addressed to COMCOR through BDM for Bakery – Bakers Flour and Ingredients.*
 - iv. *PE27 – Minute dated 04/06/13 addressed to DCOMCOR through BDM for root crops, Veg, Digging Fork.*
 - v. *PE28 - Minute dated 14/06/13 addressed to COMCOR through BDM for Bakery – Bakers Flour.*

- vi. PE29 - Minute dates 03/05/13 addressed to DCC through BDM for Gumboots – Poultry/ COMM Veg.
- vii. PE38 – Minute dated 19/03/13 addressed to DCC through BDM for Piggery – Mill Mix.
- viii. PE39 – Minute date 22/03/13 addressed to AO through BDM for Naboro Mini Mart.

[74] Evidence of Akuila Bulivono Namakadre

- (i) *Currently he is working at Grid Security Services Fiji Limited. He has been working here since 20 October 2018.*
- (ii) *Prior to this, the witness had been working at FCS from 1982 to 2016 (For 34 years). He had joined FCS in 1982 as a Career Prisons Officers. In May 2011, he was appointed as Deputy Commissioner of Correction by the 1st Accused. On 15 April 2016 he resigned from FCS.*
- (iii) *It is an admitted fact that Akuila Bulivono Namakadre was the Deputy Commissioner at the FCS from February 2012 to September 2012, before he went on tour on duty for 1 year. It is also admitted on the 20 September 2012, Namakadre handed over his files and documents before he left on tour on duty. He provided a handover statement.*
- (iv) *The witness testified to the incorporation of the Naboro Mart Limited on 24 October 2011. He was named as one of the Directors and Shareholders of the Company. The 1st Accused was also Director and Shareholder of the Company*

[75] Evidence of Abhi Ram Charan

- (i) *The written statement made by this witness, on 28 July 2015, has been tendered to Court in terms of the provisions of Section 134 of the Criminal Procedure Act. As such, this statement is now admissible as evidence.*
- (ii) *Currently, he is retired. Prior to retirement he was serving as Acting Registrar of Companies for four years. He had served at the Office of the Registrar of Companies from 2003 to November 2016.*
- (iii) *At the Office of the Registrar of Companies, his work involved facilitating and maintenance of records pertaining to:*
 - 1. *Registration of Companies.*
 - 2. *Change of Company, Directors and Secretary.*

3. *Increase in Nominal Share Capital.*

4. *Notification of issued capital.*

- (iv) *The witness confirmed that Naboro Mart Limited (NML) is the only Company registered by the FCS. The Company was incorporated on 24 October 2011 (Prosecution Exhibit PE 10). The Company has limited liability. It has a Memorandum of Association and Articles of Association, dated 24 September 2011 (Prosecution Exhibits PE 14 & PE 15).*
- (v) *There are four registered Directors and Shareholders of the Company namely Ifereimi Vasu, Apimeleki Taukei, Lusiana Lului and Akuila Namakadre (each having a share-holding of 2500 shares of \$1.00 each).*
- (vi) *The Registered Office of the Company is situated at Naboro Corrections Complex, Queens Road, Lami (Prosecution Exhibit PE 11).*
- (vii) *Prosecution Exhibit PE 12 sets out the Particulars of Directors and Secretaries of the Company, dated 13 October 2011. Prosecution Exhibit PE 13 is the Declaration of Compliance with the requirements of the Companies Act on Application for Registration of a Company, dated 20 October 2011.*
- (viii) *In the Memorandum of Association and Articles of Association, Peniasi Kunatuba has signed as a witness to the signature of the Subscribers (Shareholders).*
- (ix) *It is an agreed fact that the above mentioned Directors did not pay any subscription nor are they entitled to Directors fees or paid any remuneration as stated in the Articles of Association. It is also an agreed fact that Lusiana Lului was not only the Director of NML, she was also appointed as the Secretary for NML on the 12 October 2011.*
- (x) *When ask the question whether public servant could become a Director of a Private Company, the witness said that in terms of a Circular issued by the Public Service Commission (PSC), if any public servant wants to engage in a business he needs to seek approval from the Permanent Secretary to the PSC. This is due to the fact that there could be issues of conflict of interest.*

[76] Evidence of Nandu Naidu

- (i) *This witness is currently working at Punjas & Sons in Suva as Manager Operations Suva Branch. He joined Punjas in this capacity in 2005. His role is to manage and supervise the entire Branch operational activities.*

- (ii) *The witness stated that Punjas is an 85 years old Company today and is a well-known and respected Company in the South Pacific region.*
- (iii) *In 2012, Punjas had entered into a contract with the Government of Fiji through the Fiji Procurement Office for Tender No. CTN 146/2012 (Prosecution Exhibit PE 61).*
- (iv) *He was personally involved in the negotiations with regard to this contract. Details of the tender had been found out through newspaper publications. Since he was based in Suva he was involved in the application process – Lodging of the application, presentation etc.*
- (v) *The witness testified to the Tender submitted by Punjas on 19 June 2012 (Prosecution Exhibit PE 52 and attached documents).*
- (vi) *He also testified to Prosecution Exhibit PE 53, which is an email correspondence between himself and David Low, of the Fiji Procurement Office, dated 6 March 2013. Attached to the email is a document confirming the price of Flour and Bakers Flour.*
- (vii) *The witness was also shown the Legal Notice No. 97 - Government of Fiji Gazette Supplement, dated Monday 31st December 2012 – Commerce (Price Control) (Wheat Products Ex- Factory) (No.2) Order 2012 (Prosecution Exhibit PE 66).*
- (viii) *The witness testified to the complaint made by him, on behalf of Punjas, against the FCS (Prosecution Exhibit PE 22). He confirmed that on 19 August 2013 he had written to the Acting Director Fiji Procurement Office stating that FCS had failed to honour the standing offer contract (the tender) and had stopped purchasing Bakers Flour for the past three months. The monthly consumption of the above product throughout Fiji Prisons was said to be approximately 500x50kg bags at an approximate value of \$33,000.00 per month.*

[77] Evidence of Iliesa Lutu

- (i) *Currently he is employed at the Australian High Commission as a Senior Program Officer, looking after regional governance.*
- (ii) *Prior to this he was away for 2 years on study leave. Before that he was working at the Public Service Commission since 2008. From 2010- 2016 he functioned as Deputy Permanent Secretary to the PSC.*
- (iii) *The witness said that as Deputy Permanent Secretary he looks after the operations of the PSC, including the appointments of Senior Executive Officers.*

- (iv) *The witness confirmed that the 1st Accused was appointed as Commissioner of Prison and Corrections Services in January 2011 (Prosecution Exhibit PE 1 is the Appointment Letter of the 1st Accused).*
- (v) *As per the Contract of Employment (Prosecution Exhibit PE 3), it is stated that “The officer will not actively engage or be engaged in any other business, trade or profession and if required, will place his whole time at the disposal of the Government”.*
- (vi) *The witness also testifies to Prosecution Exhibits PE 5 and PE 6 – the Extension of Contract of the 2nd Accused from 11 January 2013-10 January 2014 and from 11 January 2014-10 January 2015, respectively.*
- (vii) *The witness was shown Prosecution Exhibit PE 57 the 2011 Edition of the General Orders, issued by the PSC and asked to comment on certain provisions of the said General Orders.*

[78] Evidence of Semiti Tikoduadua

- (i) *The written statement made by this witness, on 19 March 2019, has been tendered to Court in terms of the provisions of Section 134 of the Criminal Procedure Act. As such, this statement is now admissible as evidence.*
- (ii) *He is an Investigator attached to FICAC. He joined FICAC on 24 January 2011 as an Assistant Commission Officer with the Investigations Department. On 7 March 2016, he was promoted as Senior Commission Officer.*
- (iii) *In the instant case, he was instructed to conduct the Caution Interview Statement of the 2nd Accused. FICAC Investigator, Frank Tora was the Witnessing Officer. The recording of the interview commenced on 17 August 2015 at 10:30 in the morning. The recording of the interview was continued on 24 August 2015, 25 August 2015, 28 August 2015, 8 December 2015 and concluded on 10 December 2015.*
- (iv) *The Caution Interview Statement of the 2nd Accused was tendered to Court as Prosecution Exhibit PE 62.*
- (v) *The witness testified that during the recording of the Caution Interview Statement of the accused, an AVR (Audio Visual Recording) machine and a personal computer were used for that purpose.*

[79] Evidence of Makelesi Tunisau

- (i) *The two written statements made by this witness, on 20 March 2019 and 24 June 2019, have been tendered to Court in terms of the provisions of*

Section 134 of the Criminal Procedure Act. As such, both these statements are now admissible as evidence.

- (ii) Currently, she is working as a Financial Investigator at FICAC. She is holding the Post of Team Leader in the Investigations Department. She joined FICAC on 7 July 2014, as an Assistant Commission Officer.*
- (iii) The witness testified that a complaint had been received against the 1st Accused around April 2015. Although she was not part of the initial investigation team, she joined the investigation at a later stage.*
- (iv) In the instant case, she was instructed to be the Witnessing Officer during the recording of the Caution Interview Statement of the 1st Accused. Senior Commission Officer Kulniasi Saumi, was the Interviewing Officer.*
- (v) The recording of the interview commenced on 17 August 2015 at 12:04 in the afternoon. The recording of the interview was continued on 18 August 2015, 20 August 2015, 24 August 2015, 25 August 2015, 7 December 2015 and concluded on 10 December 2015.*
- (vi) The Caution Interview Statement of the 1st Accused was tendered to Court as Prosecution Exhibit PE 63.*

[80] That was the case for the prosecution. At the end of the prosecution case Court decided to call for the defence. You then heard me explain several options to the two accused. I explained to them that they could remain entirely silent. I further explained to them that if they so wish they could address Court either by themselves or through their counsel. They could also give sworn evidence from the witness box and/or call witnesses on their behalf. The two accused were given these options as those were their legal rights. They need not prove anything. The burden of proving their guilt rests entirely on the prosecution at all times.

[81] In this case, the two accused have exercised their right to remain silent. I must emphasize that you must not draw any adverse inference against the two accused due to Court calling for their defence or of their choice to remain silent.

Analysis

[82] The above is a brief summary of the evidence led at this trial. The prosecution in support of their case, led the evidence of 12 witnesses and tendered Prosecution Exhibits PE 1 to PE 57 and also PE 60 to PE 66.

[83] The defence tendered as Defence Exhibits DE PK 1, DE PK 2 and DE PK 3, which were Financial Statement of the FCS for the year ended 31 December 2013 and TMA Growth Analysis from 2009 to 2015, respectively.

- [84] Originally the prosecution had named 17 witnesses in their List of Witnesses provided to Court. Please bear in mind that it is not required for the prosecution to call all the witnesses named or listed in the said List of Witnesses. The prosecution has the discretion to decide as to who are the witnesses that would be sufficient to prove its case beyond reasonable doubt.
- [85] As I have informed you earlier, the burden of proving each ingredient of the two charges rests entirely and exclusively on the prosecution and the burden of proof is beyond any reasonable doubt.
- [86] In assessing the evidence, the totality of the evidence should be taken into account as a whole to determine where the truth lies.
- [87] In this case the prosecution is relying on the admissions made by the two accused in their Caution Interview Statements. Any admission made by an accused in his Caution Interview Statement is admissible and sufficient evidence to prove his guilt to a charge.
- [88] Since the accused are not challenging the admissibility of their Caution Interview Statements, the statements have been tendered to Court by consent of both the prosecution and the defence [PE 63 is the Caution Interview Statement of Ifereimi Vasu; and PE 62 is the Caution Interview Statement of Peniasi Kunatuba]. The two accused admit to making the statements and also submit that the answers given by them in the said statements represent their explanations to the allegations against them.
- [89] However, the truthfulness of the statement and the question of what weight to attach to the admissions made in the said statements is a matter of fact entirely for you to decide.
- [90] Also I must remind you once again to disregard that portion of the 2nd Accused's Caution Interview Statement where reference had been made to a previous sentence of imprisonment imposed against him. That should have absolutely no bearing in deciding this case and no adverse inference should be drawn against the 2nd Accused by virtue of that fact. The instant case should be decided purely based on the evidence presented to you in this case.
- [91] As I have stated before, in this case it has been agreed by the prosecution and the defence to treat certain facts as agreed facts without placing necessary evidence to prove them. Therefore, you must treat all those facts as proved beyond reasonable doubt.
- [92] Accordingly, it is an admitted fact that the 1st Accused in this case is Ifereimi Vasu; and the 2nd Accused is Peniasi Kurivitu Kunatuba. There is also no dispute as to the specified time period during which it is alleged the offences were committed or as to the place of offence.

- [93] In this case it has been agreed that the 1st and 2nd Accused were persons employed in the public service within the meaning of section 4(1) of the Crimes Act at all times relevant to the information of this case. It has been also agreed that the 1st Accused held the position of “Commissioner of Prison and Corrections Service” for the Fiji Corrections Service (“FCS”) during the time period material to this case. Similarly, it has been agreed that the 2nd Accused held the position of “Director Corporate Service and Acting Deputy Commissioner” for the Fiji Corrections Service (“FCS”) during the time period material to this case.
- [94] However, the prosecution must prove all the remaining elements of the two charges beyond reasonable doubt.
- [95] In respect of the 1st Accused, the prosecution case is that he did arbitrary acts, for the purpose of gain, in abuse of the authority of his office, by facilitating and approving the purchasing of goods to the amount of FJ\$ 131,683.33 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service. The prosecution submits that the said acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors.
- [96] In respect of the 2nd Accused, the prosecution case is that he did arbitrary acts, for the purpose of gain, in abuse of the authority of his office, by facilitating and approving the purchasing of goods to the amount of FJ\$ 60,345.65 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service. The prosecution submits that the said acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors.
- [97] As I have stated earlier, in respect of the 1st Accused, the FJ\$ 131,683.33, is made up of 16 distinct transactions. In respect of the 2nd Accused, the FJ\$ 60,345.65, is made up of 12 distinct transactions.
- [98] As such, you must bear in mind that the 1st Accused and the 2nd Accused have been charged separately and not jointly. In some transactions, the “Minute” makes reference to the involvement of both the 1st Accused and 2nd Accused in that transaction. However, as I have mentioned before, they have not been charged jointly for any of these transactions. They have only been charged individually. Therefore, even though reference may be made in the Minute/Transaction to the involvement of the other accused, you must consider that transaction only in respect of the involvement of the named accused or the accused in respect of whom the prosecution has based its charge upon.
- [99] The prosecution must establish beyond reasonable doubt that the 1st Accused did arbitrary acts, for the purpose of gain, in abuse of the authority of his office, by facilitating and approving the purchasing of goods to the amount of FJ\$ 131,683.33

from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service. Similarly, the prosecution must establish beyond reasonable doubt that the 2nd Accused did arbitrary acts, for the purpose of gain, in abuse of the authority of his office, by facilitating and approving the purchasing of goods to the amount of FJ\$ 60,345.65 from the Naboro Mart Limited contrary to the Procurement Regulations 2010 of the Financial Management Act 2004 and the Finance Manual of the Fiji Corrections Service.

[100] Facilitation is a very broad term. It may include approval as well. Your first task is to see whether the 1st Accused and 2nd Accused facilitated and approved the purchasing of goods. In determining this matter you have to take into consideration the procurement process that was followed at the FCS, mainly by the SBU's. Several prosecution witnesses testified to the procurement process or the process that was followed for purchasing of goods, services and works.

[101] Next you will have to decide whether in facilitating and approving the purchasing of goods, the 1st Accused and 2nd Accused acted arbitrarily and in abuse of the authority of his office. Also you will have to decide whether in doing so the accused acted with the intention of abusing the authority of their office.

[102] You will also have to decide whether the acts were prejudicial to the rights of the Fiji Government, Fiji Corrections Service and the Approved Government Contractors.

[103] You will also have to decide whether the said acts were done for gain.

[104] It is agreed by all parties that there were various irregularities and breaches in the transactions which are the subject matter of this case. However, please bear in mind that the two accused cannot be held responsible for all those breaches. In any event they have not been charged for the said breaches of procurement procedure.

[105] Both accused deny that they acted arbitrarily or that they acted in abuse of the authority of their office.

[106] Both accused have provided explanations in their Caution Interview Statements as to the basis on which they acted in respect of the transactions which are the subject of this case. As I have told you earlier any admission made by an accused in his Caution Interview Statement is admissible and sufficient evidence to prove his guilt to a charge. However, the truthfulness of the statement and the question of what weight to attach to the admissions made in the said statements is a matter of fact entirely for you to decide.

[107] Therefore, it is for you to decide whether to accept or not to accept the explanations provided by the two accused in their Caution Interview Statements.

- [108]** The position taken up by the 1st Accused is that there was no breach or irregularity in him approving the purchasers that are the subject matter of this case. The 1st Accused's position is that he have no option but to approve some of the requests as they were urgent or since the goods had already been received or consumed or due to the fact that it was the end of the year and the payment had to be made to the supplier.
- [109]** With regard to the purchasing of Bakers Flour the 1st Accused's position is that Bakers Flour was no longer a tendered item as there was a price increase.
- [110]** With regard to the purchasing of rice, the position taken up by the 1st Accused is that this was loose rice or broken rice and was not for human consumption but was to feed the pigs in the piggery.
- [111]** With regard to the Payment Voucher which is tendered as Prosecution Exhibit PE 45 – the explanation is that this was an urgent purchase of tarpaulin to secure the poultry sheds as in cold and rainy days water comes into the sheds and the birds during these days need a control environment to be able to produce desired level of stock. The 1st Accused also emphasized on the Minute put by Pene Mario where it is confirmed that over a period of three weeks 1,600 or more birds had died.
- [112]** The position taken up by the 2nd Accused is that he never approved any of the purchasers that are the subject matter of this case. The 2nd Accused submits that his Minutes to the effect “can we organise please” or “please facilitate” were not formal approvals given by him. It is for you to decide whether the 2nd Accused's position can be accepted.
- [113]** The 2nd Accused's also takes up the position that since there were many breaches and irregularities in the procurement procedure, for which other officers should be held responsible, they were now shifting the blame on to the accused.
- [114]** Further, the 2nd Accused takes the position that there is no proof of payment to NML, as no cheques were produced in Court to confirm this fact.
- [115]** Although, all the prosecution witnesses from the FCS stated that they had been directed by the accused to submit all requests for purchasers for their approval, there was no documents in writing which were tendered to Court to establish this fact.
- [116]** You must consider all the evidence of the prosecution to satisfy yourselves whether the narration of events given by its witnesses, is truthful and, in addition, reliable. If you find the prosecution evidence is not truthful and or unreliable, then you must find the two accused not guilty of the charges, since the prosecution has failed to prove its case. If you find the evidence placed before you by the prosecution both truthful and reliable, then you must proceed to consider whether by that truthful and reliable evidence, the prosecution has proved the elements of the two charges of Abuse of Office, beyond any reasonable doubt.

[117] In summary and before I conclude my summing up let me repeat some important points in following form:

- i. If you find the prosecution evidence is not truthful and or not reliable then you must find the two accused not guilty of the charges;*
- ii. If you find the prosecution evidence is both truthful and reliable then only you must consider; whether the elements of the charges have been established beyond any reasonable doubt. If so you must find the two accused guilty. If not you must find the two accused not guilty.*

[118] Any re-directions the parties may request?

The Learned State Counsel sought the following redirections:

1. That the elements for the offence of Abuse of Office should be five and not nine as stated by me. However, I disagree. I inform counsel that the elements of the offence of Abuse of Office would be as explained by me in paragraphs 35 and 36 of this summing up. As such, no re-direction was necessary in this regard.
2. That the state of mind (fault element) of the offence of Abuse of Office is “in abuse of the authority of the office” which is ulterior motive and bad faith. However, I disagree. I have already made a Ruling in this regard that the state of mind (fault element) of the offence is intention. As such, no re-direction was necessary in this regard.
3. That in explaining that the acts were prejudicial to the rights of another, it should be stated that this does not mean specific prejudice but prejudice in general. However, I explained to State Counsel that this has been sufficiently dealt with at paragraphs 46 and 47 of the summing up. As such, no re-direction was necessary in this regard.
4. That in explaining the element that the acts were done for the purpose of gain, the prosecution need not prove that it is actual gain. If the prosecution proves that the acts were done for the purpose of gain that element is proven. I directed the Assessors accordingly.
5. That the reference in paragraph 4 of the Further Agreed Facts should read as 13 October 2011, instead of 12 October 2011. I directed the Assessors accordingly.
6. That reference has been made by me at paragraph 62 of the summing up that the Further Agreed Facts makes reference to all the transactions that are the subject matter of this case, except to PE 49. State Counsel wanted Court to explain to the Assessors that although this was the case, Prosecution Exhibit PE 49 was part of the Agreed Bundle of

Documents. I explained to counsel that I have already done so in paragraph 62 of the summing up. As such, no re-direction was necessary in this regard.

7. With regard to the position taken up by the 2nd Accused, that since there were many breaches and irregularities in the procurement procedure, for which other officers should be held responsible, they were now shifting the blame on to the accused. State Counsel wanted re-directions to the effect that irrespective of whether other officers may be responsible for these breaches and irregularities or not that they have not been charged in this case. The Assessors have only to decide whether from the available evidence the 1st and 2nd Accused are guilty or not guilty of the offences charged. I directed the Assessors accordingly.

[119] Madam Assessors and Gentleman Assessor, this concludes my summing up of the law and evidence. Now you may retire and deliberate together and may form your individual opinions separately on the charges against the two accused. When you have reached your individual opinions you will come back to Court, and you will be asked to state your opinions.

[120] Your possible opinions should be as follows:

First Count (Against 1st Accused)

Abuse of Office as charged - Guilty or Not Guilty

If not guilty,

In the alternative,

Abuse of Office (with no gain) - Guilty or Not Guilty

Second Count (Against 2nd Accused)

Abuse of Office as charged - Guilty or Not Guilty

If not guilty,

In the alternative,

Abuse of Office (with no gain) - Guilty or Not Guilty

[121] I thank you for your patient hearing.



A handwritten signature in black ink, appearing to read "Riyaz Hamza".

Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 11th Day of December 2019

Solicitors for the State:

Fiji Independent Commission Against Corruption (FICAC), Suva.

Solicitors for the Accused:

Vosarogo Lawyers, Barristers & Solicitors, Suva for the 1st Accused.

Ravono & Raikaci Law, Barristers & Solicitors, Nausori for the 2nd Accused.