

**IN THE HIGH COURT OF FIJI**  
**CRIMINAL JURISDICTION**  
**AT LAUTOKA**

**CRIMINAL CASE: HAC 40 OF 2014**

**BETWEEN** : STATE

**AND** : PENIASI SUKANAKONIFEREDI

**Counsel** : Mr. A. Singh for State  
Ms. L. Tabuakuro for the Accused

**Date of Hearing** : 03<sup>rd</sup> of November – 10<sup>th</sup> of November, 2016

**Date of Closing Submissions** : 10<sup>th</sup> of November, 2016

**Date of Summing Up** : 14<sup>th</sup> of November, 2016

**SUMMING UP**

1. Madam and Gentleman assessors, you have heard the evidence adduced by the prosecution and also the respective closing submissions of the learned counsel for the prosecution and the defence. Now, it is my duty to sum up the case to you. As part of that, I will direct you on the law that applies in this action. You must accept the law from me and apply all directions I give you on matters of law.
2. Our functions in this trial have been and remain quite different. Throughout this trial the law has been my area of responsibility, and I must now give you directions as to the law which applies in this case.
3. It is also my function to remind you of the prominent features of the evidence. However, it has always been your responsibility to judge the evidence and decide all the relevant facts of this case. You and you alone must decide what evidence you accept, what

evidence you do not accept and what evidence you are not sure about; and when you come to consider your opinion, you and you alone, must do that.

4. You do not have to decide every point which has been raised; only such matters as will enable you to say whether the charge laid against the accused has been proved. You will do that by having regard to the whole of the evidence including the material tendered as exhibits and forming your own opinion about the witnesses, and which evidence is reliable and which is not. The evidence consisted of the oral testimony of witnesses and the material tendered as exhibits.
5. You all have been chosen from the community and represent a pool of common sense, knowledge and experience of the conduct of human beings in our community. You have sworn an oath or affirmed that you will deliver a true opinion according to the evidence. Therefore you must decide this case only on the evidence which has been placed before you.
6. You must reach your opinion on evidence. Evidence is what the witnesses, both from the prosecution and the defence, said from the witness box, documents and other materials received as exhibits and agreed fact. This summing up, statements, arguments, questions and comments made by the counsel of the parties are not evidence. The opening address of the learned counsel of the prosecution is not evidence. The purpose of the opening address by the learned counsel for the prosecution is to outline the nature of evidence intended to be put before you. The closing addresses of the counsel of the prosecution and the accused are not evidence either. They are their arguments, which you may properly take into account when you evaluate the evidence, but the extent to which you do so is entirely a matter for you.
7. If you heard, or read, or otherwise learned anything about this case outside of this courtroom, you must exclude that information or opinions from your consideration. You must have regard only to the testimonies, agreed facts and the exhibits put before you in this courtroom during the course of this trial. Ensure that no external influence plays a part in your deliberation.

8. As judges of facts you are allowed to talk, discuss and deliberate facts of this case only among yourselves. However, each one of you must reach your own conclusion or form your own opinion. You are required to give merely your opinion but not the reasons for your opinion. Your opinion need not be unanimous. I must advise you that I am not bound by your opinion, but I assure you that your opinion will assist me in reaching my judgment.
9. Moreover, I must caution you that you should dismiss all emotions of sympathy or prejudice, whether it is sympathy for or prejudice against the accused or anyone else. No such emotion has any part to play in your decision, nor should you allow public opinion to influence you. You must approach your duty dispassionately; deciding the facts solely upon the whole of the evidence. It is your duty as judges of facts to decide the legal culpability as set down by law and not the emotional or moral culpability of the action.
10. Matters which will concern you are the credibility of the witnesses, and the 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 is correctly recalling the facts about which he or she has testified.
11. In assessing evidence of the witnesses, you must consider whether the witness had the opportunity to see, hear and or feel what the witness is talking in the evidence. You then should consider whether the evidence presented by the witness is probable or improbable considering the circumstances of the case. Apart from that you are required to consider the consistency of the witness not only with his own evidence but also with other evidence presented in the case.
12. It is your duty as judges of facts to consider the demeanor of the witnesses, how they react to being cross examined and re-examined, were they evasive, in order to decide the credibility of the witness and the evidence.

### **Burden and Standard of Proof**

13. I now draw your attention to the issue of burden and standard of proof. The accused is presumed to be innocent until he is proven guilty. The presumption of innocence is in force until you form your own opinion that the accused is guilty for this offence.
14. The burden of proof of the charge against the accused person is on the prosecution. It is because the accused is presumed to be innocent until he is proven guilty. In other words there is no burden on the accused person to prove his innocence, as his innocence is presumed by law.
15. The standard of proof in criminal trial is “proof beyond reasonable doubt”. It means that you must be satisfied in your mind that you are sure of the accused person’s guilt. If there is a riddle in your mind as to the guilt of the accused person after deliberating facts based on the evidence presented, that means the prosecution has failed to satisfy you the guilt of the accused beyond reasonable doubt. If you found any reasonable doubt as to the commission of the offence as charged, such doubt should always be given in favour of the accused person.
16. However, in certain instances, the law requires the accused to prove certain elements or facts of the offence, which is known as reverse onus. If the law places the legal burden on the accused to prove certain elements or facts of the offence, then the accused is required to prove them on balance of probability.

### **Information,**

17. The accused is charged with one count of Unlawful Importation of Illicit Drugs, contrary to Section 4 of the Illicit Drugs Control Act, 2004. The particulars of the offence are before you, hence I do not wish to reproduce it in my summing up.
18. Section 4(1) of the Illicit Drugs Control Act states that ;

*“Any person who without lawful authority (proof of which lies upon that person) imports or exports an illicit drug commits an offence and is liable upon conviction to a fine not exceeding \$ 1,000,000 or to imprisonment for life or both”.*

19. Section 4 (2) of the Illicit Drugs Control Act stipulates that the evidential burden to prove the lawful authority lies upon the accused person.
20. In view of Section 4 (1) of the Act, the main elements of the offence of unlawful importation of illicit drug are;
  - i) The Accused,
  - ii) Imports,
  - iii) Illicit Drugs,
  - iv) Without lawful Authority,
21. In respect of the first element, the prosecution is required to prove beyond reasonable doubt that the person who imports the illicit drug is the accused person. The term “import” has been defined under Section 2 of the Act, as;

*“Import means to bring or cause to be brought, into Fiji Islands and is a continuing process including any stage thereof until any item reaches the intended recipient”.*

22. According to the interpretation stipulated under Section 2 of the Act, the term of “import” constitutes either bringing or causing to be brought any illicit drugs into Fiji Islands. Bringing into Fiji Islands means not only entering into the borders of the county but it is a continuing process that extend until the item reaches the intended recipient.

23. The term “import” also connotes that the person who involves in such activity has the knowledge or the belief that he brings or caused to be brought any illicit drugs into Fiji Islands.
24. Pursuant to Section 2 of the Act, the illicit drugs have been listed under schedule 1 of the Act. According to schedule I of the Act, Cocaine has been listed as an illicit drugs.
25. If the prosecution established beyond reasonable doubt, that the accused has imported an illicit drug, then the accused is required to prove that he had a lawful authority to import such drugs into the country. This burden of proof on the accused person is called as an evidential burden. This does not mean that the legal burden of the prosecution to prove the charge against the accused beyond reasonable doubt, which I have explained above, has shifted to the accused person. It is and will remain with the prosecution throughout the trial. The evidential burden on the accused to prove that he had a lawful authority is a lessor burden than the legal burden rested on the prosecution.
26. Accordingly, the prosecution is required to prove beyond reasonable doubt that the accused has imported 408.1 grams of illicit drugs namely Cocaine and the accused had the knowledge or belief that what he had imported is an illicit drug.
27. I now kindly draw your attention to the agreed facts, which are before you. You are allowed to consider these agreed facts as proven facts beyond reasonable doubt against the accused by the prosecution.
28. I now turn onto summaries the evidence presented by the prosecution during the course of this hearing.

### **The Evidence of Prosecution**

29. The first witness of the prosecution is Mr. Ram Raj. He was an employee of Fiji Post. He was in charge of the Parcel office at the Nadi International Air Port in the year 2014. He recalls that while on duty he received an ESM parcel came from ESM Department on

the 18th of March 2014. He then proceeded with the PNDE and let the print out of PNDE on the counter for the Team Leader to notify the customer. It was consigned to Energy Supplements Fiji Limited c/o Allied Custom Brokers. It is a normal practice for the Custom Agent to come and clear the package if it was came under the care of Custom Agent.

30. Mr. Raj stated that there were two packages under one PNDE. It had two separate consignment numbers. It had no sender's name. Team leader has informed the Allied Custom Brokers and Mr. Ananda from Allied Custom Brokers came to the office around 2-3 p.m. Mr. Raj was present when Mr. Ananda came to collect the parcel. He brought the parcel from the parcel office to the counter and handed it over to Custom Officer Kevueli Tiatia. Mr. Ananda failed to provide the commercial invoice. Therefore, Custom Officer Mr. Tiatia asked him to go and bring the invoice. When Ananda returned, Mr. Raj was not present at the counter.
31. According to the evidence of Mr. Raj, he was present when the parcel was opened. But he could not recall who opened the parcel. He could recall that the parcel was not released to Mr. Ananad and Custom Officer Mr. Tiatia detained it for further testing and verification. Mr. Tiatia then raised a detention order and asked Mr. Raj to sign on it, which he did. The outer colour of the package was greyish black. He did not open the package at any time. Mr. Ananda was informed by Mr. Tiatia about the detention of the parcel. He was present when Mr Tiatia and Mr. Ananda were discussing about the parcel.
32. The second witness of the prosecution is Mr. Abhi Ram, who is the Registrar of Company. Mr. Ram presented a certified copy of the particulars of the directors and the Secretaries and changes made therein in relation to the Energy Supplements Fiji Ltd. The changes of the directors were presented to the office of Registrar of Company by HLD Cosby and Associates. According to the particulars of the directors, Mr. Stanley Leone and Mr. Peniasi Sukanakoniferedi were the directors of the company in the year 2014. Mr. Peniasi was included as a director when Mr Richard Corbert resigned on the 5th of September 2013.

33. Mr Ram stated that it is highly unlikely that a person to be appointed as a director of a company without his knowledge. Education level of a person is immaterial to become a director of the company. Directors of a company manage the business of the company and would know what kind the business the company is engaged in.
34. During the cross examination, Mr. Ram stated that he could not state the nature of the power and responsibility of the directors in this particular company as it is an internal matter of the company. The Energy Supplements Fiji Limited has previously operated under a different name. The Energy Supplements Limited commenced its operation in 2007. Mr. Stanley Leon holds not only the position of Director but also the position of Secretary of the Company.
35. Mr. Stanley Leon holds 99 shares of the Company and Mr. Mohammed Haron holds 1 share. Mr. Ram explained that there is no difference between the directors who hold shares of the company with the directors who hold no shares of it.
36. The third witness of the prosecution is Mr. Kevueli Tiatia. He is a custom officer at the Nadi International Air Port. He was working at Parcel Post at the Nadi International Air Port as the custom officer on the 18th of March 2014.
37. Mr. Tiatia stated that Mr. Ananda of Allied Custom Brokers came to him with a parcel notification, for him to assess the duty of the value of the goods. He directed Mr. Ram Raj, the post officer to bring the goods from the custom bond. He helped Ananda at the post office counter to examine the goods. Ananda had no commercial invoice of the parcel. However he has obtained the approval from his team leader Mr. Mohammed Ajas, that allowed Mr. Tiatia to open the parcel and assess the duty on the value of the goods. If the parcel came through for a company, it is a requirement for the consignee or the agent to provide the commercial invoice during the clearing process.
38. Mr. Tiatia helped Mr Ananda to open the package and found two copies of the commercial invoice and two foil packages inside it. He did not open the two foil packages. They were sealed with cellotape around the corners. He found that one of the



foil packages had a cut and it was covered with clean cellotape. He saw some powdery substance on the said cellotape. He felt the two foil packages with his hands and felt that it contains some powdery substance. He further found the commercial invoice which he found inside the package had stated that the parcels contain plastic bags. Because of these reasons, he had a suspicion about the package and informed Mr. Ananda that he will detain the parcel for further testing and verification. He then issues a detention order and get Mr. Ram's signature on it. Mr. Tiatia then informed his senior officer Mr. Kelemedi about the parcel. Mr. Kelemedi escorted Mr. Tiatia with the package to baggage hall where he conducted ION scan test. The baggage hall is about 100 meters away from the post office.

39. At the baggage hall, Mr. Kelemedi instructed Custom Officer Mr. Mosese to conduct the ION scan test. It was conducted in front of Mr. Tiatia. Mr. Mosese conducted two tests on ION scan for the two samples that he obtained from the two aluminum foil packages. Both of test indicated that the two samples contain LSD. Mr. Mosesse then detained the package at the baggage hall. Mr. Tiatia then raised a detention order to inform the consignee or the custom agent that the custom is holding the parcel for further testing. He informed Mr. Satya, the Managing Director of the Allied Custom Brokers about the detention notice and asked them to come and sign it. But they did not come, instead Mr. Peniasi came and signed the detention order on the 19th of March 2014. After that he was instructed by his Team Leader Mr. Mohammed Ajas to complete a seizure report. He then handed over the seizure report together with the package to Investigation Officer Ms. Vasiti in the afternoon of the 19th of March 2014. She then took over the investigation of this matter.
40. During the cross examination, Mr. Tiatia stated that the custom agent needs to get approval from the Team Leader or the Manager when they cannot provide the commercial invoice to examine the good and determine the value of it. Mr. Tiatia knew about Mr. Satya as the director of the Allied Custom Brokers. Mr. Ananda did not give him any explanation about the commercial invoice. Neither he asked him about an explanation. The package had two foil packages. The package was a self-adhesive

package. It had no cellotape covering the corners of the package. PNDE stated that the package contains plastic bag.

41. In respect of the second detention notice, he spoke to Mr. Satya. Mr. Satya then informed him that they will get someone from Energy Supplements Fiji limited to come and sign the detention order. Allied Custom Brokers did not want to commit themselves in signing the detention notice.
42. Mr. Tiatia was not present when Mr. Peniasi came and signed the detention notice. He was given the detention notice after it was signed by Mr. Peniasi. Mr. Tiatia explained that the detention notice is as far as custom records are concern merely an administrative document that confirms the other party is informed that their parcel is detained. If the consignee or the agent refused to sign the detention notice, the Custom could still proceed with the detention and test and verify it.
43. The fourth witness of the prosecution is Mr Satya Nadan. He is the Managing Director of Allied Customs Brokers. It is a custom brokers company. Mr. Satya stated that his company first acted as an agent for Energy Supplement Fiji Limited in 2013. It was an airfreight shipment and Mr. Peniasi came to his office for the said shipment. He knows Peniasi works for Energy Supplements Fiji Limited.
44. When Mr. Satya was asked by the learned counsel for the prosecution whether Mr. Peniasi engaged Allied Custom Broker again in 2014 for a shipment of a parcel, he answered that he received an email from Mr. Stan Marshall informing that there was a shipment coming and gave him the tracking number. Mr. Satya has not seen or met Mr. Stan Marshall.
45. The learned counsel for the prosecution asked Mr. Satya how he came to know about Mr. Stan Marshall. His answer was that after the first shipment came, Mr. Peniasi requested his business card stating that Peniasi's boss wanted it. Peniasi did not tell him the name of the boss.

46. By the email dated 15th of March 2014, Mr. Stan Marshall has just advised Mr. Satya that a parcel was coming. He did not advise who was the recipient of the shipment in the email. When they were trying to clear the parcel, the Custom informed them that they wanted more information. Mr. Satya has then requested Mr. Stan Marshall to give more information in an email dated 19th of March 2014.
47. Mr Satya came to know about the detention of the parcel, when Custom officer Mr. Tiatia called him and advised him about it. Mr. Tiatia informed him about the detention and advised him to call the owner to come and sign the detention notice. He then immediately sent an email to Mr. Stan Marshall on the 19th of March 2014 informing him about the detention. Apart from that, he sent his driver to look for Mr. Stan Marshall. The Driver did not find Mr. Stan Marshall at the office of Energy Supplement Fiji Limited. The driver only found the accused at the office. Mr. Satya then called Mr. Peniasi and asked him to come and sign the detention notice. Meanwhile, Mr. Stan Marshall replied to him in an email saying that he was out of the country.
48. Mr. Satya in his evidence stated that under normal circumstances they can sign the detention notice on behalf of the owner, but in this case the FIRCA suggested to call the owner.
49. During the cross examination, Mr. Satya stated that Stan Marshall informed him that he was sending the parcel. Mr. Stan Marshall provided him the tracking numbers of the parcel and also advised him that the parcel contains shoe deodorizer. He said that when he was informed by the custom about the detention, he automatically sent an email to Stan Marshall informing the detention. Mr. Stan Marshall just informed him that he was out of the country.
50. Mr. Satya stated that in all the email sent back and forth with Mr Stan Marshall regarding this parcel, there has never been any reference of Mr. Peniasi to come and pick up the parcel or have any involvement of Mr. Peniasi with the shipment of the parcel.

51. Mr. Satya said that he did not personally saw the parcel, neither the detention notice. He said that this transaction of the parcel and all the correspondence with regard to the parcel, were took place between him as the owner of the Allied Custom Broker and Mr. Stan Marshall.
52. The first shipment of the Energy Supplement Fiji Limited came in September 2013. At that time he had no contact with Mr. Stan Marshall. However, he admitted that he received an email from Mr. Stan Marshall on the 30th of September 2013. He had cleared two shipments for Stan Marshal before this particular parcel came to Fiji. Mr. Stan Marshall provided the information for the second shipment, but Penisasi came and picked it.
53. Mr. Satya answered that he was present at the office when they called Peniasi about the first shipment in September 2013. He has no knowledge of the staff of the Energy Supplement Fiji Limited in Fiji. He did not know who was running the business in Fiji for the Energy Supplement Fiji Limited.
54. The fifth witness of the prosecution is Mr. Mohammed Haroon. He is an accountant and works for HLB Crosby and Associates as the Practice Manager. He in his evidence explained that Stanley Leon and Matrix Investment Limited entered into a tenancy agreement in 2007 for an office space at HLB House through one real-estate agent at Denarau. He has signed the tenancy agreement on behalf of the Matrix Investment Limited, where he is a director. Mr. Chris Chase was the one who first made contact with them and then sought their assistance to incorporate the Energy Supplement Fiji Limited. Mr. Haroon in his evidence explained the procedure and the manner the Energy Supplement Fiji Limited was incorporated and came to operation. Mr. Stanley Leon has been the director and secretary of the company since its incorporation. However on the 5th of September 2013 Mr Richard Corbert resigned as a director and he was replaced by Mr. Peniasi as a director of the Energy Supplement Fiji Limited. Mr. Peniasi is not a shareholder of the company. Mr. Haroon and Mr Leon are the shareholders of the company.

55. Mr. Haroon in his evidence explained the responsibility of the director and the responsibility of the shareholders. He initially dealt Mr. Leon and Mr. Chase in his dealing with Energy Supplement Fiji Limited, but later they both faded away from the scene and Mr. Peniasi became the liaison officer between his company and the Energy Supplement Fiji Limited. He was told that the Energy Supplement Fiji Limited manufactures essence products. He knew Peniasi was in charge of Energy Supplement Fiji Limited in the year 2014.
56. During the cross examination, Mr. Haroon said that Mr. Chris Chase was never be a director of the company, however he involved in the business of it. He was introduced to him by Mr. Leon stating that he was his business partner in New Zealand. In 2013, it was Mr. Chris Chase who instructed him to change the name of the directors of the company. The rent and the payment for their services were initially paid through telegraphic money transfer came from an overseas account called London Underground. It was then changed and Mr. Peniasi started to make payments in cash. He knows the money for the rent and other payment was coming from overseas as per the documentation provided by Mr. Peniasi. Mr. Peniasi did not make report by himself, but he provides all recipes and bills and his company makes the financial and accounting reports accordingly. He knew Mr Peniasi was paid FJD 860 monthly from the Energy Supplements Fiji Limited. If someone want to discuss anything with Energy Supplements Limited, it was Mr. Peniasi who was there as he was the only person worked at the office.
57. The sixth witness of the prosecution is Mr. Ranga Nathan. He is the Officer in Charge of Custom Intelligent Unit. He was a custom investigator in the 2014 and worked at the Nadi International Air Port. He could remember that he was instructed by his senior officer Mr. Winston Rounds on the 20th of March 2014 to take a parcel to Koronivia Research Centre for testing on the next morning. He came to office early in the morning on the 21st of March 2014 and took the brown envelope, that was sealed with custom seal to Koronivia Research Centre. Upon reaching the research centre, he handed over the brown envelope to officer Vinit. She opened the enveloped in front of him. Mr. Nathan in his evidence explained what he found inside the brown envelop and identified them in

open court. Officer Vinit then took them inside, informing him to wait until the test to be conducted. After the test, she put them to an envelope and sealed it and gave him back. He brought the parcel back to Custom office at Nadi International Air Port and handed it over to Investigation officer Ms. Vasiti on the same evening. Mr. Nathan was not cross examination by the learned counsel for the Defence.

58. The seventh prosecution witness is Mr. Anand Vish. He was employed as attaché at Allied Custom Brokers in the year 2014. He had joined the company just two weeks before this incident took place. He stated that he was instructed by his manager Mr. Rajnil Reddy to go and pick a PNDE from the Post Office on the 18th of March 2014. He went and picked the PNDE from the post office and handed it over to his Manager at the office. His Manager then told him there was an issue with the PNDE as it had no commercial invoice and instructed him to go and get the approval of the Custom Supervisor. He went and obtained the approval of Custom Supervisor Mr. Mohammed Ajaz and then went to Mr. Tiatia, the custom officer. Mr. Tiatia brought the parcel and Mr. Anand opened the parcel in front of Mr. Tiatia. He found two aluminum foil bags inside the package. Mr. Tiatia checked the two foil bags by touching and then told him that he will hold the package for further testing and verification. It was the first time he went to pick a PNDE at the Post Office. Mr. Ananda said that he had no commercial invoice for the said parcel. He said that he was not later sent to the office of Energy Supplements Fiji Limited by his boss. He did not sign any detention notice.
59. The eighth witness of the prosecution is Mr. Mosese Tuitavua. He is a custom officer and works at the Custom Baggage Hall at the Nadi International Air Port. Mr. Tuitavua in his evidence explained the procedure of conducting ION scan test .He was on duty at the Custom Baggage Hall on the 18th of March 2014 when Mr. Tiatia and Mr. Kelemedi came with the parcel. He opened the both foil packages and found brownish white powdery substance. He tested the sample of substance that he found in the both parcels and the result of those two test were positive for LSD. He then sealed the packages again and put it for safe keeping. Mr. Mosese was not cross examined by the learned counsel for the defence.

60. The ninth witness of the prosecution is Mr. Esbin Kumar. He was a counter clerk at the Post Fiji office at the Nadi International Airport in the year 2014. He could recall that Mr. Peniasi used to come and purchase stamps from him since 2010. He sometimes bought stamps worth over \$100 and sometimes less than \$ 100. He sometimes paid in cash and sometimes in cheques. He entered the amount of those cheques in front of him. The cheques were belonged to Energy Supplements Fiji Limited. He was not aware of this Energy Supplement Fiji Limited and their business.
61. The tenth witness of the prosecution is Mr. Savenaca Mara. He is a police officer, attached to Border Police Station at the Nadi International Air Port. He could recall that he conducted the caution interview of the accused on the 22nd of March 2014. Actually on the 22nd of March 2014, he was on a day off. Sgt Vikash called him back to duty as the CID unit at the Border Police Station had no sufficient officers on that day. When he came to the police station, Sgt Vikash called the accused on his phone, asking him to come to the police station. Once the accused came into the police station Sgt Vikash questioned him verbally in front of DC Mara. He then started the caution interview of the accused on the 22nd of March 2014 and concluded it on the 24th of March 2014. DC Mara explained that the accused was treated fairly and was given his all rights during the caution interview. He tendered the caution interview as one of the prosecution's exhibits.
62. During the cross examination, you may recalled that DC Mara was questioned about the meaning of the i-taukei word for pills and tablets. He went to the office of Energy Supplements Fiji Limited with the accused for the reconstruction and found and seized pills that the accused referred in his caution interview. Those pills and tablets have been referred as dove, jacks, summer days and dreams under question 26 and 85 of the caution interview. The accused has not been charged for those drugs that were referred in the caution interview. The accused was corporative during the conduct of the caution interview.
63. The last witness of the prosecution is Sgt Vikash Prakash. He is the investigation officer of this case. He was appointed as an investigation officer on the 22nd of March 2014. He then took over the investigation from the custom office. They provided him the handover

document with other relevant documentation and also the alleged package with the illicit drugs. He then started to investigate about the consignee, where it was located, what business they were engaged in and who was the receiver of it. During his investigation he found the accused was the receiver as he came and signed the detention notice. The accused had been looking after the business of the company in Fiji since 2010. He later found the accused is one of the directors of the company. After the caution interview, he was instructed to charge the accused and produce before the court. Accused came to the police station by himself. When Sgt Vikash called him to inquire about the parcel and the company, the accused had told him that he will come down to the police station.

64. The accused had informed him that the parcel was send by his boss Stanly Leon and it is for his noss. Sgt Vikash cannot recall whether the accused knew the parcel was coming from Hong Kong. The accused had further told Sgt Vikash that he was sending tablets and pills overseas as per the instruction he received from his boss. The accused agreed to take the police officer to his office. When he went to the office, he found plenty tablets, powder, chemicals, stationaries, posting materials, packaging equipment inside the office. There was room with a notice as “ production room”. He further found 44 gallon drum and it was written on the drum as “Acetone”. He had a suspicion that there has been some kind of production was going on in the office. He then arrested the accused.
65. Sgt. Vikash stated that he investigated about Stanley Leon and advice Interpol and counterparts in New Zealand. New Zealand confirmed that Stanly Leon is a person of interest for them as well and they will investigate about him.
66. He found the accused was in effective control of the Energy Supplements Fiji Limited in Fiji managing the day to day running of the business. Sgt. Vikash tendered the drug analyses reports made by the Police Forensic Research Unit at Koronivia Research Centre. The accused did not make any complaint about the conduct of his caution interview or the treatment he received during the police custody.
67. During the cross examination Sgt Vikash said that he went direct to the company instead of investigating the people that brought the parcel. He said that he was aware of the



emails that were being sent by Mr. Stan Marshall to Mr. Satya of the Allied Custom Brokers. He said that there was no mention about the bags in any of the emails exchanged between Mr. Stan Marshall and Mr. Satya.

68. Sgt Vikash admitted that he never investigated or tried to find out where exactly this parcel came from and who had handled the parcel prior to reaching Fiji. He said detention notice can be signed by anyone representing the Energy Supplements Fiji Limited or in their absence, Allied Custom Brokers. He further said that the parcel had no name of the sender, but the email states that the sender of the parcel was one Stan Marshall.
69. During his investigation, Sgt Vikash found that the accused was an employee of the company and worked as a packing boy for the company. He packed the pills and tablets, and sent them overseas. For that he was paid \$ 860 monthly. The police seized the tablets and pills found in the office and have them in police custody since then. There is no report or test to confirm those pills and tablets are illicit drugs.
70. Sgt Vikash agreed with the learned counsel for the defence that there is no evidence to show that there was a discussion or knowledge between Stan Marshall and the accused regarding the importation of this parcel on the 18th of March 2014.
71. He further said that the accused was a director of the company and the only person in charge of the company in Fiji and when the parcel came on the company name he is liable for it. Sgt Vikash said the accused should have known if something coming to the company. Nobody would send something without the knowledge of the internal receiver. The accused had a prior knowledge about the parcel was coming on the name of the Energy Supplements Fiji Limited. There is no direct evidence that the accused had knowledge that the parcel contained illicit drugs on the 18th of March 2014.
72. At the conclusion of the prosecution case, the accused person was explained about his rights in defence. The accused person opted not to give evidence. Neither he call any other witness for his defence. It is his right to remain in silent. He does not require to

prove his defence. It is the onus of the prosecution to prove the charges. Hence, you must not assume that he is guilty because of the fact that he did not give evidence.

### **Directions and Analysis**

73. The prosecution case against the accused is mainly founded on circumstantial evidence. The prosecution sought to prove variety of facts and incidents. The learned counsel for the prosecution submits that the effect of that evidence, when considered as a whole, leads to the indisputable and inescapable conclusion that the accused is guilty for the offence of Unlawful Importation of Illicit Drugs as charged. A circumstantial case is one that depends for its cogency on the unlikelihood of coincidence. In such cases, the prosecution seeks to prove separate facts, incidents and circumstances which cannot be explained as coincidence, but the only rational explanation is the guilt of the accused person. Circumstantial evidence can be powerful evidence but it needs to be examined with care to assure whether it actually has such effect.
74. The circumstantial evidence that the prosecution is seeking to rely on in this instant case are that;
- i) According to the answers given by the accused in his caution interview, he knew the parcel was coming to Fiji as Stanly Leon told him about it,
  - ii) Accused is one of the two directors of the Energy Supplements Fiji Limited,
  - iii) The parcel was consigned to Energy Supplements Fiji Limited c/o Allied Custom Brokers,
  - iv) The accused was the only person who runs the day to day business of the Energy Supplements Fiji Limited in Fiji such as payment of rent, provides information and receipt for the accountant to prepare financial and accounting report and sending pills and tablets to the addresses as directed by Stanly Leon,

v) Accused received instruction from Stanley Leon regarding the daily ruining of the company. It is an agreed fact,

vi) The accused came and signed the detention notice on the 18th of March 2014,

75. It is an agreed fact that Stanley Leon provided instruction to the accused on the day to day business of the company via Skype. The prosecution presented evidence of Mohammed Haroon to establish the accused was the one who conducted the business of the Energy Supplement Fiji Limited in Fiji. Moreover, Mr. Abi Ram presented evidence that the accused is one of the two directors of the company. Mr. Tiatia and Mr. Satya gave evidence to establish that the accused came and signed the detention notice.
76. You have heard the evidence of Mr. Satya Nadan. In his evidence he stated that it was Mr. Stan Marshall who sent him an email informing that the parcel was coming. He provided him the tracking number and the details of the parcel. There is no evidence that Mr. Satya had asked Mr. Stan Marshall or anyone for the commercial invoice for the said parcel. Neither Mr. Marshall had provided any commercial invoice.
77. When the parcel was detained by the Custom Officer at the Nadi International Air Port, Mr. Satya promptly sent an e-mail to Mr. Stan Marshall informing about the detention and asking him to come and sign the detention notice. Mr. Tiatia in his evidence stated that Allied Custom Brokers did not want to commit themselves by signing the detention notice. They sent the accused to sign it. Mr. Tiatia has only contacted the Allied Custom Broker, informing them to come and sign the detention notice. He did not contact the accused or anyone at the Energy Supplements Fiji Limited. It was Mr. Satya who sent his driver to look for Mr. Stan Marshall and/ or someone of Energy Supplements Fiji Limited. The driver did not find Mr. Stan Marshall at the office of Energy Supplements Fiji Limited, but found the accused. Mr. Satya then called the accused and asked him to come and sign the detention notice. The accused then came and signed the detention notice.

78. Mr. Satya and the investigation officer Sgt. Vikash in their respective evidence stated that there was no mention or any reference about the accused in any of the emails exchanged between Mr. Stan Marshall and Mr. Satya. Mr. Satya did not state that the accused contacted him or his office at any time material to this incident in respect of this parcel.
79. Mr. Satya in his evidence stated that the first consignment that they have cleared for Energy Supplements Fiji Limited was picked by the accused. That was in September 2014. The accused then requested Mr. Satya's contact details stating that his boss wanted it. However, there is no evidence identifying the name of the boss that was referred by the accused. The accused in his caution interview has stated that his boss is Stanley Leon. However, the sender of the email dated 15th of March 2014 was one Stan Marshall. There is no evidence to confirm whether Stanly Leon and Stan Marshall is a same person.
80. The prosecution tendered the caution interview of the accused as an exhibit of the prosecution. In his caution interview the accused has stated that he was informed by his boss Stanly Leon about this parcel, but did not know that it contained illicit drugs.
81. In order to determine whether you can rely upon the answers made by the accused in the caution interview, you must decide two issues,
82. Firstly, did the accused in fact make these statements? Having considered the evidence presented during the course of the hearing, if you are not satisfied or not sure of that the accused has actually made these statements in his caution interviews, you must ignore the caution interview.
83. Secondly, if you are satisfied, that the accused has made these statements in his caution interview, then it is for you to decide whether the contents of the caution interview are truthful, and what weight you give them as evidence. It is for you to decide whether you consider the whole of the caution interview or part of it or none of it as truthful and credible. You must consider all other evidence adduced during the course of the hearing in deciding the truthfulness and the reliability of the confessions and its acceptability.

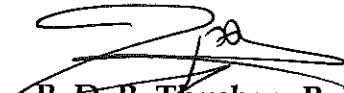
84. Ladies and Gentlemen, it is your duty to examine these evidence presented by the prosecution and decide whether you accept them or not. The learned counsel for the prosecution and accused person proposed you what inferences you should form from particular parts of these evidence. Drawing of inference is a process by which you find from evidence which you regard as reliable, that you are driven to a further conclusion of fact. You need to be careful to ensure that the evidence really lead to the conclusion, that the prosecution propose you to reach.
85. Let me give you an example of drawing or forming an inference or a conclusion, which does not arise out of the facts of this case, but will illustrate the need of care in judging whether the facts proved supports the inference of guilt. If my finger print is found in the living room of my neighbour's home, it is a sound inference that at some stage I have been in his living room. However, it would not support an inference that I was the burglar who stole his DVD recorder from his living room. If you accept my neighbour's evidence that I have never been invited into his home, then, in the absence of some acceptable explanation from me, you might infer that at some stage I had been in my neighbour's home uninvited. You may or may not be driven to the further conclusion that I was the burglar. But, if you also accept that there was a second fingerprint of mine found at the point of entry or, that in my shed there was a DVD recorder found, which my neighbour recognises as the one stolen from his living room, you, would, no doubt, conclude that you were sure that I was the burglar. You will notice how the inference of guilt becomes more compelling depending upon the nature and number of the facts and incidents proved.
86. What conclusion or inference you reach from the evidence is entirely for you to decide. However, in considering what inference you should draw or what conclusion you should reach, it is important to be mindful that speculation has no part in this process. The conclusion or the inference must be the only and certain rational conclusion or inference of the guilt of the accused persons. If the evidence that you accepted or considered as reliable, suggest you some other probable inferences or conclusions, which show the

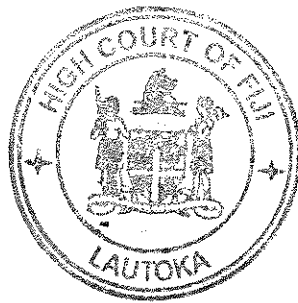
innocence of the accused or create a doubt as to the guilt of the accused, you are then not entitled to draw any inference or form any conclusion of guilt of the accused person.

87. Having considered all the evidence presented during the course of the hearing, if you believe and satisfy that the prosecution has failed to prove beyond reasonable doubt that the accused, had imported 408.1 grams of illicit drugs namely Cocaine, you must find the accused is not guilty for the offence of unlawful importation of Illicit Drugs contrary to Section 4 of the Illicit Drugs Control Act.
88. If you believe and satisfy that the prosecution has proved beyond reasonable doubt that that the accused had imported 408.1 grams of Illicit Drugs, namely Cocaine. You must then consider whether the accused has satisfied you that he had lawful authority to import such illicit drugs. If you are satisfied or believe that the accused has proven that he had a lawful authority to import such illicit drugs, you must then find the accused is not guilty for the offence of Unlawful importation of Illicit Drugs contrary to Section 4 of the Illicit Drugs Control Act.
89. If you believe and satisfy that the prosecution has proved beyond reasonable doubt that that the accused had imported 408.1 grams of Illicit Drugs, namely Cocaine. You must then consider whether the accused has satisfied you that he had lawful authority to import such illicit drugs. If you are not satisfied or do not believe that the accused has proven that he had a lawful authority to import such illicit drugs, you must then find the accused guilty for the offence of Unlawful importation of Illicit Drugs contrary to Section 4 of the Illicit Drugs Control Act.
90. Madam and gentleman assessors, I now conclude my summing up. It is time for you to retire and deliberate in order to form your individual opinion on the charges against the accused. Each of you have taken an oath or affirmation to return a true opinion according to the evidence. This is a responsibility you must fulfill. Each of you takes into this penal of assessors your individual experience and wisdom. Your task is to pool that experience and wisdom. You do that by giving your views and listening and giving due consideration to the views of others. Obviously, you could discuss and debate your views,

as a result of such discussion an individual may be persuaded to accept a view which he or she did not previously hold. But, of course, you must at all times stay true to your oath or affirmation to give a true opinion according to the evidence.

91. Once you have reached your opinion, you may please inform the clerks, so that the court could be reconvened.
92. Learned counsel of the prosecution and the accused, do you have any redirections to the assessors?

  
**R. D. R. Thushara Rajasinghe**  
**Judge**



**At Lautoka**  
**14<sup>th</sup> November, 2016**

**Solicitors : Office of Director of Public Prosecution**  
**Messrs K Law & Associates**