

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

**CRIMINAL CASE NO: HAC 126 of 2022**

**STATE**

**-v-**

**ALIKI IOWANE SILOMEA**

Counsels:

*Mr. Baleilevuka L.*

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*For Prosecution*

*Ms. Naikawakawavesi L, Ms. Nabainivalu R*

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*For Accused*

**RULING**

1. The Accused in this matter has been charged by the Prosecution on the below counts stipulated in the information filed in Court.

**COUNT 1**

*Statement of Offence*

**CRIMINAL TRESPASS:** Contrary to section 387 (4) (a) of the Crimes Act 2009.

*Particulars of Offence*

**ALIKI IOWANE SILOMEA**, on the 23<sup>rd</sup> day of January 2022, at Lami in the Central Division, without lawful excuse, entered into the dwelling house of ULITA WAQANIGAU

**COUNT 2**

*Statement of Offence*

**RAPE:** Contrary to section 207(1) and (2) (b) of the Crimes Act 2009.

*Particulars of Offence*

**ALIKI IOWANE SILOMEA** on the 23<sup>rd</sup> day of January 2022, at Lami in the Central Division, penetrated the vulva of ULITA WAQANIGAU with his tongue without her consent.

**COUNT 3**

*Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009.

*Particulars of Offence*

**ALIKI IOWANE SILOMEA** on the 23<sup>rd</sup> day of January 2022 at Lami in the Central Division had carnal knowledge of **ULITAWAQANISAU** without her consent.

2. When these charges were read to the Accused on 18/05/2022 he pleaded not guilty for each count.
3. The trial in this matter commenced on 23/03/2023 and for the Prosecution only the prosecutrix gave evidence as PW1. At the conclusion of the Prosecution case, the learned counsel for the Accused made an application pursuant to **Section 231(1)** of the **Criminal Procedure Act 2009** that there is no case to answer for the Accused, as there was no sufficient evidence presented by the Prosecution that the Accused committed the three offences he is charged with in the information.

4. **Section 231(1)** of the **Criminal Procedure Act 2009** states:

*“When the evidence of the witnesses for the prosecution has been concluded and after hearing if necessary any arguments which the prosecution or the defense may desire to submit, the court shall record a finding of not guilty if it considers that there is no evidence that the accused person committed the offence”.*

5. The test to determine whether there is evidence that the accused person committed the offence charged pursuant to **Section 231(1)** of the **Criminal Procedure Act of 2009** is now settled in our jurisdiction. The correct approach was pronounced by our Courts in the cases of **State v George Shiu Raj and Shashi Shailendra Pal (2006) AAU008/05, State v Brijan Singh (2007) AAU0005, State v Rasagio (2010) FJHC 284; HAC 155.2007 (5 August 2010)**. In these cases it was pronounced that the need is to examine whether there is relevant and admissible evidence on each contested element of the charged offences and not to determine whether the evidence is fundamentally imprecise or inconceivable.
6. **Justice Madigan** in **State v Rasagio (2010) FJHC 2 (5 August 2010)** has expanded the applicable test of no case to answer under **Section 231 (1)** of the **Criminal Procedure Act 2009**, as follows:

*“That test under section 231(1) is settled and is more stringent than the test under section 178 of the same Decree. The English test for no case to answer is stated in the case of **Galbraith (1981) 2 All ER 1060** has no application to a case in this Court. The Galbraith guidelines were expressly rejected by the Court of Appeal in **Sisa Kalisoqo v R – Ct of Appeal No. 52 of 1984** because in England the matter is not governed by any Statute. In **Kalisoqo** the Court of Appeal took the view that if there is some direct or circumstantial evidence on the charged offence, then a judge cannot say there is no evidence on the proper construction of **Section 231(1)**. This view was later confirmed by the case of **Mosese Tuisawau Cr App. 14/90**.”*

7. In this matter, the Accused is charged for penetrating the vulva of **ULITA WAQANIGAU** with his tongue without her consent on 23/01/2022, as the second count, and for having carnal knowledge of **ULITA WAQANISAU** without her consent on 23/01/2022, as the third count. For the first count the Accused is charged with criminal trespass for entering the property of the prosecutrix without lawful excuse for commission of the offences in count 2 and count 3.

8. For the second and the third counts to be successful for the Prosecution the operating phrase is committing those acts without the consent of the prosecutrix. In this regard, though PW1 stated in her evidence in chief that the Accused committed these offences on her without her consent, in cross-examination she stated:

***“We were secretly seeing one another. Actually, I consented to having sex with the Accused on this day.”***

9. Therefore, she admitted to having sexual activity with the Accused with her consent and vitiated the operational word for the offences the Accused is charged with to occur. She further qualified her relationship with the Accused, as follows:

*“I was having a relationship with the Accused then and my family didn’t know about this. I didn’t want to report this to the police, I reported because my cousin insisted.”*

10. In considering this evidence, this Court is convinced that the evidence available for trespassing is also very scant. Therefore, acting under **Section 231 (1)** of the **Criminal Procedure Act of 2009**, this Court affirms that the **Aliki Iowane Silomea** has no case to answer in this matter and acquit the Accused from further legal proceedings in this matter.

11. You have thirty (30) days to appeal to the Court of Appeal of Fiji.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage".

Hon. Justice Dr. Thushara Kumarage

At Suva

This 29th day of March 2023

cc: *Office of Director of Public Prosecutions*  
*Office of Legal Aid Commission*