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## PRIVILEGES COMMITTEE

### Report on Referral of a Matter of Privilege

RE: Hon. Ratu Naiqama Lalabalavu



PARLIAMENT OF THE REPUBLIC OF FIJI  
Parliamentary Paper No. 29 of 2015

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## **COMMITTEE MEMBERS**

The members of the Privileges Committee are:

- Honourable Ruveni Nadalo, Deputy Speaker (Chairperson)
- Honourable Aiyaz Sayed-Khaiyum, Attorney-General and Minister for Finance, Public Enterprises, Public Service and Communications
- Honourable Inia Seruiratu, Leader of the Government in Parliament and Minister for Agriculture, Rural and Maritime Development and National Disaster Management
- Honourable Faiyaz Koya, Minister for Industry, Trade and Tourism
- Honourable Semesa Karavaki, Member
- Honourable Roko Tupou Draunidalo, Member

## CHAIRPERSON'S FOREWORD

A matter of privilege was raised with Madam Speaker pursuant to Standing Order 134(1) on Monday, 18 May 2015.

At the time appointed by the Standing Orders, the Hon. Attorney-General and Minister for Finance, Public Enterprises, Public Service and Communications moved a motion on the matter.

Madam Speaker put the Question to Parliament for a vote. The motion was resolved in the affirmative and the matter was subsequently referred to the Privileges Committee ('**Committee**').

The Committee was given a timeline to report back to Parliament no later than Thursday, 21 May 2015.

A very broad Terms of Reference ('**TOR**') was prepared by the Secretariat upon the direction of Madam Speaker. (**Appendix I**)

A Work Plan was adopted at the first meeting and the members had to deal with very strict timelines and during the second week of a two week sitting. (**Appendix II**)

This Report differs from those of Standing Committees in that the proceedings were held *in camera*. Minutes and Verbatim Notes and most of the other written documentation generated remain confidential and therefore do not form part of this report.

I thank all Honourable Members of the Committee for the hard work and determination shown and respectfully submit this Report to Parliament.

Hon. Ruveni Nadalo  
Deputy Speaker and Chairperson

## SUMMARY OF PROCEEDINGS

### **1<sup>st</sup> Meeting – Monday 18 May 2015:**

The Committee convened shortly after 4.00 p.m. and noted the TOR. A Work Plan had been drawn up from the TOR and Members deliberated before adopting both tentatively on the understanding that the timelines stipulated would be adjusted as needed by the Committee.

### **2<sup>nd</sup> Meeting – Tuesday 19 May 2015:**

The Opposition Members requested that it be noted for the record that their presence at the proceedings was under protest as they did not agree with the membership.

The Committee met shortly after 2.00 p.m. and called a total of three witnesses of the ten that were in the full list. (**Appendix III**)

The first two witnesses were from Communications Fiji Limited the newsmedia organisation that first covered the story and made the recordings of the incident that is the subject of this report.

The third and final witness was the Honourable Member who is the subject of this inquiry.

After concluding examination of the third witness, the Committee unanimously agreed that it had sufficient evidence before it to deliberate and decided not to call the other witnesses.

The Secretariat was requested to collate precedents from Fiji and other relevant jurisdictions to enable the Committee to consider the available options including possible sanctions in the event the breach was substantiated.

### **3<sup>rd</sup> Meeting – Wednesday 20 May 2015:**

The Committee met shortly after 4.00 p.m. to consider–

- (i) Whether there was any breach and if so, the severity;
- (ii) The available sanctions and appropriate sanction or penalty that should be recommended to Parliament.

The Committee after deliberating at length was not able to reach a consensus and resolved unanimously to make written submissions which would be consolidated as the findings of the Committee.

Opposition Members reiterated that they participated in proceedings under protest because the–

- (i) Hon. Attorney-General was part of the committee (notwithstanding the Speaker's ruling on the matter); and
- (ii) Speaker's Ruling (morning of 20 May, 2015) - regarding the privilege matter raised by T Draunidalo (MP). (**Appendix IV**)

Written submissions would need to be submitted no later than 7.30 a.m. on Thursday, 20 May 2015 in order for the Report to be finalised and printed in time for tabling of the Report in Parliament.

**Thursday 21 May 2015:**

The Committee finalised the report via email then met briefly to endorse the Report.

# WRITTEN SUBMISSIONS

## GOVERNMENT SUBMISSION

### ESTABLISHMENT OF BREACH OF PRIVILEGE/CONTEMPT OF PARLIAMENT

#### ***JURISDICTION***

- 1.1 Under Standing Order 127(2)(b), the Privileges Committee ('**Committee**') is required to consider any question of privilege referred to it by Parliament or the Speaker whether under Standing Order 134 or otherwise.
- 1.2 A reflection on the Speaker is a question of privilege<sup>1</sup> and such instances amount to contempt which must be dealt with by Parliament.
- 1.3 It is a well-established parliamentary principle that reflections on the Speaker inside or outside Parliament are *inter alia*, regarded as contempt of Parliament.<sup>2</sup>
- 1.4 In the context of Fiji, the case of ***Anand Babla v. Devakar Prasad & the Attorney-General [High Court, 1998]*** addresses reflections on the Speaker made outside Parliament. In that case, Mr Babla who was a member of the House of Representatives had written a letter to the Secretary-General to Parliament seeking answers to questions relating to various payments made to *inter alia* the Speaker. The Secretary-General gave Mr Babla a response that was unfavourable to him. Following that, he took his claims and allegations outside Parliament to the Fiji Times and received front page publicity. Mr Babla was later suspended from the House for two sittings after the Privileges Committee found him to be in contempt of Parliament.
- 1.5 The fact that the statements were made outside Parliament sets the precedent that such statements, in particular reflections on the Speaker, warrant an investigation by the Privileges Committee.
- 1.6 In New Zealand, the Privileges Committee in reporting on a question of privilege concerning a reflection on the Speaker, refused to consider the reasons why the attack which was before it had been made and confined itself to a consideration of whether such an attack had been made<sup>3</sup>. In light of this, it is clear that the Committee and indeed Parliament must only consider whether such an attack had been made.

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<sup>1</sup>*Parliamentary Practice in New Zealand (Second Edition, 1994)*, David McGee, p 496

<sup>2</sup>*Australian House of Representatives Official Hansard Report (41<sup>st</sup> Parliament, 1<sup>st</sup> Session-4<sup>th</sup> Period)*, No. 21 of 2005, p 86

<sup>3</sup> *Ibid* 1, p 496

## **ANALYSIS OF FACTS**

- 1.7 On Thursday, 14 May 2015, SODELPA held a public constituency meeting ('**SODELPA meeting**') at the Penuei Methodist Church in Makoi. At the SODELPA meeting, Hon. Lalabalavu ('**Hon. Lalabalavu**') made scurrilous and derogatory statements in the iTaukei language against the Hon. Speaker of Parliament ('**Hon. Speaker**').
- 1.8 Communications Fiji Limited ('**CFL**') provided an audio recording of the scurrilous and derogatory statements made by Hon. Lalabalavu at the SODELPA meeting against the Honourable Speaker.
- 1.9 It is an undeniable fact that the scurrilous and derogatory statements were made by Hon. Lalabalavu.
- 1.10 According to the audio recording, it is clear that Hon. Lalabalavu referred to the Hon. Speaker as "*vutusona*". The iTaukei term is extremely obscene and gravely offensive as it literally means anal sex. Following that statement, Hon. Lalabalavu then referred to the Hon. Speaker as "*cavuka*", which means retarded or mentally challenged when he had mocked her by saying that she stood up when the Opposition side stood up during a particular sitting. In all these instances his reflections on the Hon. Speaker drew laughter from the audience.
- 1.11 In addition, Hon. Lalabalavu stated that the standards of this Parliament are much lower than ones before. He also questioned her impartiality by referring to her former membership of FijiFirst.
- 1.12 When summoned by the Committee to give his evidence, Hon. Lalabalavu was evasive about what had actually transpired at the SODELPA meeting. He also stated that the slurs in the iTaukei language may not have been necessarily directed at the Hon. Speaker.
- 1.13 Hon. Lalabalavu also submitted that the manner in which the slurs were said did not mean that they were abusive as such, especially since the Hon. Speaker is also a member of the Tovata Confederacy. According to Hon. Lalabalavu, that is the relationship of the "*vanua*" and in the context of the "*vanua*", that is how they engage in such a cultural setting.
- 1.14 However, the fact is that this meeting was a public meeting for which a permit had been obtained. The fact is that this was not a cultural gathering of the Tovata Confederacy. This was a public meeting by SODELPA which advertised this meeting as constituency meeting in which all members of the public were invited. It was not limited to members of the Tovata Confederacy. It was covered by the media for all Fijians.



- 1.15 By making such scurrilous and offensive statements, Hon. Lalabalavu has failed to uphold his expected duties and demeanour as Member of Parliament. No Member of Parliament must be allowed to attack the Office of the Hon. Speaker anywhere and at any time, whether it is at a public meeting or at a meeting held in a cultural setting. As such, Hon. Lalabalavu should have distinguished his role as a Member of Parliament and as a paramount chief in the Tovata Confederacy. Therefore, Hon. Lalabalavu's demeanour and conduct at the SODELPA meeting should have been reflective of a senior Member of Parliament.
- 1.16 The audio recording undeniably shows that the question posed to Hon. Lalabalavu was regarding the Hon. Speaker. Moreover, there was a continuous pattern of denigration against the Hon. Speaker. Based on these, it must be noted that Hon. Lalabalavu was indeed referring to the Hon. Speaker.
- 1.17 It must also be noted that Hon. Lalabalavu was unapologetic about the words and statements uttered by him against the Hon. Speaker.
- 1.18 Given the audio recording by CFL and the evasive nature of Hon. Lalabalavu's submissions, the credibility of the submissions made by Hon. Lalabalavu is highly questionable.
- 1.19 It must be noted that the Speaker is an independent and highly esteemed office under section 77 of the Constitution of the Republic of Fiji (**'Constitution'**). It states amongst other things that the Speaker serves to secure the honour and dignity of the Parliament.
- 1.20 "Being the embodiment of Parliament, reflections upon the Speaker's character or conduct directly attack the very institution of Parliament itself."<sup>4</sup> An attack against the Speaker is an attack against the institution of Parliament as a whole.
- 1.21 In New Zealand, there have been reflections on the Speaker which have resulted in contempt of the House. For example, there have been instances where:
- members attacked the character or conduct of the Speaker;
  - the Speaker was accused in a newspaper article on racial prejudice;
  - a member wrote a newspaper article criticising the manner in which the Speaker was presiding over the House;
  - a member in a radio interview advocated the replacement of the Speaker and accused the Speaker of weakness.<sup>5</sup>

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<sup>4</sup>Ibid, p496

<sup>5</sup> Ibid, p496

- 1.22 The fact that Hon. Lalabalavu made those scurrilous and derogatory statements is contemptuous.
- 1.23 A distinction must also be drawn between a Member of Parliament making comments about another Member of Parliament as opposed to a member of parliament making comments about the Speaker. Whilst a Member of Parliament may criticize another Member of Parliament (albeit maintaining decorum and the honourable status of all Members of Parliament), no Member of Parliament is allowed to attack the Hon. Speaker in any way at any meeting, whether inside or outside Parliament.

## **SANCTIONS**

- 2.0 In Fiji, there is a pressing need to strengthen institutions and in particular Parliament or the Legislature which was directly and physically attacked in the coups of 1987 and 2000.
- 2.1 Given the implementation of the Constitution which has been internationally recognised, and now that Fiji finally has true democracy, contempt matters such as this must be taken seriously to protect the dignity of the legislature.
- 2.2 The scurrilous attack by Hon. Lalabalavu on the office of the Speaker is not the example we want to set as standard or acceptable pattern of behaviour for Members of Parliament and equally for the Fijian population because it will undermine the very institution which the Constitution and which we all need to protect to ensure that there is sustained parliamentary democracy and respect for this very critical arm of the State.
- 2.3 It is also critical that our children and younger population are not exposed to this type of denigration as the norm or see that this Parliament is condoning such behaviour by a senior Member of Parliament and someone who holds a particular social status.
- 2.4 Indeed the fact that these scurrilous reflections were made against the Speaker who is currently a female and the first one at that to hold such a position, brings into question whether Hon. Lalabalavu would have made such a scurrilous attack and ridiculed the Speaker had the Speaker not been a female. Indeed questions have been raised in the public space about this issue with the Women's Crisis Centre making a strong public statement on it and asking that severe action must be taken against Hon. Lalabalavu. To overcome patriarchal notions of society the conduct of relationships and patterns of behavior must be addressed. This is why it is even more so important that we send a strong message that such behavior will not be tolerated nor condoned. As Parliamentarians, we must send a very strong message that any reflection on the Speaker's character or conduct is denigration against the institution of Parliament and must not be condoned at all.

- 2.5 As highlighted in the Babla case, Mr Babla did not use any foul words and yet was suspended from the House for two sittings. The matter currently before the Committee is unprecedented and far more severe and gruesome than the matter in the Babla case.
- 2.6 It should be noted that under section 20(h) of the *Parliamentary Powers and Privileges Act* (Cap. 5), any person who utters or publishes any false or scandalous slander or libel on Parliament or upon any member in his or her as such commits an offence and such an offence warrants *inter alia* imprisonment for a maximum of two years.
- 2.7 Hon. Lalabalavu viciously and scandalously attacked the Hon. Speaker and made a mockery of the institution of Parliament and important arm of the constitutional system of government. It was so vicious and scandalous that it would be difficult to find such contempt in other jurisdictions.
- 2.8 Given the above, the Privileges Committee strongly recommends that Hon. Lalabalavu must be suspended from Parliament for at least two years of the term of Parliament, with immediate effect from 21 May 2015. During the period of suspension, he is not allowed to enter the parliamentary precincts including the Opposition Office. He must also issue a public apology in writing to the Hon Speaker. Immediately upon his suspension, he must be ordered to leave the precincts of Parliament and to remain outside of Parliament precincts. If he fails to comply, necessary enforcement measures must be imposed to ensure compliance.

## **OPPOSITION VIEW**

### **Was there any breach and if so, what is the severity of the breach?**

- 1.1 At the outset, we refer again to the Ruling on Privilege by the Speaker on the morning of 20 May, 2015 in which she ruled that all matters of privilege are contained to the Parliamentary precinct and this does not include the Members' constituency visits.
- 1.2 We therefore submit that if privileges do not extend outside of the House then any alleged act of breach outside of the House is not a breach of privilege.
- 1.3 The powers and privileges of the Speaker derive from the House and by her ruling it is now contained strictly within the precinct.

- 1.4 If by some reason, it has on this occasion travelled out of the parliamentary precinct - the Opposition Members have not found any breach of privilege by the Honourable Ratu Naiqama Lalabalavu
- 1.5 At the beginning of proceedings on 20 May, 2015 we asked that various other preliminary issues be determined by the committee before proceeding.
- 1.6 That included, the standard of proof to be met and a translation of the words complained of.
- 1.7 The Government Members submitted that the standard of proof is the civil standard, balance of probabilities.
- 1.8 The Opposition does not agree, we believe that charges carrying penalties like breaches of parliamentary privilege require the criminal burden of proof of 'beyond reasonable doubt'.
- 1.9 On the evidence regarding the use of the word "vutusona" - the Opposition Members believe that the quality and state of the recording in itself raises doubts about its accuracy and/or veracity.
- 1.10 Further, the recording was made by Communications Fiji Limited and the recording has not been made public.
- 1.11 The Opposition Members believe that in the interests of fairness and justice, such a recording ought to be subjected to expert, forensic scrutiny.
- 1.12 The Honourable Ratu Lalabalavu clearly says in his answers to the committee that his speech in the recording is in answer to his elder, a gentleman from Vanuabalavu and is not an answer to a woman whose voice is in the recording.
- 1.13 However, if the recording is to be accepted as evidence, the Opposition Members clearly heard the words 'Ratou qo...' precede the word "vutusona".
- 1.14 Further, a male voice says "Vinaka" immediately prior to the Honourable Ratu Lalabalavu's speech where he is alleged to have made reference/s to the Speaker.
- 1.15 Any person familiar with the Taukei language will agree that the word "Ratou" is a reference to many and not just one person.
- 1.16 We say that clearly, the Honourable Member is **not** referring to the Speaker or any one person in that part of his speech.
- 1.17 The Honourable Member himself (and the verbatim report shows this) said in an answer to questions that he was not referring to the Speaker when he used the words "vutusona" and that if he was swearing at the Speaker he would have used the words "O koya.." or "Na Speaker..".

- 1.18 The Government members refer to two answers from the Honourable Ratu Lalabalavu to say that he has admitted directing his speech to the Speaker. With respect, the Opposition Members disagree.
- 1.19 We say that both the Honourable Attorney and the Honourable Minister, Mr. Koya's questions contained a statement of admission to directing the speech to the Speaker immediately before asking whether or not the Honourable Ratu Lalabalavu uttered the words complained of.
- 1.20 That is, we say that the statement and question from both Honourable Members should have been two questions. First, 'Did you utter those words...?' and second, 'Were your words directed at the Speaker?'
- 1.21 In his answers, the Honourable Ratu Lalabalavu clearly was answering the question of whether he uttered the words complained of. The Honourable Member has never denied this.
- 1.22 More importantly, the Honourable Member does not ever, in any part of his answers admit that he directed that part of his speech to the Speaker. To the contrary, the verbatim will show that he denies this.
- 1.23 And with respect, the words "Ratou qo..." in the recording confirms this. No one else gave evidence to contradict this.
- 1.24 We therefore respectfully submit that there is no evidence that the Honourable Ratu Lalabalavu directed that part of his speech to the Speaker. It has not been proven that he did on either burden of proof.
- 1.25 On the use of the word "cavuka" we submit that the Honourable Member did not say "O koya e cavuka" or "Na Speaker e cavuka".
- 1.26 From the verbatim, the Honourable Ratu Lalabalavu clearly says that there were many questions that evening about the Speaker and that he responded in the way he did to placate the general mood towards the Speaker from the audience.
- 1.27 The comments made must be taken in that context and it is clear from the discussion that the Honourable Ratu Lalabalavu does an honourable public duty of describing some instances and that in those instances the actions of the Speaker have been "like" or "akin to" that of a "cavuka" (and this is said to express understanding with the onslaught) immediately before the Honourable Member placates the audience as he goes to great length to ask the public for forbearance as the Speaker is only 'one of us' and that she is new to the job and it will take time and so spiritual forbearance is required.
- 1.28 The Honourable Member has described his speech as "vosa ni vakadre" translated, chiefly counsel of wisdom and restraint to those present.

- 1.29 The Honourable Attorney has described the speech by the Honourable Member as a series of attacks on the Speaker.
- 1.30 With respect, nothing could be further from the truth. We say that the words spoken were the wise counsel of restraint and forbearance and understanding from a paramount chief to the political supporters of the SODELPA political party that included his subjects and elders.
- 1.31 With due respect, we say very strongly that there has been no breach of privilege by the Honourable Member on either standard of proof.
- 1.32 Just as importantly, due to the lack of consensus in the committee - the House needs to hear the recording in question and read the minutes and verbatim of the proceedings to fairly pass judgment in their deliberations on the motion.

### **The sanctions, if Parliament finds a breach**

- 2.1 Again, without prejudice - if the House finds that the Honourable Member has been in breach of privilege in reflecting on the Speaker then the House ought to note that the usual practice is to ask the Member to withdraw and that be the end of the matter.
- 2.2 Even the authority submitted by the Government Members, *Anand Babla v Devaka Prasad & Anor* bears this out. The contempt was found when after showing remorse in the House and withdrawing his statements, conduct and the House having dealt with him fairly and - that Honourable member then re-offended with the same from within the precinct - outside of the House.
- 2.3 We therefore submit that if any breach is found, that the Honourable Ratu Lalabalavu be asked to withdraw the comments he made and that be the end of the matter.
- 2.4 We submit to the House that Standing Orders 75 and 76 contain the penalties that are available to Members to deal with breached of privilege.
- 2.5 Further the standing orders clearly differentiate between this punishment for breach of privilege and any punishment for contempt which is not at issue in this matter.
- 2.6 We have attached case law which shows that the Courts of law will ensure that the House abide by its own rules (the Standing Orders) and we submit that if we go beyond Standing Orders 75 and 76, the courts will bring us back to it.
- 2.7 The two cases we refer to are *Butadroka v the Attorney General* and, *Robati v Privileges Standing Committee*.

- 2.8 As to the nature of reflections on the Speaker, we submit that the Speaker cannot be compared to a member of the judiciary.
- 2.9 The latter arbitrates disputes between private and public litigants and requires a standard of protection from more powerful forces to enable them to freely adjudicate. Refer, *Mahendra Pal Chaudhary* 1998 FJHC 44.
- 2.10 The Speaker in contrast derives her powers from the Members of the House. The House of politics.
- 2.11 The House of free speech that evolved to protect free speech and representation as a safeguard from the authoritarian rule of the King and nobility in England.
- 2.12 The Speaker embodies the House to protect our privileges against powerful forces, not curtail it. Hence, Standing Orders 75, 76 and no more than that.
- 2.13 We had hoped for much more time to deliberate and write our submissions but the numbers are against us. (**Appendix V – Opposition Case Authorities**)

Karavaki, S (MP)

Draunidalo, T (MP)

# ENDORSEMENT

We the undersigned Members of the Privileges Committee of the Parliament of the Republic of Fiji hereby endorse this Report:

Hon. Ruveni Nadalo

Hon. Aiyaz Sayed-Khaiyum

Hon. Faiyaz Koya

Hon. Inia Seruiratu

Hon. Semesa Karavaki

Hon. Roko Tupou Draunidalo



# APPENDICES