

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC (FICAC) 2 OF 2014

BETWEEN : FIJI INDEPENDENT COMMISSION
AGAINST CORRUPTION (“FICAC”)

AND : TIMOCI NAULU

Counsel : Ms F. Puleiwai & Ms L. Mausio for State
Mr E. Maopa for Accused

Date of Hearing : 29th September 2016 to 30th September 2016
3rd October 2016 to 5th October 2016

Date of Closing Submissions : 6th October 2016

Date of Summing Up : 11th October 2016

Date of Judgment : 12th October 2016

JUDGMENT

1. The accused is being charged with two counts of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation No 12 of 2007. The particulars of the offences are that;

The First Count,

Timoci Naulu between the 25th day of September 2013 and 29th day of September 2013 at Nadi in the Western Division being a public servant namely, an Acting Inspector of the Fiji Police without lawful authority or reasonable excuse solicited an advantage of FJ

5000 from Kamlesh Kumar on account of his abstaining from performing an act in his capacity as a public servant, namely not to file charges against Kamlesh Kumar,

The Second Count,

Timoci Naulu between the 25th day of September 2013 and 29th day of September 2013 at Nadi in the Western Division being a public servant namely, an Acting Inspector of the Fiji Police without lawful authority or reasonable excuse accepted an advantage of FJD 200 and AUD 200 from Kamlesh Kumar on account of his abstaining from performing an act in his capacity as a public servant, namely not to file charges against Kamlesh Kumar,

2. The accused pleaded not guilty for the two offences. Hence, the matter proceeded to hearing. The hearing commenced on 29th of September 2016 and concluded on the 6th of October 2016. The prosecution presented the evidence of six witnesses. The accused did not give evidence on oath, but he called two witnesses for his defence. At the conclusion of the defence's case, the learned counsel for the prosecution and the defence made their respective closing submissions. I then made my summing up.
3. The three assessors returned with unanimous opinion of not guilty for the first count and unanimous opinion of guilty for the second count. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having considered the evidence adduced during the course of the hearing, the closing submissions by the respective counsel, the summing up and the opinion of the three assessors, I now proceed to pronounce my judgment at follows.

5. The prosecution alleges that the accused solicited an advantage of FJD 5000 from the Complainant, Mr. Kamlesh Kumar in order to not to file charges against the complainant. The second count is with regard to the acceptance of an advantage of FJD 200 and AUD 200 from the said Complainant in order to not to file charges against the complainant.
6. The accused denies the charges and claims that it was the Complainant who made an offer to donate FJD 5000 to the Border Police Station. He then initiated an operation by himself against the complainant to investigate the source of the money.
7. It was revealed in the evidence of Mr. Kamlesh Kumar that the accused has requested him to give FJD 5000 in order to finish his pending investigations, while he was detained at the Border Police Station on the 25th of September 2013. The accused met Kamlesh in his office at the Border Police Station and made this request of FJD 5000.
8. In order to collaborate the evidence of Kamlesh in respect of the allegation of soliciting FJD 5000, the prosecution presented evidence of Alvin Kumar, a friend of Kamlesh and four recorded telephone conversations that have taken place between the accused and the complainant between the period of 26th of September 2013 and 27th of September 2013. Moreover, the prosecution relied on the recorded conversation that has taken place between the accused and Kamlesh at the "Chicken Bites" restaurant on the 29th of September 2013.
9. According to the evidence given by Alvin Kumar, he went to Border Police Station to visit Kamlesh and met him in the office of the accused on the 25th of

September 2013. However, it was a very brief meeting as the accused came into the room and asked Alvin to leave. While he was walking out of the room, he heard the accused asking Kamlesh FJD 5000 to drop his charges pending with the Border Police Station.

10. The accused has not mentioned anything about a donation during any of the four recorded telephone conversations he had with the complainant. If there was such an investigation as claimed by the accused, it should have been recorded in the official records of the police station, at least in the official note book of the accused. However, there is no such record to be found. The two most senior police officers in the division, Deputy Police Commissioner Western and Divisional Crime Officer Western were not aware about any of such investigation, nor about any donation. The accused has stated in his caution interview that he discussed about this operation with his team at the crime office, that included Corporal Filipe and IP Gounder. However, both of them in their evidence did not collaborate the claim made by the accused in his caution interview. Corporal Filipe in his evidence stated that he was not aware of any such operation conducted by the accused against Kamlesh on the 29th of September 2013.
11. Having considered the conversation that has taken place between the accused and the complainant at the "Chicken Bites" Restaurant, I find that the accused deliberately tried to explain and convince the complainant that he was making a donation to the Border Police Station. Towards the end of their conversation, the accused has advised the complainant that he must not talk about how much he was going to give. Instead of that, he should talk about how much he was going to donate (page 16). This part of the conversation of the accused culminated his

deliberate effort, which he had been making throughout the conversation, to portray this transaction as a donation to the Border Police Station.

12. If there is an official investigation and the accused was engaged in it officially, I do not find any reasonable justification for him to use his personal mobile phone to communicate with the Complainant during the period between 26th of September 2013 to 29th of September 2013.
13. Having considered the evidence of Kamlesh and Alvin and the subsequent conduct of the accused which was revealed through the four recorded telephone conversations and the conversation that took place at the "Chicken Bites" Restaurant, I am satisfied that the accused has solicited an advantage of FJD 5000 from the Complainant in order to not to file charges against the Complainant.
14. It has been agreed by the parties that the accused received FJD 200 and AUD 200 from Kamlesh at the "Chicken Bites" Restaurant on the 29th of September 2013. The conversation that has taken place between the accused and the complainant and the evidence of Investigation officer Avneel Prasad and SCO Sokoveti, have established beyond reasonable doubt that the accused received said FJD 200 and AUD 200 in order to drop the charges pending against the Complainant with the Border Police Station.
15. I am satisfied that the accused failed to established on balance of probabilities that he acted within his official duties and conducted an official investigation against the Complainant regarding the donation offered by the Complainant.
16. In view of the above discussed reasons, I find there is a cogent reason for me to disagree with the unanimous opinion of not guilty given by the three assessors in

respect of the first count. However, I do not find any cogent reasons to disagree with the unanimous opinion of guilty given by the three assessors in respect of the second count of bribery.

17. In conclusion, I hold that the accused is guilty for the two counts of Bribery contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation and convict him for the same.

At Lautoka
12th October 2016



R. D. R. Thushara Rajasinghe
Judge

Solicitors: Office of the Fiji Independent Commission against Corruption
Messrs Babu Singh & Associates for the Accused person