

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 353 OF 2016S

STATE

VS

JOVILISI DAU

Counsels : Ms. M. Khan and Ms. B. Kantharia for State
Mr. E. Koroï and Mr. S. Valenitabua for Accused

Hearings : 16, 17, 18, 19, 20, 24, 25, 26 and 27 July, 2018

Summing Up : 30 July, 2018

Judgment : 31 July, 2018

Sentence : 10 August, 2018

SENTENCE

1. In a judgment delivered on 31 July 2018, the court found you guilty and convicted you on the following information:

Statement of Offence

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act 2009.

Particulars of Offence

JOVILISI DAU between the 1st day of August 2011 and the 3rd day of August 2011 at Suva in the Central Division, being employed in the Public Service, in abuse of the

authority of his office, directed the Ministry of Provincial Development staff under his supervision, to sign Delivery Docket No. 1763, to accept a supply of building materials to the value of \$184,000 from Central City Hardware Limited, when only building materials to the value of \$46,081.60, were supplied by Central City Hardware Limited, an arbitrary act prejudicial to the rights of the Ministry of Provincial Development

2. The brief facts were as follows. Between 1 and 3 August 2011, the accused (DW1) was the manager of the Rural Housing Unit (RHU) within the Ministry of Provincial Development, a government department of the Republic of Fiji. He first joined the department in 1989 and rose through the ranks. He had certificates in construction studies and timber engineering from the then Fiji Institute of Technology. At the time, DW1 was responsible for the purchasing of building materials and the supply of the same to the Northern Division, for the rehabilitation of 20 rural housings, allegedly damaged as a result of Cyclone Thomas. He was answerable to the Permanent Secretary of the Ministry of Provincial Development. Under his supervision were 35 staffs, which included the Building Supervisor (BS), the Senior Technical Assistant (STA), the Technical Assistant (TA), the OC Top Yard, the Storeman, Clerk A and B, 17 carpenters, 3 drivers, 5 labourers, the gateman and 2 watchmen. He was tasked with overseeing and supervising the supply of \$184,000 worth of building materials from Central City Hardware Limited. However, he abused the authority of his office by directing his storeman and two clerks to certify the receipt of \$184,000 worth of building materials, when only \$46,081.60 worth of materials were supplied to the Ministry. As a result of what he did, the rehabilitation of 20 houses for Cyclone Thomas victims in the Northern Division collapsed. The Ministry as of today, had not received the building materials, nor recovered it's money.
3. The maximum penalty for "Abuse of Office", contrary to section 139 of the Crimes Act 2009, is 10 years imprisonment. If the act was done for gain, the maximum penalty was 17 years imprisonment.
4. In **Fiji Independent Commission Against Corruption (FICAC) vs Ana Lagere and Others**, Criminal Case No. HAC 56 of 2014S, High Court, Suva, His Lordship Mr. Justice Rajasinghe discussed the earlier authorities in **Naiveli v The State**, Criminal Appeal No. 2 of 1992, Fiji Court of Appeal; **State v Kunatuba**, Criminal Case HAC 018 of 2006S, High Court, Suva; **State v Sorovakatini**, Criminal Case HAC 018 of 2005, High Court, Suva; **State v Bola**, Criminal Case HAC 029 of 2005, High Court, Suva and **Fiji Independent Commission**

Against Corruption v Mau, Criminal Case HAC 089 of 2010, High Court, Suva. After discussing the above authorities, His Lordship came up with the following tariff for “Abuse of Office” cases:

	High Level of Culpability	Medium Level of Culpability	Lesser Level of Culpability
High Level of Harm/Prejudice with gain	8-12	6-10	4-8
Medium Level of Harm/Prejudice either with medium level gain or without gain	6-10	4-8	2-6
Lesser Level of Harm/Prejudice either with less gain or without gain	4-8	2-6	1-4

I agree with His Lordship’s tariff.

5. The final sentence however, will depend on the aggravating and mitigating factors

6. The aggravating factors in this case were as follows:
 - (i) **Serious Breach of Employer’s Trust.** The Ministry of Provincial Development employed the accused to do a certain task, that is, it paid the accused to oversee the purchase and supply of building materials from Central City Hardware Limited to the Ministry’s Top Yard, at Walu Bay. The building materials were for the rehabilitation of 20 houses in the Northern Division, that were allegedly damaged by Cyclone Thomas. He was the Manager of the Rural Housing Unit. Under his watch, \$184,000 of taxpayers’ money were paid to the company as cost of the building materials. It was his duty to see that all building materials were delivered to the Ministry. However, through his actions and inactions, only \$46,081.60 worth of building materials were delivered to the Ministry, at the material time. He flouted the Ministry’s procurement procedures by directing his staff to receive only \$46,081.60 worth of materials when \$184,000 was ordered. He abused the authority of his office by not performing his job to see that \$184,000 worth of materials was delivered to the Ministry. For abusing the authority of his office, a custodial sentence is essential to send out a warning to others.

(ii) By offending against the Ministry, 20 families whose houses were to be rehabilitated as a result of Cyclone Thomas missed out on government assistance. Obviously, this caused untold miseries to those people.

(iii) As a result of your offending, the Ministry had lost \$137,918.40 worth of taxpayers' money.

7. I can only find one mitigating factor for you, and that is, at the age of 63 years, this is your first offence.
8. I find your culpability at the medium level and the harm or prejudice done also at the medium level. So, the tariff for you is a sentence between 4 to 8 years imprisonment. I start with 4 years imprisonment. I add 2 years for the aggravating factors, making a total of 6 years imprisonment. You have spent 22 years with the Ministry, and obviously during that time, you have performed well, until 2011, when you fell into error. This being your first offence at the age of 63 years, I deduct 4 years from the 6 years, leaving a balance of 2 years imprisonment.
9. Mr. Jovilisi Dau, for abusing the authority of your office as Manager of Rural Housing Unit of the Ministry of Provincial Development, between 1 and 3 August 2011, at Suva in the Central Division, I sentence you to 2 years imprisonment, effective forthwith. I will not impose a non-parole period.
10. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Suva**
Solicitor for Accused : **E. Koroi, Barrister and Solicitor, Suva and**
S. Valenitabua, Barrister and Solicitor, Suva