

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

**CRIMINAL CASE NO. HAC 317 OF 2015**

**STATE**

**v**

**NOUSHEEN MEZBEEN HUSSAIN**

**Counsel:** **Ms. M. Khan with Ms N. Shankar for State**  
**Mr. T. Toganivalu for Accused**

**Dates of Hearing:** **12-15, 18-21, 25-28 November 2019**

**Date of Summing Up :** **3 December 2019**

**SUMMING UP**

Gentlemen Assessors,

1. It is now my duty to sum up to you. In summing up of the case, I will direct you on matters of law which you must accept and act upon. You must apply the law that I direct you on in this case. On the facts however, it is for you to decide what facts to accept and what facts to reject. In other words, you are the judges of fact.
2. If, in the course of this summing up, I express my opinion on the facts, or if I appear to do so, it is entirely a matter for you whether you accept what I say or form your own opinions.
3. Both Counsel have made submissions to you at the end of the trial about how you should find the facts of the case. That is their right as counsel. But you are not bound by their submissions. If what they have said appeals to your own sense of judgment, then you may accept them. You must decide what really happened in this case as reasonable members of the community.

4. You will not be asked to give reasons for your opinions but merely your opinions themselves. Your opinions need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me, but they will carry great weight with me when I come to deliver my judgment.
5. On the question of proof, I must direct you as a matter of law, that the Prosecution bears the burden of proving the accused's guilt. That burden remains throughout the trial upon the Prosecution and never shifts. There is no obligation upon the accused person to prove her innocence. Under our system of criminal justice, an accused person is presumed innocent until he or she is proven guilty.
6. The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused before you can express an opinion that he/ she is guilty on each count. If you have any reasonable doubt about the guilt of the accused, you must express an opinion that she is not guilty. You may only express an opinion of guilt if you are satisfied so that you are sure that she committed the offences alleged in the information.
7. Your deliberations must be based solely and exclusively upon the evidence which you have heard in this courtroom and upon nothing else. You must disregard anything you may have heard or read about the case outside this court. Your duty is to apply the law to the evidence you have heard and draw reasonable inferences from facts proved by evidence.
8. You must not be swayed away by emotions and emotive thinking. That is because you act as judges of facts in this case not to decide on moral or spiritual culpability of anyone but to decide on legal culpability as set down by law.
9. In assessing evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole.
10. In deciding on the credibility of a witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gives evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.

11. Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw heard and felt the offence being committed. Documentary evidence is also important in this case. Documentary evidence is the evidence presented in the form of a document. In this case, the bank statements and the record of caution interview are examples, if you believe that such records were made. Then you can act on such evidence.
12. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether witness is consistent in his or her own evidence and with his or her previous statements or with other witnesses who have given evidence in court. You should see whether a witness is shown to have given a different version elsewhere and whether what the witness has told court contradicts with his/her earlier version. However when a witness is confronted with an alleged previous inconsistent statement, he must be given an opportunity identify the previous statement and come up with his explanation to the alleged inconsistency. If there is a contradiction, you must be satisfied whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter.
13. Police Investigating Officer Nilesh read the relevant parts of the record of caution interview. The accused has given certain explanations to police about the money she had received to her bank account from the complainant's company. Defence does not challenge the truthfulness of the contents of the portions of the caution interview that was read in court. You can safely act upon the caution statement in evaluating evidence of this case.
14. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth.
15. The agreed facts of this case are that:
  1. Nausheen Hussein aka Nousheen Mazbeen Hussain aka Nousheen Mezbeen Ali, the defendant, was employed at Art and Soul Limited from December 2008 till May 2012.
  2. Art and Soul Limited maintained a business account number 7834698 at ANZ Bank.

3. The signatories to Art and Soul Limited's ANZ Bank account number 7834698 was Felicia Verma and Shiri Ram between 2008 and 2012.
4. Art and Soul Limited business account number 7834698 had internet banking facilities.
5. The defendant had two bank accounts with ANZ Bank which is account number 10154528 and 10678519.
6. The defendant had two bank accounts with ANZ Bank which is account number 10154528 and 10678519.
7. The defendant is registered as a tax payer at Fiji Revenue and Customs Authority (FRCA) and has TIN Number 012479908.
8. In the month of February 2012 the defendant filed form S, Return for Salary and Wage Earner with FRCA.
9. The Form S referred to in paragraph 8 contained an attached "Pay as you Earn Employee Certificate" (PAYE Certificate).
10. The PAYE Certificate referred to in paragraph 9 declared the gross wages, earning as \$14,423.25 with tax deducted as \$1772.10.
11. Based on the information in Form S (referred to in paragraph 8) and PAYE Certificate (referred to in paragraph 9) FRCA refunded the Defendant \$1772.10 through ANZ Bank account number 10155428.
12. On 10<sup>th</sup> February 2012, Art and Soul cheque no. 4296, a sum of \$5000 ANZ was deposited into the defendant's bank account by the defendant.
13. On 12<sup>th</sup> March 2012 a sum of \$557.10 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.

14. On 15<sup>th</sup> March 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
15. On 15<sup>th</sup> March 2012 a sum of \$619.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
16. On 23<sup>rd</sup> March 2012 a sum of \$557.10 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
17. On 29<sup>th</sup> March 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
18. On 29<sup>th</sup> March 2012 a sum of \$668.45 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
19. On 30<sup>th</sup> March 2012 a sum of \$472.00 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
20. On 30<sup>th</sup> March 2012 a sum of \$100 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
21. On 5<sup>th</sup> April 2012 a sum of \$557.10 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
22. On 12<sup>th</sup> April 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.

23. On 12<sup>th</sup> April 2012 a sum of \$766.50 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
24. On 20<sup>th</sup> April 2012 a sum of \$1000 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
25. On 26<sup>th</sup> April 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
26. On 26<sup>th</sup> April 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
27. On 26<sup>th</sup> April 2012 a sum of \$984.72 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
28. On 2<sup>nd</sup> May 2012 a sum of \$743.83 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
29. On 11<sup>th</sup> May 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
30. On 11<sup>th</sup> May 2012 a sum of \$996.98 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.

31. On 17<sup>th</sup> May 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
32. On 17<sup>th</sup> May 2012 a sum of \$467.96 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
33. On 25<sup>th</sup> May 2012 a sum of \$474.65 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
34. On 25<sup>th</sup> May 2012 a sum of \$996.50 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
35. On 31<sup>st</sup> May 2012 a sum of \$100 was transferred through internet banking from Art and Soul Bank Account number 7834698 to the defendant's bank account number 10154528.
36. On 2<sup>nd</sup> March 2012 a sum of \$1772.10 from FRCA which was deposited into the Defendant's bank account number 10154528.
37. Between the 10<sup>th</sup> day of February 2012 and the 31<sup>st</sup> day of May 2012, the Defendant received the following sums into her bank account number 10154528 from Art and Soul Bank account number 783469:

<b>No.</b>	<b>Date of Deposit</b>	<b>Amount</b>
1	10/2/12	\$5000
2	12/3/12	\$557.10
3	15/3/12	\$619.65
4	23/3/12	\$557.10
5	29/3/12	\$474.65
6	29/3/12	\$668.45

7	30/3/12	\$100
8	5/4/12	\$557.10
9	12/4/12	\$766.50
10	20/4/12	\$1000
11	26/4/12	\$474.65
12	26/4/12	\$984.75
13	2/5/12	\$743.83
14	11/5/12	\$996.98
15	17/5/12	\$467.96
16	25/5/12	\$996.50
17	31/5/12	\$100
	<b>Total</b>	<b>\$15065.19</b>

#### Documents

16. The admissibility of the following documents is not in dispute and is tendered with consent:
1. PE1 – Art and Soul Limited ANZ Bank statement of account 7834698;
  2. PE2 – Art and Soul Limited ANZ Bank statement of account 8075218;
  3. PE3 – Nausheen Mezbeen Hussain ANZ Bank statement of account 10154528;
  4. PE3(a) – Nausheen Mezbeen Hussain ANZ Bank statement of account 10678519;
  5. PE4 – Christina Lockington ANZ Bank statement of account 10154471;
  6. PE5 – Lakalaka Vola ANZ Bank statement of account 10288949;
  7. PE6 – Quality Print Limited Receipt Number 62074;
  8. PE7 – Cheque No. 04296;
  9. PE8 – Deposit Slip;
  10. PE9 – Payment Voucher;
  11. PE10 – Form S – FRCA Return for Salary and Wage Earners for the Defendant;
  12. PE11 – PAYE Employee Certificate for the Defendant.
17. The accused is charged with one count of Theft, One count of Obtaining Property by Deception and one count of Money Laundering. If you find the accused guilty on one count that



does not mean she is necessarily guilty of other counts also. There are three counts and you are supposed to consider evidence against each count separately.

18. Information reads as follows: Please refer to the Information.

*First Count*  
*Statement of Offence*

**THEFT**: Contrary to section 291 of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**NOUSHEEN MEZBEEN HUSSAIN also known as Nousheen Mezbeen Ali**, between the 1<sup>st</sup> day of January, 2012 and the 31<sup>st</sup> day of May, 2012, at Suva, in the Central Division dishonestly appropriated \$15,362.78 belonging to Art and Soul Limited with the intention of permanently depriving the said Art and Soul Limited of the said amount.

*Second Count*  
*Statement of Offence*

**OBTAINING PROPERTY BY DECEPTION**: Contrary to section 317 of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**NOUSHEEN MEZBEEN HUSSAIN also known as Nousheen Mezbeen Ali**, between the 8<sup>th</sup> day of February, 2012 and the 2<sup>nd</sup> day of March, 2012, at Suva, in the Central Division dishonestly obtained \$1,772.10 from Fiji Revenue and Customs Authority with the intention of permanently depriving Fiji Revenue and Customs Authority of the said amount.

*Third Count*  
*Statement of Offence*

**MONEY LAUNDERING:** Contrary to section 69(2)(a) and (3)(b) of the Proceeds of Crime Act 1997.

*Particulars of Office*

**NOUSHEEN MEZBEEN HUSSAIN also known as Nousheen Mezbeen Ali**, between the 1<sup>st</sup> day of January, 2012 and the 31<sup>st</sup> day of May, 2012, at Suva, in the Central Division used a total of \$17,134.88, that are the proceeds of crime, knowing or ought reasonably to have known that the \$17,134.88 is derived or realised directly or indirectly from some form of unlawful activity.

19. To prove the first count, the following elements are required to be proved by the Prosecution:

- (a) The accused;
- (b) Dishonestly appropriated property;
- (c) Belonging to another;
- (d) With the intention of permanently depriving the other of the said property.

20. The elements of the second count Obtaining Property by Deception are as follows:

- (a) The accused;
- (b) By a deception;
- (c) Dishonestly obtained property;
- (d) Belonging to another;
- (e) With the intention of permanently depriving the other of the said property.

21. Section 69 of the Proceeds of Crimes Act defines Money Laundering as follows:

*“A person shall be taken to engage in money laundering if, and only if:*

*(a) the person engages, directly or indirectly in a transaction that involves money, or other property, that is the proceeds of crime, or*

*(b) the person uses, disposes of or brings into Fiji any money or other property, that is the proceeds of crime,*

*and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.*

22. The elements for the offence of Money Laundering in this case are that:
- (a) The accused;
  - (b) Used property;
  - (c) That is proceeds of crime;
  - (d) The accused knew, or ought reasonably to know that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.
23. The Defence does not dispute the identity of the accused. Other elements of each count must be proved by the Prosecution beyond a reasonable doubt. I will elaborate on other elements of each count in the analysis part of this Summing-Up.
24. I will now remind you of the Prosecution and Defence cases. In doing this it would not be practical for me to go through the evidence of every witness in detail and repeat every submission made by the counsel. It is fairly a lengthy trial and I will take some time to summarise the evidence for you to help refresh your memory. The summary is limited to the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

### **Case for the Prosecution**

#### **PW 1- Shiri Ram (The Complainant)**

25. Shiri Ram is the complainant in this case. He runs an advertising and marketing business called 'Art and Soul Ltd' in Wainadoi for 14 years now. He and his wife Felicia Ram were the co-directors of the company during 2008- 2012 period and were the signatories to the ANZ bank (ANZ) cheques issued on account 7834698. He and Felicia divorced sometime in 2015-16 and Felicia ceased to be a director of Art and Soul. Shiri Ram has three children with his marriage to Felicia and one daughter named Rani from Christina.

26. The company cheque account was used for making and receiving payments of the company with suppliers and contractors. The cheque account had internet banking facility from 2012 to do online transactions on the internet banking platform. The online banking facility was used to pay off the utility bills, pay the salaries of the staff and also to do some personal payments.
27. The internet banking platform was operated and managed by the then accounts person Nousheen who had been given authority to settle the bills, pay the salaries of the staff on fortnightly basis, make payments, and collect money and to deal with the bank. The whole accounts and admin department became a one person show and Nousheen was the only person handling the accounts with the assistance of Emma. Nousheen joined 'Art and Soul' in 2008 and she remained there until 2012. She moved up and earned salary increases during that period.
28. Nousheen had access to the online banking platform for the company account 7834698 and she used this to make the payments that were required. Except himself and Nousheen, no-one else knew the credentials and the password to access this account. Nousheen was given the password because she was a trusted accounts person and as. He, as a photographer, was out of the office quite often.
29. Nousheen had set up an online banking payroll system and she used it to make payments to all the staff. She was the one who manually entered the details on the payroll system when it was first setup. Every day running of things were done by Nousheen. The system could be edited from time to time if and when the salaries increased.
30. Nousheen kept soft copies on the computer mostly for accounting purposes and year-end financial statements. The overall annual salary of the staff was determined by him, but because of the FNPF and tax deductions, Nousheen was supposed to calculate fortnightly salary. Once determined, Nousheen used to inform him the salary of each staff. He just approved the amount determined by Nousheen. He did not approve each and every transaction but the general amount of how much a staff member was getting paid every fortnight. Nousheen was also paid fortnightly on the same basis. He would review that amount only if there was a change at a pay rise.

31. Ram explained the process involved in writing cheques. A process of preparing a payment vouchers was not always followed. Generally the things were done based on trust. He would trust what Nousheen would tell him. When he was travelling, he would even sign blank cheques to be used only for business purposes and leave them with Nousheen. Nousheen prepared all the cheques until she was terminated in April or May 2012.
32. He had no sense of accounts or money. He rarely verified the payments either of utility bills or salary. He used to access the account only to check the account balances. He just trusted Nousheen. He never had any reason to doubt.
33. He was struggling to manage the company so he hired one Sydel Whippy to assist with running of the business. When Nousheen was on leave, Sydel had noted suspicious double payments in a recurring pattern. Sydel brought them to his attention. ANZ confirmed that the narrative for the second entry was false and that the money was going into Nousheen's bank account.
34. He sent a text message to Nousheen about the discovery. She wrote back and apologised. Nousheen came to the office with her child and admitted taking \$10,000. She brought \$10,000 from the bank and gave the money to him which he and Sydel counted. He didn't have any intention of going to the police because he assumed that he got his money back. Nousheen's service was terminated.
35. Sydel started digging into the bank statements and found out that the amount stolen had exceeded \$30,000. Sydel called Nousheen again and told her to bring copies of all her bank statements which she brought. Nousheen came and sat down with Sydel and highlighted on her statement the money she had stolen. Nousheen came to the office next day and apologised in front of the staff for breaking the trust and for having stolen money. Sydel later found discrepancies of over a \$100,000. At that point he decided to go to police. When he entered Samabula Police Station, he saw Nousheen leaving the police station. She had lodged a sexual harassment case against him with the police. Ram said that Sydel later found out numerous discrepancies indicating that Nousheen had stolen much more but due to lack of documents, she was not charged for the full amount.

36. Ram said Nousheen's annual salary in 2011 was \$ 10,000 and, in 2012, it was increased to \$12,000 so she was supposed to take home \$424.61 fortnightly. She was not entitled to any other benefits.
37. Ram tendered documents marked PW.1 to PW 11 all of which are agreed documents. When the bank statements were shown to Ram, he pointed out all the transfers and deposits done by Nousheen into her account without his authorisation.
38. He tendered an Art and Soul cheque No. 4296 for \$ 5000 dated 10<sup>th</sup> February 2012, signed by Felicia (PE7). It had been deposited into Nousheen's bank account. Felicia had signed this cheque when it was blank. Upon checking the cheque butt, believing that it was a payment for Quality Print, Felicia had signed it. He said that payment voucher for Quality Print (PE 9) was supposed to be prepared for the payment of 5000 to be done on 1<sup>st</sup> February 2012 by Cheque No. is 4282 and not for cheque number 4296. The receipt issued by Quality Print for the payment on 31 January 2012 was tendered (PE 6). He said that the Quality Print would not have issued a receipt before getting a cheque.
39. Ram said that the cheque issued to Quality Print bore the number 4296. He pointed out in PE 2 that two checks of \$ 5000 had been presented to bank. On the receipt issued by Quality Print, the cheque number had been changed from 4296 to 4282. He recognised Nousheen's handwriting on the cheque and said that he had never authorised Nousheen to deposit the cheque into her account. Referring to Nousheen's salary bank account statement, (PE3) he denied that he had authorised Nousheen to transfer a sum of \$557.10 through internet banking to pay his BSP life policy insurance premium. He also denied transferring or giving authority to Nousheen to do internet banking transfers to Nousheen's bank account for her to do FEL bill payments.
40. You would recall Ms. Khan took Ram through Art & Soul bank statement (PE2) and that of Nousheen (PE3) for him to identify all the deposits and online transfers done into Nousheen's bank account. I do not think I should go through each and every transaction as they form part of admitted facts of this case. You can refer to the admitted facts to refresh your memory.
41. Ram said that Nousheen was entitled to a fortnightly salary of \$424.61 and what was deposited or transferred in excess of that amount under the narrative 'payroll' was unauthorised.

He emphasised that he neither carried out nor had Nousheen been given the authority to carry out any of those transactions.

42. When he was shown Pay as You Earn employee (PAYE) certificate for Nousheen (PE 11), Ram said he was not familiar with that document. The signature on it had been forged and the information provided on it is incorrect and misleading. During the period between 1/6/11 and 31/12/11 Nousheen was not earning a gross income of \$14,423.25. There was no tax deducted from Nousheen's pay because she never got paid above the tax threshold. Therefore she was not liable to pay taxes at all and the sum of \$1772.10 shown as the tax deduction is incorrect. He said that in 2011, Nousheen was on \$10,000 per annum salary scale. He further said that the stamp of Art and Soul at all times was with Nousheen.
43. Ram said that she never used Nousheen to give cash to Felicia. When Felicia was away Nousheen would deposit or transfer the money online into Felicia's bank account.
44. He said that Christina gave birth to his youngest daughter Rani in February 2011 and he took Rani's custody when Rani was only 6 months old. He was financially supporting Rani from October 2011. If he did give money to Christina after that, he would have given himself and at no point in time he had instructed anybody to transfer or give money to Christina in 2012.
45. Ram admitted that he was supporting Lakalaka's family in 2011. He said that the money went direct from Art and Soul either to Lakalaka's or her father's bank accounts by way of online transfers. Nousheen had added Lakalaka on to the payroll and online transfers were done by Nousheen on his instructions on fortnightly basis. If they needed anything something more he would go and give money himself. Ram said that as a result of monies that were stolen, the company was struggling.
46. He agreed that the total sum of unauthorised payments into Nousheen's bank account for the period between 10<sup>th</sup> of February 2012 and 31<sup>st</sup> of May 2012 stands at \$15362.78. The State Counsel tendered through Shiri a document marked PE-12 where she has tabulated the transactions and the amounts which the accused has received from Art & Soul as a result of alleged unauthorised deposits or transfers.

47. Under cross-examination, Shiri Ram said that there was no employment contract for Nousheen. Ram admitted that before 2011, when online facility was not available, he was signing cheques for the payroll. Not all the time payment vouchers were prepared for the purpose of payroll. At times, the whole cheque book came to him for signing. He said that if the details were already filled in the cheques, then he would accept that he had signed the cheques after authorising the payment.
48. He concedes that Nousheen's ANZ bank statement PE 3 (Account No. 10154528) shows an entry- 'reverse incorrect salary' of \$993.85 credited to her account on the 18<sup>th</sup> of September. He admits signing a cash cheque for \$6566.30 made on the 13<sup>th</sup> of September 2009. He does not deny the proposition that ANZ deposit slip of 18<sup>th</sup> September 2009 was signed by Nousheen when she made an error by putting her money into Art & Soul account. However he denies that the ANZ bank had called him to verify the transaction of \$993.85 and, upon his instructions, the bank had reversed the money to Nausheen's bank account.
49. He denied having seen or sending the document (DE1 bearing ANZ stamp dated 11 December 2009) to the bank and denied that it was the document relied upon by the bank to pay the salaries for Art and Soul Ltd staff.
50. Ram admitted that he was in a relationship with Lakalaka and transferring money by way of online transfers as reflected in bank statements. However he denied that he had advised Nousheen to use company money to be shared with Lakalaka and Christina. He denied that Nousheen had done cash payments to Lakalaka on his instructions. He could not recall if he had instructed Nousheen to take groceries to Lakalaka's house. He also denied that he made payments to Lakalaka through Nousheen in order to hide from his wife the relationship he had with Christina. He denied having instructed Nousheen to make payments to Lakalaka for the washing machine bought from the Court's account. He however admitted informing Courts Co. that Lakalaka is a permanent employee in order to help her.
51. Shiri denies that Nousheen had transferred money from her account to Lakalaka's father's account on his instructions. He emphasised that Lakalaka received money from Art & Soul bank account by way of direct transfers as reflected in in the bank statements. Shiri admits that he was in a relationship with Christina. He denies that he had come to Nausori to give \$2000 to Nousheen so that she could give it to Lakalaka and Christina.



52. He admitted that Nousheen was on maternity leave from 1<sup>st</sup> July 2011 to around 30<sup>th</sup> September 2011. Having admitted signing the salary cheques during this period, Ram denies that those cheques (8 July 2011) were prepared by somebody other than Nousheen. He said that Nousheen had pre-prepared most of the cheques and, a few times, she had even come into the office to make sure that everything was being done properly. He however did not rule out the possibility that Freeda would also have prepared the cheques. He said that the actual physical act of going to the bank was done by Shivaram Reddy, Umesh or somebody else during that period. He admitted that while Nousheen was on maternity leave, her ANZ bank account had received a salary cash deposit of \$474.65 fortnightly and sometimes \$574.65 when she should have received only \$424.61.
53. He admits telling the police that Nousheen had destroyed the company documents because he had genuinely believed so. He said that only the soft copies of missing documents were recently recovered from a discarded computer. He admits that Nousheen had not destroyed the hard copies.
54. Shiri could not recall if he had deducted Nousheen's pay on 14<sup>th</sup> of October 2011 because she had not turned up to work after maternity leave and that the deducted pay was paid in her next pay on 28<sup>th</sup> October. He however concedes that she had received \$284.77 on 14th October and \$874.65 on 28th October.
55. He said that when internet banking facility was available in 2012, no documentation for payroll was done for internet banking. Nousheen had to ensure that everyone gets paid fortnightly on the basis of annual salary determined by him. Nousheen was verbally instructed about the annual salary and she would in turn calculate how much each employee actually gets paid fortnightly after tax and FNPF deductions.
56. He denies that the withdrawal on 10<sup>th</sup> February 2012 of \$5000 on cheque No.4296 was done by Nousheen to help pay for the maintenance of his children with Felicia and to help with the legal fees for Rani's custody matter.
57. He denies that he had instructed Nousheen to transfer Art & Soul funds to her account in order for her to pay cash towards premiums for BSP Life Policy, electricity bills and city rates.

**PW2 - Felicia Verma.**

58. Felicia is the ex-wife of Shiri Ram. She is a mother of 4 children. Shiri Ram fathered 3 of them. She was residing at Veiuto, Suva, from 2015 until 2018. She married Shiri Ram in 2000 and got separated in late 2012.
59. She moved to Samoa around early 2011, to work with Air Pacific. Her children were with her for few months and the kids came back to Suva to stay with Shiri because of a nanny issue. Shiri has another daughter, Rani, who was residing with Shiri. All the children were financially supported by Shiri.
60. She was appointed a director in Shiri's company in 2006, but had no involvement with the company save that in 2007 she was doing some financial work, just overseeing payments. She was signatory to check account of Art and Soul but she rarely signed cheques. When Shiri needed her to sign when he wasn't around only she signed. She did not have the credentials and password to access online banking. It was handled by Shiri and Nousheen. She signed cheques only after checking what was written on the cheque butt. She ensured that blank cheques were crossed to make them 'not negotiable'.
61. Felicia recognised her signature in PE 7. She said that it was a blank cheque when it was brought by Nousheen for her signature. She thought that it could have been an urgent payment for Quality Print. She checked the cheque butt to verify the payee before putting her signature and crossed the cheque as a precautionary measure. She did not know that the cheque money was going to Nousheen. If she did, she would not have signed without consulting Shiri. She said that she was aware that Shiri was giving money to Christina.
62. Under cross-examination, Felicia said that, in 2008, salaries of the staff were paid based on a breakdown set out in an excel spreadsheet. She admitted that in 2012, she was handed cash by Nousheen once in a blue moon. She admitted that in 2011 and up until April 2012 there had been cash deposits into her account authorised by Shiri. She was aware that Shiri had a weakness for women and that he had a relationship with Christina and Lakalaka.
63. She could not recall the exact date PE 7 was signed. Shiri did not speak to her about the cheque. She admits that the cheque she signed was dated 24 March 2011 and was not crossed. She admits sending the email DE 9 to Shiri about the divorce arrangement.

64. Under re-examination, Felicia said that the cash deposits from January 2012 to May 2012 were received when she was in Samoa and did not know if the deposits were physically done by Shiri himself or through Nousheen. Having referred to her passport, Felicia confirmed that she was not in Fiji on 10<sup>th</sup> February, 2012 and she could not have signed PE 7 on that date. She said that on 4<sup>th</sup> March 2011 she would have been in Fiji and would not have crossed it on Shiri's instructions.

**PW-3 Sydel Whippy**

65. Sydel joined Art and Soul in April 2012 as the office manager when its financial position needed assistance. She was pressured by Nousheen to sign a VAT document at the end of the month in April or May in 2012. After initiating it to be processed, she wanted to go through it again as she didn't have time when she initialled. When Nousheen was on sick leave on a Monday, she found out on a payroll spreadsheet in Nousheen's computer a pay out of an amount that was not familiar. That amount was not assigned to any immediate staff member. When she questioned Nousheen about that transaction, she advised that it was a payment to Felicia. When Felicia arrived into Fiji she confirmed she did not receive that money. On Shiri Ram's instructions, she and Nousheen went to ANZ bank with numerous other unexplainable transactions which she had identified. The bank had confirmed to Shiri a few days later that all the money had gone into Nousheen's personal bank account.
66. When she and lawyer Adriyan Ali questioned Nousheen, she admitted stealing money from the company. She made a summary of a few bogus transactions and asked Nousheen how much she had stolen. She implied that she didn't know how much. Nousheen went to the bank and brought back her bank statements. Nousheen had withdrawn the balance and paid \$10,000 back to the company. Shiri asked her to count and she verified it was \$10,000. She said that in the year 2012, Nousheen was on \$12,000.00 annual salary scale and her net wage for a fortnight was \$424.61. She was under \$15,000 tax threshold and was not liable for tax.
67. Under cross-examination, Sydel said that pay roll breakdown is provided in a spreadsheet on a computer. There were no paper documents for any salary for Art and Soul in April 2012 and the salaries were paid online. No payment vouchers prepared for utility bills. Nousheen was the payroll officer and salaries were based on fixed annual rate and Nousheen had been

given the authority to process the pay when the pay was due. She knew that there was a document prepared by lawyer Ali asking Nousheen to confirm taking \$10,000. Nousheen was uncooperative and within 48 hours of her finding \$10,000 was paid back.

#### **PW-4 Divendra Prasad**

68. Prasad was the accounts officer at Quality Print Pvt. Limited back in 2012. Art and Soul is their regular customer and was paid by checks payable to Quality Print Limited. Sunita Narayan had received such a payment whereupon a receipt was issued. Prasad recognised PE 6 and confirmed that on 31/01/12 his company had received a payment of \$5000.00 from Art and Soul Ltd by ANZ cheque No 4282. During the police investigations, the police showed him PE7 which is cheque no. 4296 dated 10<sup>th</sup> of February, 2012 and he denied having received any payment on this particular cheque which was payable to Nousheen. He did not see who brought the cheque to Quality Print on 31/01/12. He did not know who had scribbled the cheque number on the PE6. The original receipt did not have any scribbling.

#### **PW5 -Feret Solomone**

69. In 2013, Solomone worked for Fiji Revenue and Customs Authority (FRCA) as the National Manager Internal Assurance. Upon a search warrant, he had to provide with the police some documentary evidence in the possession of FRCA. He gave two documents, the Salary and Wage Earners Form that had been filled by tax payer Nousheen. The salary slip attached thereto had been certified by employer Art & Soul Limited. Both documents had been submitted to FRCA by the tax payer.
70. In 2011, \$15,000.00 was the threshold for tax exemption. If the income of the employee is less than \$15,000.00 for the year, he or she is not liable to pay taxes. The deducted tax will be refunded to the tax payer. He recognised PE 10 and PE11 that were submitted to FRCA on 8<sup>th</sup> February, 2012. According to which, the annual gross income of tax payer for 2011 was \$14,423.25. The amount of tax deducted was \$1772.10. PE 11 is the PAYE Certificate for the period from 1<sup>st</sup> of June, 2011 to 31<sup>st</sup> of December, 2011. Based on those two documents the FRCA had refunded the deducted tax.
71. Under cross-examination, Fereti admitted that he wouldn't know who from Art and Soul had lodged these returns. He said that "*signature of employer /authorised person*" in PE-11

was supposed to be signed by the authorised person of the employer. He said that the tax funds belonged to FRCA.

**PW-6 Christina Lockington**

72. Christina worked for Art & Soul from 2006 to 2010 as an advertising executive and various other capacities. She began on \$16,000.00 annual salary scale and earned increments up to \$ 30,000.00. She was earning 900.00-1000.00 fortnightly. She developed a relationship with Shiri Ram. She has a daughter Rani from Shiri who is now 9 years old. Rani came into Shiri's custody in 2011 when she was 10 months old. Shiri was financially supporting Rani. She used to receive salaries on a fortnightly basis whilst working at Art and Soul. Christina recognised her bank statement PE 4 and identified the salary deposits received from Art and Soul.
73. Under cross-examination, Christina said that Shiri had brought Nousheen into Art & Soul as her assistant and then she moved into accounts. She is not aware that Nousheen was paying the electricity bills for the house she lived in 2011.
74. She admitted that during the custody battle, Shiri had provided a financial statement to Family Court to show how much money he had been spending on her. She denied receiving any internet banking transfers into her account from Art & Soul after she had left Art & Soul. She could not recall receiving any money or food groceries from Nousheen although she admits that Nousheen had brought Rani to her place in the care of Kinisimere. She denied having received any legal fees from Nousheen for the custody matter.
75. She admits that her account has been credited with irregular deposits that were not consistent with her fortnightly salary. She has no clear idea as to how it may have happened. Her possible explanation was that work related extra expenses incurred by her in some projects would have been reimbursed by Art & Soul. Christina emphasised that she had received no other money that was put into her account unless it was work related. She is certain that at no time she had ever asked for money either from Shiri or Nousheen that was not owed to her by the company for the hard work done.
76. She admits having had a Facebook account in 2010. She could not recall if she was in conversation with Nousheen on her Facebook platform asking for money from Nousheen by

writing “*Hey larki hamaar paisa kaha*” meaning “*hey girl where is my money?*”. She said that she would never engage in writing something like that on a public platform. If she had ever asked for money from Nousheen it would have been for a work related reason. She denied having received any money from Nousheen at New Wave Media.

**PW-7 Nilesh Prasad**

77. Detective Sergeant Prasad, whilst based at Cyber Crime Unit at CID Headquarters, was tasked to conduct the investigation into the complaint received from Shiri Ram, a director of Art and Soul Ltd. His Cyber Crime team uplifted bank statements of the Art and Soul Ltd, bank statements of suspect Nousheen and other documents mentioned by the complainant. He also interviewed the suspect under caution. Nousheen was charged by Mereseini Koritoga.
78. This interview commenced on the 30<sup>th</sup> of July 2014 and concluded on the 10th March 2015. The relevant parts of the record of interview (PE 14) was tendered as an admitted document and read in evidence.
79. During the initial process of investigation and at the interview, Nousheen mentioned that she had only one ANZ bank account. Further investigations with Reserve Bank and the Financial Intelligence Unit revealed that there was another hidden ANZ account which was operational under Nousheen’s name. The money from the original account where she used to receive her salaries was again transferred to this hidden savings account by way of wire transfers. Further investigations based on the statements and financial statements revealed that Nousheen was getting extra money either by cash, cheques or internet bank transfers to her salaries account far more than what she was supposed to get as her salaries from Art and Soul Ltd. The extra money had been transferred to a hidden savings account which they believed was used to disguise the true source of income and to make the money look legitimate. It was revealed that withdrawals done from the hidden savings account and the withdrawn money had been used to do her shopping and make payments.
80. That was the case for the Prosecution.
81. At the close of the Prosecution’s case, you heard me explain to the accused her rights in defence that she could remain silent and say that the Prosecution had not proved the case be-

yond reasonable doubt; she could give evidence and be subjected to cross examination and call witnesses on her behalf.

82. The accused elected to give evidence under oath and Kinisimere was called by the Defence to support her version. Please bear in mind, by electing to adduce evidence, the accused assumes no onus of proof. That remains with the Prosecution throughout. She is under no obligation to prove her innocence or anything at all. Her evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

### **Case for the Defence**

#### **DW 1 Nausheen Mezbeen Hussain (Accused)**

83. Nousheen said that she met Shiri for the first time in 2008 and joined his company based at Vatuwaqa. As a beginner she had to go and do various payments like utility bills. For each payment, a payment voucher was prepared and the invoice or the bill was attached for each cheque before they were taken to Shiri for his approval and signature. For salary payments, the payment vouchers would be a print out of an excel spreadsheet.
84. Cheques for PAYE and FNPF deductions of the employees were prepared by herself and the payments were done on monthly basis upon being approved by Shiri. All payment vouchers were compiled and given to Anthony Ho & Associate to prepare the year-end financial statement. Salary spreadsheets would be stored in computer as soft copies and salary slips were printed out only when a need arose.
85. Art & Soul was on an overdraft all the time and the cheques were honoured by the bank only upon Shiri's assurance and approval. Internet banking was introduced in 2012 and henceforth bill and salary payments were done online. The entire process remained the same except that cheques would no longer be written. The staff on payroll was getting paid at a fixed fortnightly rate. But the total salary amount fluctuated because of the payments done to Shiri's two girlfriends, Christina and Lakalaka, whose payments were always decided by Shiri Ram. She however admitted that Christina, apart being Shiri's girlfriend was a paid employee at Art & Soul for a few months from April in 2009. Nousheen said that she was earning an annual salary of \$12,000 in 2009. Accordingly, she was getting a little less than \$400 fortnightly.

86. Shiri had approved the credit reversal (as noted in P 4 of DE1, the deposit slip) of \$993.85 that happened on 18<sup>th</sup> of September 2009 and that amount included her salary and the money to be given to Christina and Lakalaka. She said that Shiri's approval was needed because she had mistakenly deposited money back into Art & Soul account.
87. Explaining why she was putting Art & Soul money that was to be paid to Christina and Lakalaka, into her bank account, Nousheen said that from April 2009 Shiri used to give her a large sums as much as 600-700 per week to be given to Christina and Lakalaka. When the girls were fighting with Shiri, she was instructed to stop payments to them. As a result, the money got accumulated in her hand. To be accountable for money left in hand, Shiri, on her request, authorised her to deposit the accumulated cash into her bank account and at the same time she maintained an excel spreadsheet for future references and accountability.
88. She said that a payroll spreadsheet generated in excel along with a breakdown (P5 of DE1) was sent as a practice to the bank fortnightly. Because the company was on an overdraft, the payments were done only upon the assurance being given by Shiri. She admits that Shiri's signature was not obtained for this document (P5 of DE1).
89. She said her fortnightly salary in 2009 was \$424. When questioned about the extra money she was receiving into her salaries bank account under the narration payroll, her explanation was that extra money was to be given to Shiri's two girl friends as per Shiri's instructions. She said Shiri's approval was obtained for those payments on a payment breakdown which happened to be a separate document. She told police about those documents, both hard and soft copies. When the police questioned Shiri and Sydel about those, they said 'Nousheen had destroyed all the documentary evidence'. She had no opportunity take those documents when she left the company in 2012 because she was not allowed to enter the office.
90. Christina was residing within just 5 minutes' drive from the office and she used to withdraw money from an ATM and give it to Christina. Nousheen said that from 3<sup>rd</sup> of March 2009 to the 27<sup>th</sup> of January 2010, she deposited money into Christina's bank account and the payment fluctuations and frequencies were based on Shiri's instructions. When referred to 90 cash deposits totaling \$14,630 into Lakalaka's ANZ bank account (PE 5), Nousheen said that she made some of them on Shiri's instructions.



91. Nousheen also said that she was transferring money to Lakalaka's bank account after internet banking was introduced in 2012. She was paying money to Courts account for the washing machine Lakalaka had bought. She was also transferring money into Lakalaka's father's bank account from her bank account. She said that she was used by Shiri Ram to do these payments to keep the private matters separate from company financials, and to keep them hidden from Felicia and also because he was too busy.
92. She denied coming to the office after 1st July 2011 during her 3 1/2 month maternity leave to prepare cheques. But she admitted having prepared pre-prepared cheques, vouches and spreadsheets in advance before going on maternity leave. She said that she did not put the amounts on the cheques so that Shiri could make adjustments. However she denied preparing the cheque dated 8<sup>th</sup> of July for \$7205.59. Explaining the cash deposit of \$2,000 into her bank account during maternity leave period, Nousheen said that Shiri came all the way to Nausori to give this money to her to be distributed among Christina and Lakalaka as per his instructions. She said that all other payments during the maternity leave period had been authorised by Shiri in her absence and without her involvement.
93. She said that nearly \$ 2000 large gap between pre-prepared salary breakdowns of 19<sup>th</sup> of August 2011 and 2<sup>nd</sup> September 2011 could have been verified by Shiri himself. She received only \$284.77 on 14 October 2011 because she got a salary deduction. She failed to report to work after maternity leave period and the deducted amount was paid later with the next salary on 28<sup>th</sup> of October 2011. That's why \$874.65 was back in her account.
94. Nousheen admitted filling PE 10 and PE11 and lodging them with FRCA to get a tax refund of \$1772.10 for the last 7 months of 2011. She admitted receiving the refund as claimed on 2<sup>nd</sup> of March 2012 into her bank account from FRCA. She said she had started paying taxes from June 2011 when Shiri increased her salary to \$25,000.00, beyond the tax exemption threshold. She said the claim was genuine and she was entitled to claim the said refund. Shiri signed PE 11 and stamped it verifying her gross salary earnings for the relevant period. She was not queried by FRCA nor was she asked at any time to make a fund reversal.
95. She explained the 10 cash withdrawals worth \$2390.00 and 13 purchase transactions worth \$2191.51 in 2011 contained in PE3, which is her bank statement. She said that those had been her personal purchases and withdrawals. Explaining about the grocery purchases from January 2012 to the end of May of 2012, Nousheen said that those grocery purchases were

done for Christina and Lakalaka on Shiri's instructions utilizing the money transferred to her bank account upon being authorised by Shiri.

96. Explaining the 12 cash withdrawals done at ATMs from January, 2012 to the end of May, 2012 worth \$1800.00, Nousheen said that those withdrawals were done on Shiri's instructions to give money to Christina. She admitted receiving \$5,000.00 on the 10<sup>th</sup> of February 2012 into her account, upon realisation of the cheque (PE-7). Her explanation is that she was instructed by Shiri to disperse this money to Christina according to Shiri's instructions as Christina had agreed to hand over Rani's full custody to Shiri. Felicia knew about this arrangement. That is why she signed the cheque for \$5,000.00. She admits seeing this particular cheque and cheque butt during the caution interview which had 'Quality Print' written on it. She said PE 6 (receipt issued by Quality Print Limited) would have been received by Art & Soul on 31<sup>st</sup> January 2012. She did not know who scribbled or wrote on that cheque.
97. She said a sum of \$557.10 was transferred online on 12<sup>th</sup> of March 2012 into her bank account when Shiri had authorised it. She was instructed to use the money to pay Shiri's BSP life Policy when it was supposed to be paid.
98. Nousheen gave her explanation in respect of each and every transaction contained in PE12 with reference to Art & Soul bank statement PE1. She said that all the payroll transfers were done with the approval of Shiri Ram, and he had approved a fortnightly salary of \$474.65 for her and not \$420.61 as indicated by Shiri and Sydel Whippy in court. She also said that other payments like, FEL bill payments, payment to Vodafone Company, USP life policy payments were all done through her account as instructed by Shiri.
99. She further said that Shiri used internet banking facility under his own user name and she used her own user name. If Shiri had done a particular transfer then his name would appear on the internet banking receipt.
100. Nousheen said she was terminated from 5<sup>th</sup> June 2012. Before the money started coming from Art & Soul into to her account, she had a balance of \$2099.71 carried forward from 2011.

101. Nousheen denied having made a confession to Shiri that she had stolen money from Art & Soul. She also denied that she, upon being caught, withdrew \$1,000/- and \$10,000 from her savings account to retribute Shiri. Her explanation for those withdrawals is that, on Shiri's request, she transferred \$1000.00 of his balance money sitting in her savings account for him to meet an urgent payment on Friday and again on Monday the 4th June 2012, she gave him \$10,000.00 as a loan for him to settle maintenance payment owed to Felicia. The allegation of theft was made up on the 5th June 2012 after the moneys was given.
102. Her explanation for putting the narration -"jewellery purchase" for \$10,000 withdrawal was that she wanted, on Shiri's request, to suppress from her husband the fact that she was lending money to Shiri.
103. She said that Shiri had instructed Anthony Hoe to prepare two different sets of financial statements, one to be given to HFC bank and the other to FRCA and the statement given to DPP does not reflect the correct financial status of Art & Soul.
104. She tendered DE7 to show that \$3000 withdrawn from her savings account had been used to make a city rate payment of 1725.25 to Suva City Council for the office and Mr. Shiri Ram's residence on the 30<sup>th</sup> January, 2012. She said she was reimbursed \$ 3000 on the same day and the balance money was returned to Shiri.
105. She denied that \$ 450 deposit shown in Ram's Westpac bank statement were proceeds of a book sale. Her version is that, on Shiri's request, she made the said deposits out of the remaining balance money that was to be given to Lakalaka and Christina.
106. Nousheen tendered a Facebook message (DE9) allegedly received from Freda on the 17<sup>th</sup> of May, 2012 to show that Felicia had planned for a divorced and she was asking money from Shiri for her maintenance. She had given the loan to Shiri to meet his expenses in potential litigation.
107. She said she went to Samabula Police Station on the 7<sup>th</sup> June, 2012 to lodge a complaint against Shiri and his agent's intimidating tactics that were used to get a confession from her. She tendered DE11 to show that she had made a request to police asking for a copy of the complaint she made on 7th June 2012.

108. Under cross –examination, Nousheen admitted that she did not have any qualification when she joined Art& Soul in 2008. She said that there was no contract of employment. She started with an annual salary of \$10,000.00 and it was increased to \$12,000 in late August 2009. In 2010 she got another pay increase and, up until May 2011, she was on a threshold of \$15,000.00 so her PAYE tax was not deducted. From June 2011, she was placed on around \$25,000.00, but she was not sure of the exact figure. She was not given a termination letter but she did not lodge a complaint with the Employment Tribunal.
109. She said that she opened a second account for the sole purpose of savings. Transfers were done from her salaries account to her savings account from which withdrawals were done very rarely. She admitted that from 2008 to 2012 her only source of income was from Art and Soul and the deposits reflected in PE3 came from Art & Soul. She concedes that Shiri had trusted her as the accounts person and even shared with her the user ID and password when internet banking was introduced. It was her sole responsibility in 2012 to transfer all the salaries to the staff's accounts and had access to do whatever transfer she wanted.
110. She did not agree that she was supposed to do internet transfers solely for the purpose of business. She had to do each and every transfer after obtaining Shiri's written authority and internet bank receipt for each payment had to be verified by Shiri and compiled to be sent to Anthony Ho for financials.
111. She admitted that the username registered with ANZ bank for Art & Soul was 'Shiri Ram' and that his counsel did not ask Shri Ram if Art & Soul had two user names. She agreed that all payroll transfers to her account in 2012 were done by herself and soon after the money had hit her account, she had done corresponding withdrawals and transfers. She admitted that from the start in March of 2009, she had received a fortnightly salary of \$ 283 on the basis of \$10,000.00 per annum. She admitted that she should have received \$530.00 fortnightly in 2010 but nowhere in her bank statement does it reflect because her salary also consisted of amounts supposed to be dispersed to Christina and Lakalaka.
112. She admitted that her salary increase of \$10,000.00 from June 2011 did not reflect in her salaries bank statement on fortnightly basis. She agreed that her fortnightly salary should have been around \$ 800.00 but her account had received only \$ 474.65 on a consistent pattern. She agreed that if Shiri's evidence that her annual salary was 10,000 in 2011 is true, she should be receiving only \$353.85 fortnightly.

113. Nousheen said that she mentioned \$14,423.75 on PE 11 based on Anthony Hoe's financial report. It was her gross income for the 7 months period starting from June 1, the day she started paying taxes. She agreed that refund was done by FRCA based on the information she provided in PE 10 and 11.
114. To explain the contradiction in her caution statement in regards to the presence of Shiri when (PE7 ) was raised, she said she meant prior approval was already given by Shiri for this sum to be given to Christina on his instructions.
115. You then heard the explanations given by Nousheen when she was confronted with PE 12 which is the summary of impugned transactions. I do not go through all of her explanations. She said that all the transactions were done with the approval of Shiri and according to his instructions.

**DW-2 Kinisimere Ukumoce**

116. In 2011 Kinisimere was employed by Shiri Ram as the house maid from June 2011 to December 2012. She was looking after Shiri's three children from his previous wife Felicia and also Rani from his girlfriend Christina.
117. She used to go with Nausheen to the Super Fresh Supermarket in Tamavua to withdraw money at the ANZ ATM and also to do grocery shopping for Christina and Lakalaka. The money withdrawn was taken to Christina and Lakalaka almost every Friday in 2011 and, in 2012, for the whole period she was employed. She used to take Rani to see her mother and for other children it was a day outing. Christina was residing at Lavoni Street and Lakalaka was residing at Vatuwaqa. Christina and Lakalaka were waiting at house for them to be visited on every Friday. She left Shiri's place because it's against her belief what was happening in that house. She had to work full time as a live in house girl and look after Shiri's children like a mother so she had no time for her children.
118. Under cross- examination, Kinisimere said that she was not aware about the relationships until Rani was dropped at home after the court case.
119. That is the case for the Defence.

### Analysis

120. There is no dispute that a total sum of \$15,362.78 was received by the accused into her bank account from Art & Soul Limited. This admission is reflected in the agreed facts 12-35. Prosecution tendered PE 12 which is the schedule of 23 transactions to reflect those transactions. The first transaction is a deposit of a cheque and the rest are internet banking transfers or wire transfers carried out from 10 February 2012 to 31 May 2012.
121. With regards to the 1<sup>st</sup> transaction, the Prosecution says that cheque for 5000/-(PE7) was unauthorised in that, when the signature to it was obtained, Felicia was misled by the accused in to believing that the payee of the cheque was 'Quality Print'. The accused maintains that Felicia was fully aware in whose name the cheque was to be payable and for what purpose it was drawn. You heard what Felicia, Shiri and Prasad from Quality Print had to say about this cheque and also the version of the accused. There are two contrasting versions and you have to decide who is telling the truth.
122. The rest of the transactions are internet bank transfers. As per the Art & Soul bank statement (PE1), impugned internet transfers carry various narrations or labels like 'PAYROLL', 'FEL-IB', 'BSPL POL', 'INTEREST' and most them appear to be those of payroll transfers. The Prosecution says that those transactions were unauthorised and the narrations given to them are misleading.
123. For example, you heard Shiri and Sydel say that in the year 2012, Nousheen was on a \$12,000.00 annual salary scale and she was entitled to a fortnightly salary of \$ 424.61. According to Art & Soul bank statement, Nousheen's salary does not appear consistent with what the complainant says her salary to be. It had been fluctuating and in most of the time the amount exceeds the \$ 424.61 mark. The Prosecution says that anything transferred in excess of the stipulated salary is unauthorised. Shiri further says that Nousheen was a trusted accounts person having had freedom an access to internet banking to do any transaction she wished to and by exploitation the trusted position and his admitted weaknesses in accounting and women, she had misappropriated the company money.
124. The accused on the other hand says that all the transactions were done with the full knowledge and approval of the complainant. The accused in her caution interview and her

testimony in court came up with her explanations as to why and for what purposes the money was being transferred to her account. She says that the complainant is lying. She says all the supporting documents like vouchers and excel spreadsheets which would have supported her case have been suppressed by the complainant and he, having spent lavishly on her two girlfriends, is now putting the blame on her for missing money. Nousheen maintains that her salary in 2012 was \$ 25,000.00 and the fluctuations and excesses in payroll payments had been due to instructions she received from Shiri to do various payments most of which were in favour of Shiri's two girlfriends, Christina and Lakalaka.

125. Again there are two contrasting versions. You heard the evidence and observed the demeanour of the witnesses. You decide which version is to believe. If you believe the version of the Prosecution to be true, then you have to see if the prosecution has proved all the element of each offence beyond reasonable doubt.

#### **1st count- Theft**

126. In relation to the first count, the Prosecution must prove that the accused has dishonestly appropriated a sum of \$15,362.78 belonging to the complainant with the intention of permanently depriving the complainant of the said money.
127. It is not disputed that deposit of the cheque (PE7) and 22 wire transfers were done by the accused and as a result of which the accused received a sum of \$15,362.78 into her bank account. Those are the appropriations the Prosecution is alleging. The Prosecution says that those appropriations were unauthorised and therefore dishonest. You heard what Shiri and Sydel said about those transactions. Evidence was also lead about a confession allegedly made by the accused to Shiri and Sydel with regard to the alleged theft and about her subsequent conduct of restitution of \$10,000.00. You heard the version of the Defence and the explanations given by the accused. You decide if the accused has dishonestly appropriated a sum of \$15,362.78 belonging to the complainant with the intention of permanently depriving the complainant of the said money.

#### **2nd Count-Obtaining Property by Deception**

128. "Deception" means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law. To deceive is ....to induce a man to believe that a thing is true which is false.
129. In this case, the accused admits that she lodged PE10 (Form S – FRCA Return for Salary and Wages Earners) and the attached document PE11 (Pay as you earn (PAYE) Employee Certificate [agreed facts number 8] with FRCA. Shiri testified that the accused was on a \$10,000 annual salary scale and was not liable to pay taxes in 2011. He denies signing PE11 and stated that the company stamp was always in the possession of the accused.
130. PW 5- Fereti of FRCA said that relying on the documents lodged, the application was processed and FRCA had refunded the deducted tax of \$1772.10. He said that the refunded money belonged to FRCA. There is no dispute that the accused received a sum of \$1772.10 a payment made by FRCA as tax refund into her bank account. You heard what the accused had to say about the refund. If you are sure that the accused was not entitled to a tax refund for 2011 and that she lodged fraudulent and misleading documents with FRCA (PE10 and PE11) and that as a result of the misrepresentations, the FRCA was deceived you may find the accused guilty on the 2nd count.

### **Third Count - Money Laundering**

131. To prove the offence of Money Laundering count in this case, The Prosecution must prove that the accused used property that is proceeds of crime and she knew, or ought reasonably to know that the money she was using was derived from some form of unlawful activity.

#### **'Uses property'**

132. The Prosecution runs its case on the basis that the accused received a total sum of 17,134.88 which they say is proceeds of crime into her 'salaries' account and as soon as the monies hit her account she either withdrew or transferred part of that money to a 'hidden' savings account to disguise the true origin of the proceeds of crime. Prosecution tendered the bank statements PE 3 and PE3(A) to show as to how the transfers and withdrawals were done by the accused. According to those statements, from 13 February 2012 to 31 May 2012, a total sum of 20268.64 had been withdrawn. You have to be satisfied that by making withdrawals



and transfers the illicit money was being 'used' by the accused in such a manner so as to disguise the true source of income and to make the illicit money look legitimate or clean.

**'Proceeds of crime'**

133. *"Proceeds of crime" means property or benefit that is wholly or partly derived realised or acquired directly or indirectly by any person from the commission of a serious offence or a foreign serious offence. The "property" includes money or any other property, real or personal, things in action or other intangible or incorporeal property; "Serious offence" means an offence of which the maximum penalty prescribed by law is death, or imprisonment for not less than 12 months".*
134. The State says that the sum of \$17,134.88 as mentioned in the charge was wholly derived directly by the accused from the commission of two serious offences namely, Theft and Obtaining Property by Deception. The maximum penalty for theft and obtaining property by deception is 10 years' imprisonment. Therefore these two offences are serious offences. If you are satisfied that a sum of \$17,134.88 that was deposited into accused's bank account had been derived by commission of those serious offences, then you may conclude that this money forms proceeds of crime.
135. Nousheen said that before the money that is subject matter of the allegation started coming from Art & Soul into to her account, she had a balance of \$2099.71 carried forward from 2011. The Defence has raised issue as to how to differentiate clean money from proceeds of crime deposited into the accused's bank account. The Defence argues that the Prosecution did not show that the total sum that was sitting in her savings account during the period in question was the proceeds of crime, suggesting "It is entirely possible that the funds withdrawn from the savings account would have come from sources other than criminal activity".
136. The Prosecution had the burden of showing that the money that was used in the monetary transactions was in fact derived from specified unlawful activity. This does not mean, however, that the Prosecution had to show that funds withdrawn from the accused's account could not possibly have come from any source other than the unlawful activity. Once proceeds of unlawful activity have been deposited in a financial institution and have been credited to an account, those funds cannot be traced to any particular transaction and cannot

be distinguished from any other funds deposited in the account. The "tainted" funds may be commingled with "untainted" funds, with the result being simply a net credit balance in favor of the depositor. What you have to be satisfied with is that whether the accused had withdrawn money from an bank account that was tainted with proceeds of crime.

**The person knows, or ought reasonably to know that the money or other property is derived or realised, directly or indirectly form some form of unlawful activity.**

You have to be satisfied that the accused was aware, when being used, that the sum of \$17,134.88 was directly derived from unlawful activity that is the commission of Theft and Obtaining Property by Deception.

137. That is all I have to say about the elements of offence of Money Laundering.
138. Remember, the burden to prove the accused's guilt on each count beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused. The accused is not required to prove her innocence, or prove anything at all. In fact, she is presumed innocent until proven guilty.
139. If you accept the Prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of accused's guilt on each count you must find her guilty on each count. If you are not sure of the accused's guilt, you must find her not guilty.
140. Well gentleman assessors that is all I wish to say. You will retire now and deliberate your opinions. Your possible opinions will be "guilty" or "not guilty" in respect of each count. It is desirable if both of you could agree but that is not strictly necessary. When you are ready you may inform our clerks, so that we could reconvene, to receive your opinions.
141. Any re-directions?



**Aruna Aluthge**  
**Judge**

**At Suva**

**3 December 2019**

**Solicitors: Director of Public Prosecution for State  
Toganivalu Legal for Accused**