

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HACD 01 OF 2022L

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC)

v

INOSI TAUVOLI

Counsel: Ms A. Vaganalau for Prosecution (FICAC)
Ms A. Tubuitamana for Defence

Date of Judgment: 20 March 2025

Date of Sentence: 31 March 2025

SENTENCE

1. Mr. Inosi Tauvoli, you were charged with three counts of Abuse of Office (not for gain), contrary to Section 139 of the Crimes Act. The information filed by the Fiji Independent Commission Against Corruption (FICAC) was as follows:

COUNT 1

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of the Offence

INOSI TAUVOLI, between 19 October 2018 and 18 January 2019, at Nadi in the Western Division, whilst being employed in the Civil Service as the Senior Estate Officer – Operations of iTaukei Land Trust Board, in the abuse of his office, did arbitrary acts, namely, processed and approved the Application to Lease for land files belonging to tenant Huang Yuean, without following the relevant policies and procedures that applied to the processing and approval of such applications, which are acts prejudicial to the rights of the iTaukei Land Trust Board (TLTB).

COUNT 2

Statement of Offence

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of Offence

INOSI TAUVOLI, between 19 October 2018 and 20 December 2018, at Nadi in the Western Division, whilst being employed in the Civil Service as the Senior Estate Officer – Operations of iTaukei Land Trust Board, in the abuse of his office, did arbitrary acts, namely, processed and approved the Application to Lease for land file number 6/10/42460 without following the relevant policies and procedures that applied to the processing and approval of such applications, which are acts prejudicial to the rights of the iTaukei Land Trust Board (TLTB).

COUNT 3

Statement of Offence

ABUSE OF OFFICE: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of Offence

INOSI TAUVOLI, between 19 October 2018 and 18 January 2019, at Nadi in the Western Division, whilst being employed in the Civil Service as the Senior Estate Officer – Operations of iTaukei Land Trust Board, in the abuse of his office, did arbitrary acts, namely, processed and approved the Application to Lease for land file number 6/10/42486 without following the relevant policies and procedures that applied to the processing and approval of such applications, which are acts prejudicial to the rights of the iTaukei Land Trust Board (TLTB).

2. You pleaded not guilty to the above counts. The Court proceeded to trial in which you were found guilty on each count. After being convicted, you now stand before this Court to

receive the sentence. The Counsel from both sides filed helpful written mitigation/sentencing submissions for which I am grateful. I considered those submissions to arrive at a sentence that fits the offence.

3. At the time of the offence, you were a Civil Servant employed as a Senior Estate Officer of the iTaukei Land Trust Board (TLTB). As the custodian of iTaukei native lands in Fiji, the TLTB is responsible for administering the trust for native landowners and overseeing all leases related to native lands. You held the second-highest senior position in the Regional Office in Nadi and had approximately nine years of work experience. You were well-versed in the Estate Operation Manual (EOM), policies and standard procedures that should be followed when processing lease applications.
4. It was proven that you accepted four commercial lease applications from three individuals of Chinese origin on a single day and processed them together in a suspicious and opaque manner, disregarding the EOM and standard practices of the TLTB. You approved the applications by exercising powers beyond your scope. You failed to consult the landowners as required by the EOM and deliberately falsified the minutes of the consultation to justify the irregularity. Your abuse of office and arbitrary actions brought disrepute and thereby caused prejudice to the TLTB and the landowners.
5. I must have regard to the proportionality principle enshrined in the Constitution, Section 4 of the Sentencing and Penalties Act 2009 (SPA), the current sentencing practice and the applicable guidelines issued by the courts to arrive at a sentence that is best suited to you. Having due regard to the seriousness of the offence and the harm/prejudice caused to the victims, I would select the starting point. The final sentence will be determined after making appropriate adjustments for aggravating and mitigating factors.
6. According to Section 139 of the Crimes Act, the offence of Abuse of Office as charged (not for gain) is punishable with a maximum sentence of ten years imprisonment.
7. There is no established tariff for this offence. The sentence passed by the High Court in **FICAC v Ana Laqere & Others**,¹ (sentence ruling) provides useful guidance in

¹ Sentence Criminal Case No. HAC 056 of 2014 (10 May 2017)

selecting an appropriate starting point. Rajasinghe J reviewed previous cases of Abuse of Office² and observed as follows:

24. In view of the above sentencing precedents, it appears that the courts of Fiji have considered the level of authority and trust reposed in the position held by the accused, and the level of prejudice caused to the victim in sentencing. If the level of authority and trust, and the prejudice caused are high, the court could go to the higher starting point and vice versa.

25. I would like to adopt the same approach in setting an appropriate tariff, allowing the sentencing court to determine the appropriate starting point based on the level of culpability and the prejudice/harm caused. Accordingly, I find a tariff limit of one (1) year to twelve (12) years would adequately serve the above purpose. The sentencing court could consider the following ranges of starting points based on the level of culpability and the harm caused;

	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

26. In order to determine the level of culpability, the court could consider the following factors; however, this is not an exhaustive list. They are:

- i. The level of contribution or the influence made by the accused in the commission of the offence,
- ii. The level of authority, trust and responsibility reposed in the position held by the accused,
- iii. Has the accused influenced or pressured others to be involved in the offence,
- iv. Nature and how the offence was committed or planned,
- v. Number of victims,
- vi. Whether the accused involved in the offence through force, coercion, exploitation or intimidation,
- vii. Not motivated by personal gain,
- viii. Opportunistic “one-off” offence with little or no planning,

² Naiveli v The State, Criminal Appeal No. 2 of 1992, Court of Appeal; State v Kunatuba, Criminal Case No. HAC 018 of 2006, High Court, Suva; State v Sorovakatini, Criminal Case No. HAC 018 of 2005, High Court, Suva; State v Bola, Criminal Case No. HAC 029 of 2005, High Court, Suva and FICAC v Mau, Criminal Case No. HAC 089 of 2010, High Court Suva.

27. The level of harm/prejudice can be determined by considering the level of gain and the impact on the victim.”

8. However, the Court of Appeal in Halafi v FICAC³, commenting on the above sentence Ruling, observed that *the range of sentences the trial judge had relied on applies only in so far as picking a starting point is concerned and does not denote the sentencing tariff for Abuse of Office (which if required, may be laid down by Court of Appeal or Supreme Court).*
9. Viewed objectively, Abuse of Office is a serious offence, attracting an imprisonment term of 10 years. I also assess its seriousness based on your position of seniority in the civil service. You held a high-ranking post in your office, second only to the Regional Manager. The more senior the officer, the greater the culpability. By virtue of your post, you wielded considerable influence over the subordinate officers and took over the responsibilities not meant for you under the EOM. Your culpability level is high as you played the leading, if not the sole role in processing and approving the lease applications arbitrarily.
10. You held a position of trust. For good governance, the civil/public servants must maintain a high degree of integrity, accountability and trust. The landowners trusted you that they would be served faithfully and honestly. PW 3 described how you betrayed that trust. You took advantage of the system you held in trust to abuse the office. The harm/prejudice caused to your ex-employer and the land-owning unit is high.
11. Considering the objective seriousness of the offence, the culpability level and the harm/prejudice caused to the victims, I pick a starting point of four years.
12. I do not find any aggravating factors other than those considered in picking the starting point. To avoid double counting, I add nothing for aggravation.
13. Your Counsel submitted that you are 40 years of age, married with four children and the sole breadwinner of your family. You are currently employed as a Principal Valuer at the Ministry of Land and Mineral Resources. It is submitted that you are indebted to financial institutions and struggling to maintain the business. You have taken loans not for survival

³ 200[2021] FJCA 119 (6 August 2021)

but to buy properties or as an investment strategy. Before committing these offences, you should have thought about the business, the family and the consequences of your actions. Your (personal) circumstances are of little mitigating value.

14. You have no previous convictions. You have maintained a clear record over the past 40 years of your life. The character reference of the *Turaga-ni-Koro* attached to your submission indicates that you had been a well-known person in the village with a high standing. For that very reason, I suppose, namely your good character, you had been appointed to a position of trust⁴. On the other hand, the fact that a person has no previous convictions does not inevitably mean that he is of good character; for any criminal activity has to start at some stage of a person's life⁵. These offences can be committed only by a person who is in a position of authority and trust. Therefore, you, as a person who breached that trust, should earn very little on account of good character.
15. The FICAC amended the information at the last moment to make your offence less serious. Consequently, no evidence was led to prove that you have gained financially or otherwise. However, it was admitted that you compromised rules and standard procedures to achieve the targets set by the office. You also agreed that to achieve the targets and earn fringe benefits such as bonuses, the officers are not entitled to bulldoze the established rules and procedures.
16. In mitigation, I deduct one year to arrive at a sentence of three years.
17. Your Counsel has submitted that, given you are a first offender with a clean record and for being remorseful, you are a suitable candidate to be considered for a suspended sentence.
18. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence should only be exercised by the High Court where the custodial sentence does not exceed 3 years. Since the final sentence has not exceeded 3 years in this case, I should consider if you are qualified for a suspended sentence.

⁴ FICAC v Aau [2011]FJHC 222 (14 April 2011);

⁵ Gilbert v The Queen (Practice Note [2006] 1WLR 2108; Lata v The State FJCA 56 (26 May 2017)

19. It is well settled that a suspension of sentence is warranted only in exceptional cases where there is no breach of trust and genuine remorse⁶. In breach of trust cases involving dishonest employees, suspension of sentence is only appropriate if there are exceptional circumstances⁷.
20. I am not convinced that you are genuinely remorseful of your wrongdoings. Although you admitted to having compromised work procedures, you maintained the not-guilty plea and blamed the TLTB for its shortcomings and the excessive workload to justify your dishonest conduct. The circumstances highlighted by your counsel cannot be accepted as exceptional.
21. The offence of Abuse of Office is deemed serious, especially when public institutions are usually the target of fraud and malpractices. The public interest need to be considered in order to safeguard the integrity of the public service and to promote good governance. The courts are not prepared to regard such offences lightly. The people in high office who abuse their power should be required to serve an immediate prison sentence⁸. The sentences will not be suspended just because the consequences of such officers are severe. The gravity of the breach of trust needs to be marked by an immediate term of imprisonment, no matter how sad the offender's story or how compelling the mitigation is in his /her favour⁹.
22. The courts have emphasised that the increasing prevalence of this offence in our community calls for deterrent sentences. The offenders must receive harsher punishment to mark the society's outrage and denunciation against abuse of public office. The main purpose of your punishment is to condemn your action and to deter others with similar impulses.
23. An immediate custodial sentence is warranted in this case. However, since you are a first offender with a clear record, a partial suspended sentence would balance the need for rehabilitation with other sentencing purposes set out in the SPA.

⁶ State v Roberts [2004] FJHC 51; HAA0053J.2003S (30 January 2004), Shameem J

⁷ Deo v State p No 25.2011 November 2005 at [26, 27]

⁸ Naiveli v State [supra (2)]

⁹ State v Prasad [2003] FJHC 320 (30 October 2003) Gates J

24. You were convicted of more than one offence founded on the same facts. Therefore, I prefer to impose an aggregate sentence of imprisonment in respect of all three offences pursuant to Section 17 of the SPA.

Summary

- 25 Mr Inosi Tauvoli, you are sentenced to three years imprisonment. A period of one year of your sentence is suspended for three years. As a result, you are to serve only two years in the correction facility, and the remainder of one year is suspended for three years. You are not eligible for parole until you have served twenty months in the correction facility.
26. The consequence of breaching a suspended sentence is explained.
27. You have 30 days to appeal to the Court of Appeal.



Aruna Aluthge

Judge



31 March 2025

At Lautoka

Solicitors:

Fiji Independent Commission Against Corruption (FICAC) for Prosecution
Niudamu Lawyers for Defence
