

IN THE RESIDENT MAGISTRATE COURT
WESTERN DIVISION **AT NADI**

CRIMINAL CASE NO. 305 OF 2009

BETWEEN : **STATE**

AND : **AVIYASHNI VANDHANA NAIDU**

**BEFORE HIS WORSHIP THE
RESIDENT MAGISTRATE**

: Mr. Mosese Vatutaleikeiviti W. Naivalu

For The State

: Ms. Vateitei, DPP

For The Accused

: Mr. Azeem Sahu Khan, Barrister & Solicitor,
Nadi

JUDGMENT

[1]. The Defendant has been charged for the following offences:

FIRST COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 21st day of January 2009 at Nadi in the Western Division with intent to defraud, obtained \$2000 cash for her own use from **SANJEET SEN MANGAL** by falsely pretending that she was in a position to arrange a New Zealand visa for the said **SANJEET SEN MANGAL**.

SECOND COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 27th day of January 2009 at Nadi in the Western Division with intent to defraud, obtained \$1400 cash for her own use from **NAVIN DEO** by falsely pretending that she needed the money to purchase a place ticket to travel to New Zealand to visit her parents who were allegedly involved in an accident which she would repay.

THIRD COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 30th day of January 2009 at Nadi in the Western Division with intent to defraud, obtained \$2000 cash for her own use, from **Rajeshni Kumari** by falsely pretending that she was in a position to arrange a New Zealand visa for **Navin Deo** the husband of **Rajeshni Kumari**.

FOURTH COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 3rd day of February 2009 at Nadi in the Western Division with intent to defraud, obtained \$3000 cash for her own use, from **Rajeshni Kumari** by falsely pretending that she was in a position to arrange a New Zealand visas for the said **Rajeshni Kumar** and her husband **Navin Deo**.

FIFTH COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 8th day of February 2009 at Nadi in the Western Division with intent to defraud, obtained \$2,335 cash for her own use from **Navin Deo** and **Rajeshni Kumari** by falsely pretending that she was in a position to obtain multiple visas for New Zealand for the said **Navin Deo** and his wife **Rajeshni Kumari**.

SIXTH COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 9th day of February 2009 at Nadi in the Western Division with intent to defraud, obtained \$3,000 For her own use, from **Navin Deo** and **Rajeshni Kumari** by falsely pretending that she was in a position to obtain multiple visas for New Zealand for the said **Navin Deo** and his wife **Rajeshni Kumari**.

SEVENTH COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 13th day of February 2009 at Nadi in the Western Division with intent to defraud, obtained \$860 h for her own use, from **Navin Deo** by falsely pretending that she was in a position to obtain multiple visas for New Zealand for the said **Navin Deo** and his wife **Rajeshni Kumari**.

EIGHTH COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 18th day of February 2009 at Nadi in the Western Division with intent to defraud, obtained \$4000 for her own use, from **Rajeshni Kumari** by falsely pretending that she was in a position to obtain multiple visas for New Zealand for the said **Rajeshni Kumari** and her husband **Navin Deo**.

NINTH COUNT

Statement Of Offence

Obtaining Money By False Pretence: Contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars Of Offence

AVIYASHNI VANDANA NAIDU d/o Appal Naidu on the 24th day of February 2009 at Nadi in the Western Division with intent to defraud, obtained \$750 cash from **Navin Deo** by falsely pretending that she was in a position to obtain multiple visas for New Zealand for the said **Navin Deo** and is wife **Rajeshni Kumari**.

- [1]. Just prior to trial the DPP through its Counsel made an oral application for an amendment to the present charges to which Mr. Khan for the defence showed his concern at the 11th hour development nonetheless asked for the matter to be stood down to obtain further instructions from his client. The Court had understandably anticipated an application for adjournment which would be fair under the circumstances however at the resumption Mr. Khan advised the Court that he had instructions and that nothing had changed as far as the position of his client was concerned that she was still pleading not guilty to all the charges and that he was ready to proceed to trial. The amended charges were then filed and served on the defence.

- [2]. PW1 was Sanjeet Sen Mangal f/n Suken Prasad of Korovuto,, Nadi who was an Accounts Receiver at the Mercure Hotel, Nadi and swore on the Ramaiyan in English.
- [3]. He stated that he lived with his family being his parents and his son and lived there for 5 years. It was his third year at the Mercure and before that he was at Fiji Mocambo as a Chief Storeman. He reached Form 6 level at the Korovuto Secondary after which he obtained a Certificate from the Nadi Business School.
- [4]. He and the Accused were in a de-facto relationship that began in late 2008 and that they decided to marry in October 2009. That their relationship was strong and intimate and they trusted each other. He was in love with her.
- [5]. The Accused had told him that she was working for UNDP when they first met while she was a houseguest at Mercure Hotel and that he trusted her as she had shown him her identity card.
- [6]. Their relationship soured and ended in February 2009. He broke up with her for a number of reasons being that he later found out the Accused was 10 years older than he was secondly, that she was seeing some other guys and thirdly, all the money that he gave the Accused had disappeared.
- [7]. That he had introduced the Accused to several of his friends including a couple, Navin Deo (PW2) who worked for Novotel Hotel and his wife Rajeshni Kumari (PW3), who worked for a courier company in Nadi. That he had known the couple since 1999 and they worked together in Chase Apparel and that the couple resided in Waqadra, Nadi. He had called Navin up to loan \$2,000.00 from him to apply for his visa which the Accused would arrange.
- [8]. That sometimes in late January the Accused had told him that her dad was involved in an accident and she would like to go but she had a problem with her

credit card as she also wasn't earning hence she urgently needed \$1,400.00 cash which PW1 didn't have.

- [9]. That PW1 asked Navin again to help and they arranged to meet on the same afternoon for collection of that money. That he and Navin met between 5.30pm and 6pm in front of ANZ ATM, Namaka where the Accused also met Navin for the first time. That Navin was already aware of who the Accused was by the time they had met as PW1 had already told him about her.
- [10]. Just a day after she received this \$1,400.00 they went to dinner with Navin and Rajeshni at the couples place which purpose was to thank the couple. There, the Accused approached Navin and told him she could sponsor him to go to New Zealand. Navin was willing as it was an opportunity. Accused even told Navin that PW1's visa had been approved although he still hasn't received any visa to date. The Accused then told Navin that if he wanted to apply he had to give her \$5,000.00.
- [11]. In February 2009 Rajeshni called him up to collect \$3,000.00 from her at the airport to give to the Accused at the Mercure Hotel. That money was for the couple's visa which she told PW1 she was arranging. In the same month PW1, Navin and Rajeshni sent \$2,300.00 in total over to the Accused who was in New Zealand. He identified the Western Union money transfer customer copy of \$1,000.00 (sent to Vandhana Chariya in 714 Pioneer Highway, Palmerston North) as filled in his own handwriting and it was tendered as Exhibit 1. Chariya was the Accused's married name.
- [12]. He remembers when on 13 February 2009 Rajeshni called him up again to go and collect \$860.00 from Navin which money was for the levy fee for the visa application. He does not know what that money was used for.

- [13]. However, the Accused did not fly to New Zealand as her passport had expired. She eventually left sometime later for New Zealand and stayed for about a week returning on 13 February 2009 as, he remembers, her birthday was on 14 February 2009. He remembers she eventually managed to fly over to New Zealand after Immigration allowed her to travel on some sort of document for that trip.
- [14]. As for the \$2,000.00, it was given on either 21 or 22 January 2009 and that he collected it from Navin's wife, Rajeshni and gave it to the Accused immediately in Room 219 of the Mercure Hotel. They were still in a relationship then.
- [15]. Under cross-examination, he admitted he planned to marry the Accused in October 2009 but they broke up in late February 2009. The reason being that she was 10 years older and she was seeing other guys. That he wasn't bitter or angry it was just that he was upset. He loved her and she promised him a visa. That it was he who borrowed \$2,000.00 to give to the Accused as well as the \$1,400.00. He was just the agent and conduit. The \$1,400.00 wasn't for visas it was for her to visit her sick father.
- [16]. He trusted her, loved her and had faith in her. She had spent New Year's in New Zealand, came to Fiji then went back out again then returned on 13 February 2009, a day before her birthday. He never made any enquiries on the visas. But when challenged that because they broke up that he was angry and had animosity towards her, he admitted that his being upset with the Accused has affected his judgment on her.
- [17]. On re-examination, he said that the Accused was buying him and his family things like his clothes, his dad's liquor, his niece's clothes, his friend's son's clothes and his 5 year-old son's educational needs. The Accused and his son had a good relationship. He denied that his having broken up with the Accused did not have an impact on his giving evidence on the day.

- [18]. PW2 was Navin Deo f/n Sashi Kant Deo of Waqadra, Accounts Administrator at Novotel Hotel who swore on the Ramaiyan in English.
- [19]. That after Form 6 he attained a TPAF Computing Level MYOB and Business Accounting. He currently works at Novotel which is his third job. It was at his second job at Chase Apparel where he first met PW1. At that time PW1 was married. In 2005 he joined Mercure Hotel.
- [20]. That he knows why he is in court today because of the allegations against the Accused and remembers the first time he met the Accused when he was introduced to her by PW1 who had said that they were going to settle down.
- [21]. On 21 November 2009, PW1 called him to say that he needed \$2,000 for his multiple visa to be arranged by the Accused and as PW1 was his friend he offered to help. His wife gave PW1 the money the next day; 22 January 2009 at Airport ANZ where she withdrew the money and gave it to him as he was not working so could not have given the money. Five days after 22 January 2009 the Accused told him she couldn't travel on the company ticket she had and was crying.
- [22]. She then came with PW1 in a rental car and needed an instant air-ticket which would cost \$1,400.00 and she needed cash to buy the ticket as she had problems with flying and needed to visit her sick dad who was involved in a car accident back in New Zealand. He personally gave \$1,400.00 to her at ANZ, Namaka and that it was a rainy day. His wife, Rajeshni gave \$1,000.00 while he gave \$400.00. He has a CNB bank account while his wife has two ANZ bank accounts. That would have been the second time he would have met her and the Accused thanked him for the \$1,400.00 and said that she would help them as they had helped her.
- [23]. That she flew off to New Zealand the following Sunday. The Accused told him he could come over to New Zealand and stay with her then bring his wife over. That the Accused told him she could get him a visa and that she worked for UNDP. That

she had a friend called Wendy at the New Zealand Embassy so a quicker process of his visa would be ensured.

[24]. That he didn't get any confirmation that the Accused worked for UNDP nor has he received his passport which was conveyed to her in New Zealand vide DHL.

[25]. The first amount of monies was given in this breakdown - \$2,000.00 to PW1 to give to her, \$1,400.00 was for the ticket given to her in front of the ATM machine, \$2000 was given to her by his wife. The Accused flew eventually to New Zealand and returned on 13 February 2009 as 14 February 2009 was her birthday. On her return she told him that his visa had been stamped.

[26]. While in New Zealand she had called his wife and told her she can also go to New Zealand with him but her token will increase so she suggested to increase bank balance to \$10,000.00 to include the token and PW2 borrowed \$3,000.00 from a Karan Chauhan. Hence all total monies had become \$8,400.00 so to cover for the balance from \$10,000.00 the Accused said that she'll arrange payment of the \$1,600.00 to complete the total \$10,000.00 needed.

[27]. When that \$3,000.00 was sent PW2 wasn't present. On 8 February 2009 he sent his share of \$300.00 vide Western Union to 51 Merton Street, Wellington (sent to one Appal Naidu, the Accused's father) as the designated addresses needed to be entered into the form and it could not be sent to one recipient only per company policy being above the limit of \$1,000.00 hence it was split into three with three different addresses. On that same day he was accompanied by PW1 who had sent \$1,000.00 and his wife, Rajeshni who sent \$1,000.00. He identified the money transfer customer's copy which was tendered as Exhibit 2.

[28]. After the token PW2 was now told to pay a bond as the Accused had told him that New Zealand Immigration were investigating their passports and that another

\$5,000.00 was needed which was refundable together with the token of \$10,000.00. That the \$2,300.00 sent by Western Union was only for the bond.

[29]. He still believed that his visa was being processed. As for his wife's application there was a problem with the barcode which was eventually sorted out later. That the Accused always called his wife up for up-dating. He trusted her as she was his friend's girlfriend. She also said that the levy fees of \$860.00 needed to be paid by 13 February 2009 which she had also told his wife. This levy fee was given by him to PW1 who then gave it to the Accused.

[30]. After this, a further \$4,000.00 as a second bond was given to her which she said was to clear some complaints that were made about the couple to the New Zealand Immigration. He had told Accused that they had no more money but she said that her father had already deposited \$10,000.00 into her bank account and this money would be sent to them as refund. His wife then gave her this \$4,000.00 at the airport as he was working at the time. Another \$750.00 was also given to her as bond. He didn't give this money. He positively identified the Accused.

[31]. Under cross-examination, he confirmed that he was a good friend of PW1 since 1999 and that their careers overlapped. He trusted him as a friend and he believed PW1 and he still considered him as a true friend. That PW1 approached him for the loan, not the Accused and he still hasn't returned the loan to date. He did say that the visa was not approved yet so he didn't demand for the refund and just waited.

[32]. That the only money he ever gave to the Accused was the \$1,400.00. He knew the Accused and PW1 were going out and that they would marry and settle down. PW1 was married but separated from his wife.

[33]. PW1 had told him that the Accused stayed at Mercure Hotel. They would meet up at the couple's home only. That the Accused had promised to provide visas for

him first and later his wife. He didn't sign any agreements nor was there any receipts issued. He trusted her through PW1. When Accused would receive all the monies they gave her she would call him for an up-date although she didn't call him after the \$2,000.00 borrowed by Sanjeet. That was Sanjeet's loan.

- [34]. He had asked PW1 of her background and he answered that she was from a rich family background and that she was here to help everyone. PW1 kept re-assuring him about the Accused. The Accused did tell him saying that someone would call him later. That person did call. It was a lady who said that his visa will be approved and his passport was with her. She had an accent and was a European lady. It was definitely before 13 February 2009.
- [35]. He is still awaiting his passport and he still doesn't know if his visa has been approved as he is still awaiting them. He admitted that he has family living overseas but not aware of how long it takes to process a visa. The Accused had told him that someone had written to the New Zealand Immigration complaining about him and his wife. On 3 March 2009 he met Accused at Ohana's Bar where he went with his boss Christopher Haines and they signed an agreement with the Police. At that point he began to take interest in the matter as far as his position was concerned.
- [36]. He soon received a communication from a lady in New Zealand and PW1 kept re-assuring him, so he believed the Accused that she was doing something for him and his wife. He was patient with PW1 and the New Zealand lady but he wasn't patient with the Accused.
- [37]. Under re-examination, he said that after 11 months his position had not changed i.e. from January 2009 to November 2009. He's still awaiting his passport and the couple's visas. He said that he only gave her \$1,400.00 in her hand. The rest of the monies were either given by his wife Rajeshni, or PW1.

- [38]. PW3 was Rajeshni Kumari f/n Ram Kumar of Waqadra who worked as a Customer Service Officer at Expedition International, Nadi Airport. She swore on the Ramaiyan in English.
- [39]. She attained a Form 6 level of education after which she did Secretarial Studies at St. Mary's Commercial School. She is married to Navin Deo, PW2 and her current job is her third job and she had spent 3 years there. She too worked for Chase Apparel where PW1 also worked and they were friends and have known each other for over 10 years now and continues to stay in touch. She knew why she was in court as it was her that lodged the official complaint.
- [40]. She was introduced to the Accused by PW1 who said that they were going to settle down and PW1 had said that she worked for UNDP. The Accused didn't show her any proof of this in the form of any identification.
- [41]. On 20 January 2009 PW1 introduced the Accused to her by way of phone. She didn't talk to her. PW1 said that she would be arranging a visa for him. That she gave money to PW1.
- [42]. She gave PW1 \$2,000.00 so he could show that his bank balance had that money as the Accused was arranging for his visa. It was through ATM card and was given from the ATM at the airport at approximately mid-day. No one was present. She wanted to help him as he was a friend and she trusted him and PW1 had said that he would pay her back.
- [43]. On 3 February 2009 another \$3,000.00 was given to PW1 to take to the Accused and that the reason she gave made her believe her more that both her and her husband are now applying for the visas and after the Accused received the monies she called to confirm that she would now process the visas. On 8 February 2009 the Accused called her up asking her whether she needed a multiple visa or a 3-month visa. For a multiple visa she needed about \$5,000.00 more.

- [44]. On 8 February 2009 when the Accused was in New Zealand \$2,335.00 was sent to her while on the 09 February 2009 another \$3,000.00 was further sent to her. PW1, PW2 and she had sent the \$2,335.00 as they were advised that the receiver can not collect more than \$1,000.00 in a day so the money had to be split amongst them.
- [45]. She remembers on 27 January 2009 the Accused came home crying as she needed \$1,400.00 quickly to fly to New Zealand as her dad had had an accident there. After a while she learnt that the Accused didn't travel due to some problems with her travel documents.
- [46]. She remembers her husband, PW2 giving the Accused \$1,400.00.00 and after that she came to her place to ask if they were interested in going to New Zealand as well where she could be willing to help by being their sponsor. PW3 and her husband had planned to migrate overseas and so were saving all this while.
- [47]. On 30 January 2009 she gave the Accused \$2,000.00 for her sponsorship which was given in Namaka outside the ANZ Bank. The Accused said that that money was to make up for the balance for \$5,000.00 which was the minimum required balance. They were aware that she had already arranged for PW1's visa.
- [48]. That she believed Accused by the way she was talking to her and her husband and she was very helpful. She was given the couple's leave letter too from their employers. When she was in New Zealand she called to say that since it was two of them applying \$10,000.00 and not \$5,000.00 should be in the bank balance as minimum.
- [49]. She later sent \$1,000.00 while her husband sent \$335.00 and DW1 sent \$1,000.00 all through Western Union. Accused mentioned that all our monies sent to her would be refunded and she believed the Accused. There was nothing written and

no agreement. She identified the Western Union money transfer customer copy of \$1,000.00 (sent to Aviyashni Naidu, the Accused at 88/A Raukawa Street, Wellington) as filled in her own handwriting and it was tendered as Exhibit 3.

- [50]. On 09 February 2009 a further \$3,000.00 was arranged through friends which was sent vide Western Union to New Zealand which address was given by the Accused. Her husband again was present. The friends were Doreen, Irshad and Vikash who each loaned them and sent \$1,000.00 each. All the above amount went towards the first bond for the multiple visa.
- [51]. On 13 February 2009 Accused called from New Zealand informing her of a levy fee for the multiple visa which was \$860.00. She was not present. Later Accused called her to confirm receipt of this sum and that PW2's passport was stamped except hers had a problem as New Zealand Immigration could not read the bar code of her passport.
- [52]. On 18 February 2009 she gave Accused \$4,000.00. She said that PW2's passport was okay but not hers. She also told her that New Zealand Immigration was wrong the bond should be \$10,000.00 and not \$5,000.00. She gave the Accused the \$4,000.00 at the airport. It was for a further bond. It was given to her in the car she had borrowed it from a friend, Pritika. She told her that bond money would be refunded if they didn't do anything illegal while staying in New Zealand.
- [53]. Accused told her that her father had just deposited \$10,000.00 into her bank account and Pritika's money would be refunded. To date no money has been forthcoming and she still awaits the refund.
- [54]. On 24 February 2009 Accused came up with another story that their passports were being held up as someone told New Zealand Immigration that they would not return. The passports were now in their Suva office but seized because of the complaint and she needed a further \$5,000.00 to clear the complaint. She then

told the Accused that she had no more money and that she should just cancel the visa. Accused then said that her brother had arranged finance for \$4,000.00 and that she was just to give her \$750.00 and she would look into the balance. The \$750.00 was given on 24 February 2009. The Accused was positively identified by her.

- [55]. Under cross-examination, she said that she knew those dates well as they were from her personal account details and that she kept a record of the transaction as it was her money. She did not rehearse and knew it all by heart not even with her husband.
- [56]. She was told the Accused could get her visas after she was introduced to the Accused by her boyfriend, PW1. She trusted PW1 and the Accused as they were dating. She also knew she rang from New Zealand as her husband PW2 had told her that the Accused had informed him that his visa will be approved.
- [57]. On 29 February 2009 she still believed the Accused as she had said that her brother was assisting her. When asked of the reference number she didn't give it. Accused informed her that the courier was going to pick up her passport from Suva at 3.30pm on a Saturday.
- [58]. The following Monday, she checked with New Zealand Immigration and gave her and her husband's passport number but nothing appeared in the computer records.
- [59]. \$2,000.00 she gave directly to the Accused, \$3,000.00 she gave to PW1 to give on to Accused, \$2,335.00 sent by Western Union to New Zealand, she gave her \$4,000.00 to the Accused, \$3,000.00 was transmitted to Accused by 3 friends after loan from them, \$860.00 was paid to DW1 by DW2 as suggested by Accused. No direct payment to the Accused. \$4,000.00 paid to the Accused personally at the airport. \$750.00 paid to the Accused personally at Waqadra.

- [60]. The first \$5,000.00 was for the so-called token for her husband's visa. The second \$5,000.00 was for her token for her visa. Amanda was explained to her to being a friend of the Accused and she gave \$3,000.00 to Sanjeet to pass onto Amanda.
- [61]. It was at that point that she knew she was tricked and she called the Accused, to try and settle and the Accused said that she will sort it out. Then PW2's boss Chris Haines, PW2 then had an agreement before a Policeman where the Accused admitted and promised that she will return all the monies before a certain date. That she is still awaiting her passport and visa which have not been sent to her. She was satisfied that her visas would be approved as the Accused kept updating her by calling her 2-3 times a day. Accused called her. She never called the Accused.
- [62]. It never occurred to her to have an agreement drawn up as she trusted the Accused and believed her and also trusted PW1 too. No receipt was received at any time. The \$1,400.00 given by DW2 to Accused was not witnessed by her and she relied on what PW2 had told her.
- [63]. That she had called New Zealand Immigration herself and gave both their passport numbers and the reply was negative. She immediately believed the official when she further responded by saying that the only records that they have of the couple was their previous application for the Pacific Quota System for migration to New Zealand.
- [64]. That the Accused occasionally gave her updates and that her suspicious began after her queries with New Zealand Immigration. She then tried to settle the matter with the Accused and discussed this with her. She was still convinced up until the time she called New Zealand Immigration that the Accused was getting them visas.

[65]. Under cross-examination, she confirmed not having traveled overseas. She would regularly get updates from the Accused on monies received when she had received Doreen's money and PW2's monies. She believed the Accused. It was the way she talked and she even visited them and had dinner with them; she said she'll support and assist them. She went out of her way to help them and even involving her family members to assist as well. She didn't make any enquiries as to which visas were being arranged.

[66]. There was no re-examination.

[67]. PW4 was Police Officer DC Shalvin Prasad of Nadi Police Station who swore on the Ramaiyan in English.

[68]. He was a Police Officer since 2004 and he was based with the Transnational Crime Unit and he remembers the case well and it was a case of obtaining money through false pretences. That he was the one that recorded the caution-interview in computer format.

[69]. The Accused was never intimidated, coerced or oppressed and appeared relaxed and gave her answers freely. At the end of the interview she read it to herself and was asked to amend if any. She did not sign the interview. After the interview she was advised by her lawyer, Koyas not to sign. PW4 signed his part. The caution interview was shown to Accused and she confirms that it was the same.

[70]. He was asked to read certain excerpts of the caution-interview thus:

Q. 53 According to Sanjeet he gave you \$2000-00 on 22/01/09 at Mercure Hotel, what can you say about that?

A: Yes.

Q: 54 Can you tell me what was that money for?

A: It was for my personal use.

Q. 55 From where he got that money?

A: He got it from Navin and Rajeshni.

Q. 58: Can you tell me where you used that money?

- A: *It was my personal use.*
- Q.59: *What did you told to Sanjeet after receiving that \$2000-00 which was loaned from Navin and Rajeshni?*
- A: *I told Sanjeet that when I'll go to NZ and from there I will send the money on his account to give it to Navin and Rajeshni.*
- Q.61: *What major happened when you two came to visit Navin and Rajeshni at their house that evening?*
- A: *My parents in Wellington NZ got involved in an accident and I asked Navin if he can loan me \$1400-00 as I need to go to NZ to see my parents.*
- Q.62: *Did Navin loan you that \$1400-00?*
- A: *Yes.*
- Q.63: *From where Navin got that \$1400-00 from?*
- A: *Navin went in my rental and made withdrawal from ANZ and CNB and handed over to me \$1400-00 in the car.*
- Q.64: *What did you told Navin about the returning of that \$1400-00?*
- A: *I told him from NZ I will Western Union to him this \$1400-00.*
- Q.69: *Before going to New Zealand did you went to Rajeshni's work at Nadi Airport?*
- A: *Yes.*
- Q.70: *What was the reason for you going to Rajeshni's work and what was the date?*
- A: *I went on 30/01/09 and Rajeshni printed out New Zealand visitors Visa Application form and she signed. We went to Navin's work where he signed his form, we came to Namaka where she withdrew \$2000-00 and handed over to me.*
- Q. 71: *What was that money for?*
- A: *To show their bank balance.*
- Q. 72: *Where and how you will show the balance with that \$2000-00?*
- A: *I will take that cash and present to the immigration or even we can buy the immigration token.*
- Q. 73: *What did you do with that \$2,000-00?*
- A: *I traveled with it.*
- Q.74: *After traveling with that money to New Zealand, what did you do with that money?*
- A: *No comments*
- Q. 75: *Can you recall on 03/02/09 Sanjeet handed over \$3000-00 to you at Mercure Hotel Restaurant, what can you say about that?*
- A: *Yes.*
- Q. 76: *According to Navin and Rajeshni you called Rajeshni on 02/02/09 told her that as they both are applying, they need to show \$10,000-00 not \$5,000-00 and have to arrange another \$5000-00 where by Rajeshni arranged from her family in New Zealand and gave it to Sanjeet on 03/03/09 who then handed over to you at Mercure Hotel Restaurant. What can you say about that?*
- A: *Yes.*
- Q.77: *What did you do with that money?*
- A: *I traveled with it.*
- Q.81: *Did you asked any money from them through phone?*
- A: *Yes I told them I have only \$5,600-00 in my bank and I need the rest.*
- Q.82: *Did they send you any money?*

A: Yes.

Q.83: *How much they sent, when and how?*

A: *\$2,300-00 and they went through western union on 08/02/09.*

Q.84: *How they send \$2300-00 through western union as we can only send \$1,000-00 per person?*

A: *They made three separate transactions through three people in Fiji on three accounts in New Zealand.*

Q.85: *What did you do with that money?*

A: *No comment.*

Q.86: *Can you recall on 09/03/09 you called Rajeshni and told that the immigration bond has increased and they to pay bond \$5000-00 urgently*

A: *Yes.*

Q.87: *What was Rajeshni's response after talking to you on phone?*

A: *She agreed to arrange from some where and give it to me.*

Q.88: *Did they send you the money?*

A: *Yes.*

Q.89: *How much money they send, when and how?*

A: *They sent on 09/02/09 through western union by three separate transactions through three people in Fiji on three accounts in New Zealand total of \$300-00.*

Q.90: *What did you do with that money?*

A: *I deposited into my ASB bank account in New Zealand.*

Q.91: *When did you returned to Fiji after that?*

A: *On 13/02/09 at about 4.00pm.*

Q.92: *According to Navin and Rajeshni they send you their passport on 07/02/09 what can you say about that?*

A: *Yes.*

Q.93: *Did you receive that said passport?*

A: *Yes.*

Q.97: *What is the name of that lady in immigration who was in charge of Navin and Rajeshni's application?*

A: *She was immigration agent and her name is Wendy.*

Q.98: *Under which name Wendy is operating her agent company?*

A: *I can't recall the name now.*

Q.99: *Can you recall on 13/02/09 before returning to Fiji you call on Rajeshni's phone and told her that they have to pay \$860-00 for their multiple visa levy fee and to give you on your return, what can you say about that?*

A: *Yes.*

Q.100: *Did you receive that \$860-00 on your return?*

A: *Yes.*

Q.101: *When, where and who gave it to you?*

A: *On 13/02/09 the day of my return, at Tanoa International Hotel Room and it was given to me by Sanjeet.*

Q.102: *From where Sanjeet got that \$860-00 cash and how he know about that?*

A: *I told Sanjeet to pick from Rajeshni at Namaka and bring to Tanoa International hotel.*

Q.103: *What did you do with that money?*

A: *No comments.*

Q.104: *Can you recall receiving \$4000-00 from Rajeshni at Nadi Airport on 18/02/09?*

A: Yes.

Q.105: *Who all were present when you received that \$4000-00 cash from Rajeshni at Nadi Airport?*

A: *No one.*

Q.106: *What was that \$4000-00 for?*

A: *As two of them are applying through multiple so they have to show bond \$10,000-00 and they need to arrange another \$5000-00 but they could arrange only \$4000-00.*

Q.107. *What did you do with that \$4000-00 cash?*

A: *I send it through a friend to New Zealand where she will give it her mother who will hand it over to immigration agent namely Wendy.*

Q.111: *Can you recall calling Rajeshni on 24/02/09 and told her that you need another \$500-00 cash as someone reported in immigration that they will go and stay for good, what can you say about that?*

A: *Yes.*

Q.112: *Did you receive any cash from Rajeshni?*

A: *Yes.*

Q.113: *How much and where?*

A: *\$750-00 outside Navin and Rajeshni's house at Waqadra, Nadi.*

Q.114: *Who all were present when you received the money \$750-00 out Navin and Rajeshni's house?*

A: *Rajeshni, Navin and myself.*

Q.115: *What did you do with the above cash?*

A: *I used for my personal use.*

Q.120: *Did you give you answers to my question in your own free will?*

A: *Yes.*

[71]. The caution interview was tendered as Exhibit 4.

[72]. Under cross-examination, he confirmed that the Accused was advised fully of her rights. At the start of her interview she waived he rights to counsel. It was at the end of the interview that she wanted to speak to her lawyer. He was absolutely sure that all that had happened just before signing.

[73]. That in Namaka Police Station there is only one computer and one printer. For convenience the whole document is printed out just prior to her signing and not printed after completion of each page although the signing instructions appear at the bottom of the page.

[74]. He was asked about 'personal use' as appeared in Q54 and that it does not necessary mean illegal, and he agreed. He also didn't make enquiries with New

Zealand about any car accident involving her dad. He also didn't enquire with New Zealand Immigration whether the Accused had acquired any visas.

[75]. He also didn't enquire with New Zealand Immigration (Suva) office. He also didn't make any enquiries regarding this person called Wendy. She appeared normal. He waited for her lawyer, Mr. Koya for about 3 hours. He also gave the Accused a copy of her charge statement.

[76]. There was no re-examination.

[77]. PW5 was Detective Corporal Timoci Naulu of Namaka Police Station who joined the Police Force in 1995. He swore on the Holy Bible in English. He remembers charging the Accused on a charge of obtaining money by false pretences. The statement was recorded in English and she was accorded with her rights. She also consulted her lawyer, Koyas.

[78]. He was asked to read the following questions:

Q. 3: *Do you have any difficulty to read, write and understand the English language?*

A: *No.*

Q. 5: *Are you sick or suffering from any illness that may hinder you in the performance of this charge?*

A: *No.*

Q. 6: *Can you sign to acknowledge that you are physically and mentally fit to be charged?*

A: *Yes.*

[79]. He confirmed that the sign space is blank as Accused refused to sign. He positively identified the Accused.

[80]. Under cross-examination, he confirmed that his role is to charge the Accused which he did so.

- [81]. He said that there was no amendment in the charge and that he agreed that any amendment must be put first to the Accused to which he assured in the affirmation. The charge statement was tendered as Exhibit 5.
- [82]. There was no re-examination.
- [83]. That was the end of the Prosecution case and the Defence decided to take the stand.
- [84]. DW1 was Aviyashni Vandhana Naidu unemployed currently of Votualevu, Nadi. She was speech therapist by profession doing policy work for Pacific Islanders under a UNPD Programme conducting health programs and workshops. Her role was to conduct these workshops in regional countries.
- [85]. She made a trip to Fiji in approximately mid November 2008 where she came with a team of 6 and stayed at the Mercure Hotel but returned to New Zealand after a change of opinion due to the political climate. While here they visited some localities in Ba, Rarawai and Koronubu. They left Fiji the following Tuesday.
- [86]. She decided to return to Fiji in November 2008 or first week of December 2008 for a holiday as she had annual leave due to her. It was during this visit that she met and had a relationship with PW1, Sanjeet as he was a staff at the Mercure and she was a guest. He had enquired who she was from the bar staff. The Accused loved him but was not in love with him. She just liked him. PW1 however was in love with her and wouldn't leave her alone except when he had to go to work. She disputed all the monies alleged.
- [87]. She said on 8 December 2009 Nadi was flooded and because of the flooding all the computer terminals were closed and her bills were unpaid and she was panicking. She told PW1 this and he called a friend Sanjay of ATS before PW2 and PW3. PW1 had told them it was for his visa application. She didn't tell them anything about

any visa. That everything was fine between them until she went back to New Zealand and returned on 13 February 2009. Her birthday was on 14 February 2009 and he was drunk and she was taken back at his behavior but because it her birthday she let it go. He was with friends. She denied flirting with other men. On 17 February 2009 the Accused spoke to him about the bar incident and she even spoke with Ana, the Manageress who told her that he was just a local boy. That the relationship turned sour after they met at his landlord's place and he became abusive. The following Tuesday they split.

[88]. The couple met the Accused the evening after the \$1400.00 was given. Later Navin had called up PW1 to see if Accused could get them visas and the Accused told them that she don't know anything about visas as she wasn't an immigration agent. She said though, that she knew one Sue Mason of "Masons Consultancy". Accused genuinely tried to help them and offered them her sponsorship. She also knew one Wendy Sutherland who worked for Masons and the Accused had spoken to her sometimes in January in relation to Navin and Rajeshni and she gave Accused some rules and regulations making sure that the applicants had sufficient monies i.e. Navin and Rajeshni. The Accused communicated with Rajeshni every step of the way but denied giving her undertaking to send any passport from Suva to Nadi. She admitted that she was the "middle-man" as Masons was the main one.

[89]. She could recall receiving some monies. The amended charges just prior to trial were new and were never put to her by the Police. She had spent 6 weeks of her own time assisting the couple. She denied obtaining money through false pretences. She was devastated after being charged with the offence and her family too was devastated. It affected her financially and emotionally.

[90]. Under cross-examination she admitted that she came back to Fiji for work and that she had had a relationship with PW1. She didn't promise anyone any visa and only went to PW2's home for dinner. PW1 had paid for the Accused's hotel bill. Navin

had approached her for visas for him and his wife but she told him she could only help in sponsoring them. With the monies sent to her via Western Union she had contributed her own money to top up balance to \$5,000.00. The only money she received is \$770.00 for her flight fare back to New Zealand as Air Pacific has economic fares available at that time.

[91]. The passports are still with Masons. PW3 had started corresponding with Masons as Accused had backed out then. She denied promising anyone any visa and that she would return the passports. Six weeks is not enough time to be granted a visa. She didn't know where the passports are. Masons had closed down. After police got involved, she was warned not to contact the complainant. She didn't use any money for her personal use.

[92]. There was no re-examination.

[93]. For clarification, the Court asked the Accused two questions which basis arose out of her responses both in examination-in-chief and cross-examination as DW1. The first one was why didn't she tell the investigation officer all about Mason's Consultancy and she replied that she did. Secondly, why did she not tell the same officer the truth about the first \$2,000.00 and she replied that she did also.

The Law

[94]. Winter J in *Maharaj v The State* [2006] FJHC 21; HAA0111.2005 (23 January 2006) aptly laid down the law in relation to the subject offence at page 2 of his extempore decision.

What the law requires on a charge of false pretence is readily ascertainable from the Section.

False Pretences

309. Any person who by any false pretence-

(a) with intent to defraud, obtain from any other person any chattel, money or

valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to him or to any other person for the use or benefit on account of himself or any other person; or

(b) with intent to defraud or injure any other person fraudulently causes or induces any other person-

(i) to execute, make, accept, endorse or destroy the whole or any part of any valuable security; or

(ii) to write, impress, or affix his name or the name of any other person, or the seal of any body corporate or society, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security.

Is guilty of a misdemeanor, and is liable to imprisonment for five years.

To establish this charge, the State must prove three elements.

- 1. First, that the accused obtained the possession, ownership or benefit or of any chattel, money or valuable security (or got any chattel, money or valuable security delivered to a third party).*
- 2. Second, that the accused obtained that possession, ownership or benefit by means of a "false pretence". That is, that there is a direct link between the use of a false pretence and the obtaining of the possession, ownership or benefit. There are three stages to analyzing whether there has been a "false pretence". The State needs to prove:*
 - (i) That there was a "representation", that is, a statement about a matter of present, or past fact, or statement about a future event, or a statement about an existing intention, opinion, belief, knowledge or some other state of mind.*
 - (ii) That that "representation" was false. It will be a false representation if the person making it knew it was false. In short, that the statement was a deliberate lie:*
 - (iii) That the false representation was made with the intention of including the person to whom it was made to act on it.*
- 3. Third, that the false pretence was made "with intent to defraud". To defraud someone is to deprive that person of something by dishonestly causing that person to believe something that is not true. A person does something dishonestly if he or she does it deliberately and knowing that it is in breach of his or her legal obligation. Even if this is established, if it is claimed that D nevertheless believed that he was "justified" in departing from such a legal*

obligation, or was "entitled" to so act, it must be shown that D did not honestly believe this.

In summary, the State must prove that the Accused without justification or entitlement told a deliberate lie intending that the complainant would believe it and thereby hand over or deliver something which he or she would not have done if the truth had been known.

- [95]. To begin with, for Counts 1 and 2 according to PW2, DW2 said that the \$2000.00 was PW1's loan for his visa application. Even PW1 admitted this in cross-examination. This contention is supported by PW2 and PW3, the complainant couple. Further, that money was given to PW1 by PW3 at the airport and not to the Accused hence the Accused is not caught out by the law for this count alone.
- [96]. As for the \$1,400.00, being the second count, the purpose is clear what that money was intended for but there is confusion as to who exactly received that money from PW2 at the ATM Nawaka, was it PW1 or DW1? That money was for the Accused to fly to New Zealand to visit, according to her, her sick father. According to PW2 he gave the money to the Accused but according to PW1 he received the money from PW2. However, in the Accused's caution-interview she admits receiving the money from PW2 but as a loan which she would repay although no time-frame is agreed upon.
- [97]. Hence, because the Accused's caution-interview is not challenged we'll rely on it and therefore conclude her admissions as a fact that it was a loan which she would repay later. The Accused however did in fact fly to New Zealand although for a week as was represented to PW2. She did not misrepresent flying as it is now clear that she did fly but what is in doubt was the repayment part. According to the particulars of offence the Accused allegedly misrepresented flying to New Zealand and also in repaying the loan.
- [98]. In it's respectful view, there can be no half-misrepresentation and in this regard the Court will cast doubt on the offence in it's totality without any hesitation. In any event, PW1 admitted in cross-examination that as her boyfriend he had

arranged the loans and was the agent and conduit to these two transactions. Bearing that in mind, from the outset the State has failed to satisfy the criminal burden beyond reasonable doubt in Counts 1 and 2 and the Court acquits the Accused accordingly on these two initial counts. We are now left with the 7 remaining counts.

[99]. On oath, the Accused denied receiving any of the following monies: -

- \$1,400.00 (Count 2);
- \$3,000.00 (Count 6);
- \$860.00 (Count 7).

[100]. However, she admitted to receiving the following monies only:-

- \$2,300 (Count 5);
- \$4,000 (Count 8);
- \$3,000 (Count 4).

[101]. However, in her caution-interview she admits to receiving all these monies and I will refer to these for ease of reference.

Q.70: *What was the reason for you going to Rajeshni's work and what was the date?*

A: *I went on 30/01/09 and Rajeshni printed out New Zealand visitors Visa Application form and she signed. We went to Navin's work where he signed his form, we came to Namaka where she withdrew \$2000-00 and handed over to me.*

Q. 75: *Can you recall on 03/02/09 Sanjesh handed over \$3000-00 to you at Mercure Hotel Restaurant, what can you say about that?*

A: *Yes.*

Q.83: *How much they sent, when and how?*

A: *\$2,300-00 and they went through western union on 08/02/09.*

Q.89: *How much money they send, when and how?*

A: *They sent on 09/02/09 through western union by three separate transactions through three people in Fiji on three accounts in New Zealand total of \$300-00.*

Q.92: *According to Navin and Rajeshni they send you their passport on 07/02/09 what can you say about that?*

A: *Yes.*

Q.93: *Did you receive that said passport?*

A: Yes.
Q.99: Can you recall on 13/02/09 before returning to Fiji you call on Rajeshni's phone and told her that they have to pay \$860-00 for their multiple visa levy fee and to give you on your return, what can you say about that?
A: Yes.
Q.100: Did you receive that \$860-00 on your return?
A: Yes.
Q.104: Can you recall receiving \$4000-00 from Rajeshni at Nadi Airport on 18/02/09?
A: Yes.
Q.112: Did you receive any cash from Rajeshni?
A: Yes.
Q.113: How much and where?
A: \$750-00 outside Navin and Rajeshni's house at Waqadra, Nadi.

[102]. Hence it will be correct to say that in all the remaining 7 counts the Accused admitted to accepting those monies. However, to Q74, Q85 and Q103 she replied no comments in her caution-interview. I will deal with these 3 counts later.

[103]. In Q90 however she replies that she deposited the money into her ASB account in New Zealand. In Q107, she replied that she gave the money to a friend to give it to Wendy's mother who would then pass it on to Wendy. In Q115, she replied that she used it for her personal use.

[104]. On those very admissions this Court does not hesitate to find that the State has indeed satisfied the criminal burden hence proving its case beyond reasonable doubt for Counts 6 and 9. For Count 8 one wonders why she could not just give or send it to Wendy straight yet had to pass it through two different sets of hands before it (assumedly) reached Wendy. Hence, having passed the money onto a third party she is caught under the law and the State has further proven the criminal burden beyond reasonable doubt for Count 8. We now arrive at the last three counts being Counts 3, 5 and 7.

[105]. I'll start with Count 5, on oath however she admitted to receiving \$2,300.00. Given this, the State has further proven the criminal burden beyond reasonable doubt for Count 5.

[106]. For Counts 3 and 7 this Court will rely on the evidence of PW2 and PW3 in particular where they both say on oath that after the Accused admitted her wrongdoing PW2 arranged for himself, his boss Chris Haines, the Accused and a Police Officer to draw up an agreement which was held at Ohana's Bar, Nadi to which she admitted her actions and to repay the monies although no due date was given. This evidence on oath was never rebutted by the defence using the *Brown v Dunn* Rule. In the absence therefore, it will be accepted by this Court that the Accused had admitted to everything in particular, to obtaining money by false pretences for the remaining 7 counts and that she agreed to pay it back by way of an agreement.

[107]. The *Brown v Dunn* Rule for ease of reference is pronounced as thus:

*..... I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do so if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue he is a witness unworthy of credit. My Lords, I have always understood that if you intent to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making an explanation which is open to him; and as it seems to me that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses: **Browne v Dunn** (1893) 6 R 67, per Lord Herschell, LC.*

[108]. And above all else at Q92 she admits to receiving on 7 February 2009 the couples passports. This is undisputed evidence against her. The Court asks itself, of what use or good would a passport be to her unless she obtained it for the purposes of having promised visas for the couple at the material time as per the allegations? She further admits to later sending the passports to New Zealand and which have still not been returned.

[109] While this Court makes no adverse inferences in the Accused not commenting to Q74, Q85 and Q103 and true to the law that the onus is never on the Accused to prove her innocence ultimately in not challenging and/or rebutting the evidence by the State tantamounts to an overwhelming evidence that at the time she took all these monies and passports she did so while misinterpreting to the couple that she in a position to obtain and/or deliver their visas to them.

[110]. Given the above, the State has further proven the criminal burden beyond reasonable doubt for the final two counts being Counts 3 and 7.

[111]. Hence, the State has indeed proven that the Accused without justification or entitlement told a deliberate lie that she would be in a position to get visas for the couple thus intending that the couple would believe it and thereby hand over their passports together with the various amounts of monies (except for Counts 1 and 2) which they would not have done if the truth had been known.

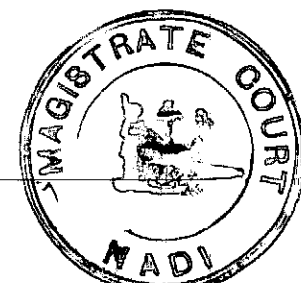
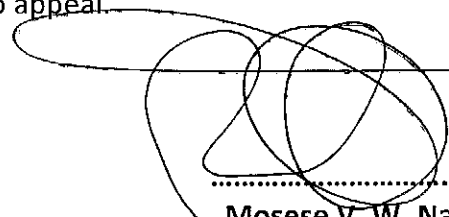
[112]. In the circumstances, this Court finds the Accused not guilty on counts 1 and 2 but guilty on all remaining 7 counts and she is thus convicted as charged accordingly which summary is as follows:

Count 1 & 2 – Not Guilty

Count 3– 9 Guilty

[113]. 28 days to appeal.

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Mosese V. W. Naivalu
Resident Magistrate

