

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 108 of 2015

STATE

v

LAISIASA WAQAMOCE

Appearance : **SGT Naidu** for the prosecution
Mr Kohli. A for the accused

Ruling : **18 February 2019**

RULING

NO CASE TO ANSWER

1. The accused, *Laisiasa Waqamoce* was charged for *Obtaining Financial Advantage by Deception*, contrary to section 318 of the *Crimes Decree*.
2. The particulars of the offence are;-
"Laisiasa Waqamoce on the 11th day of December 2014, at Labasa, in the Northern Division, by deception dishonesty obtained \$3,000.00 cash from Muktar Ali of Valebasoga Tropic Board, Labasa."
3. The Accused pleaded not guilty to the charge on 20 April 2015. The Counsel for the accused informed the court that there is no admission. The case proceeded to trial on 13 December 2016.

4. At the trial, the Prosecution called the victim as his only witness. At the close of the prosecution case, the Counsel for the accused seeks time to file no case to answer submission. The submission was filed on 2 February 2017.
5. In the submission, the Defence submit that;-
 - a. *There is no evidence of dishonesty by the accused.*
 - b. *The accused entered into a commercial agreement with the victim. The money was taken by the accused to allow the victim to harvest the timber. The accused got a better deal and breached the agreement but did not break the law.*
 - c. *The prosecution failed to prove the element of dishonesty.*

Law

6. *Section 178 of the Criminal Procedure Act state;-*
“If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused”
7. The test for no case to answer in the Magistrate Court was explained in **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-
“In the Magistrate’s Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the Prosecution evidence, taken at its highest, a reasonable tribunal could convict. In considering the prosecution at its highest, a reasonable tribunal could convict. In considering the prosecution case, taken at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a Court can uphold a submission on no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case”.

8. *Section 318 of the Crimes Decree 2009, state;-*
“A person commits a summary offence if he or she, by deception, dishonestly obtains a financial advantage from another person”
9. The elements of the offence are;-
- (a) *the accused,*
 - (b) *by deception,*
 - (c) *dishonestly obtained money,*
 - (d) *from the victim.*

Prosecution evidence

10. The victim stated in his evidence that the accused have big pine plantation. In 2014, they discussed with the accused about logging in the accused land. The agreement was prepared by SS Law. The accused signed the consent for access and for the agreement to proceed. The agreement is to be signed when the accused returned from Suva. The accused requested for advance from the company before the pine is harvested. A cheque of \$3000.00 was paid to the accused. The accused left for Suva and promised them that they will sign the agreement on his return. They tried to contact the accused 2 to 3 times through the phone but it was diverted, so they reported to the police. They contacted the accused through the phone several times and he never answered. The accused answered his phone after they reported to the police and the accused told them on why they report to the police. The accused came to see them with the money and he refused to receive the money. In cross examination, he stated that he knew the accused for 15 years.

Analysis and determination

11. The accused was identified by the victim in court. The victim had paid \$3,000.00 to the accused as advanced. Unfortunately, there was no documentary evidence tendered to prove the payment. Consequently, there is insufficient evidence to establish that the accused did obtained money from the victim.

12. *Section 316 of the Crimes Act defines “deception” to means;-
“an intentional or reckless deception whether by words or other conduct, and whether as to fact or as to law, an includes-
(a) a deception as to the intention of the person using the deception or any other person;*
13. The victim and the accused have agreed for the agreement to be signed when the accused returned from Suva. The accused took advance and to be repaid when the pine is harvested. The accused signed the consent for access and agreement to proceed. The accused agreement to repay the advance and conduct of signing the consent for access and agreement to proceed shows no deceptive intention by the accused. There is a mutual understanding with clear intention of accused to repay the advance.
14. There was no evidence on when did the accused returned from Suva. The victim’s oral evidence that they contacted the accused by phone was not supported by any evidential proof. It is not clear from the evidence on the time in which the victim was contacting the accused, was it when the accused still in Suva or when he was back in Labasa. The evidence shows that when the accused is aware of the victim’s complaint to the police, he took the money to the victim and the victim refused to receive the money. According to the accused submission he had a better deal. The returning of the money by the accused shows no intention to deceive the victim.
15. With all these evidence, I find no deceptive conduct from the part of the accused. In absence of any deceptive conduct, consequently there is no dishonesty.
16. The consideration on the weight of the evidence, the credibility of the witness, and the requirement to prove the case beyond reasonable doubt are immaterial at this stage.
17. In assessing the evidence, I find that the Prosecution failed to provide sufficient evidence to support the elements of deception and dishonestly. Accordingly, the Prosecution case will fail as there are not sufficient evidence to require the Accused to put his defence.

18. With the evidence that are before the court, no reasonable tribunal can convict on it.
19. In my ruling, I find that the Defence application has merit and has satisfied the requirement for granting of such application. Accordingly, I dismissed the case, and I acquit the Accused accordingly.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", enclosed within a blue oval scribble.

C. M. Tuberi
RESIDENT MAGISTRATE