

**IN THE RESIDENT MAGISTRATES COURT**  
**AT SUVA- CRIMINAL JURISDICTION**

**Criminal File No: MACD 65/2021 SUV**

**BETWEEN** : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

**Prosecution**

**AND** : PRIME FIJI LIMITED

**Accused**

**Appearances**

**For Prosecution** : Mr. S. Savumiramira (*FICAC*)

**For the Accused** : In-absentia

**Date of Sentence** : 13<sup>th</sup> June 2022

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**SENTENCE**

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1. The accused in this matter is a Corporation.
2. It was charged with the following offences, that is:

**Count 1**

Statement of offence: Forgery: Section 156(1) of the Crimes Act.

Particulars of offence

Prime Fiji Limited, a Limited Liability Company having its registered address at 17 Auckland Street, Viria West Vatuwaqa, Suva between 01<sup>st</sup> day of April 2016 and the 30<sup>th</sup> day of April 2016 partly at Suva in the Central Division made a false document namely the Performance Security of Westpac banking Corporation for the Performance Guarantee No. FRA/TIISP/15-67, Streetlight renewals amounting to FJ \$ 351,865.00 purported to have been issued by the Westpac Banking Corporation, with intent to dishonestly induce Fiji Road Authority in their capacity as public officials to accept it as genuine, and to dishonestly influence the exercise of their function.

**Count 2**

Statement of offence: Using forged document: Section 157(1) of the Crimes Act.

Particulars of offence

Prime Fiji Limited, a limited Liability Company having its registered address at 17 Auckland Street, Viria West Vatuwaqa, Suva between 01<sup>st</sup> day of April 2016 and the 30<sup>th</sup> day of April 2016 partly at Suva in the Central Division used a false document which Prime Fiji Limited knew to be false, namely the Performance Security of Westpac Banking Corporation for the Performance Guarantee No FRA /TIISP/15-67, Streetlight Renewals amounting to FJ351,865.00 with intent to dishonestly induce Fiji Roads Authority officials in their capacity as public officials to accept it as genuine, and to dishonestly influence the exercise of their function.

3. The matter had been tried in the Magistrate's Court wherein the Accused Corporation was acquitted of both charges.
4. Prosecution then appealed the acquittal wherein the Anti-Corruption division of the High Court set aside the acquittals and not only found the Corporation guilty of both offences but also convicted them as well.
5. The Corporation was not represented during the Appeal nor were they were present personally however a reading of the Judgment of Appeal highlights that the presiding Judges had proceeded with the Appeal on the basis of being satisfied with the attempts to serve.
6. Following the finding of guilt and conviction, the matter was remitted to this Court for sentencing and the directions were to serve the decision of the appeal prior to sentencing.
7. By way of Affidavit of Service issued on 8<sup>th</sup> February 2022 and deposed by Frank Tora, Prosecution attempted service at the registered local address and via email however the premises at the registered address had been padlocked whilst the email sent was responded to by an automatic reply stating that the said corporation was no longer operational.
8. Further to the above, by way of Affidavit of Service also issued on 8<sup>th</sup> February 2022 and deposed by Riazmin Nisha a copy of the Appeal Judgment was sent via registered mail and it has not been returned, signifying that the postal address of the Corporation is still in use.
9. As such Prosecution as highlighted by paragraph 8 above-herein has complied with the directions for service.
10. The facts as relevant in this matter have been aptly discussed in the Appeal Judgment. This court does not wish to regurgitate the same.
11. Considering Section 14(2) (h) of the *Republic of Fiji Constitution 2013* and Criminal Appeal No: HAA23 of 2012, *Peniame Drova vs State* and noting proof of service of the Appeal Judgment this court shall now proceed to sentence the accused Corporation in its absence.

### **Mitigation**

12. There is no mitigation presented because the accused is not present or represented.

### **Prosecutions Sentencing Submission**

13. The gist of Prosecution's submission which this court has considered leans towards seeking a sentence which is aimed at deterring future would be offenders from committing similar offences and for public protection.
14. Further to this is a submission that the Director of the Corporation namely Shane Halliday should be the person who is sentenced as he was front and centre in the entire matter.

### **Should Criminal Responsibility be shifted**

15. In this case, it is the entity Prime Fiji Limited which has been charged and not Shane Halliday.
16. As rightfully submitted by Prosecution Section 51 and 52 of the *Crimes Act 2009* recognises that a Corporation is deemed as a separate legal entity and therefore can be criminally responsible.
17. Prosecution asks that this court at sentencing stage shifts responsibility to the individual Shane Halliday.
18. When the court had enquired from learned counsel for Prosecution whether they had sought this during the Appeal stage, they replied that they had not.
19. This court has only been given the responsibility of sentencing the offender. The offender in this case is Prime Fiji Limited the corporation.
20. The purpose and guideline of sentencing is made clear under paragraphs 4(1) and 4(2) of the *Sentencing and Penalties Act 2009*. A reading shows that it is not the duty of the sentencing court to be imputing criminal responsibility at this stage of the proceedings.
21. As such the submission by Prosecution invites this court to exercise a power it does not have at this stage of the proceedings. Therefore, this court shall not impute criminal responsibility on Shane Halliday.

### **Maximum Punishment and Tariff**

22. The offence of Forgery and Using Forged Document has a maximum penalty of ten (10) years imprisonment.

23. This court chooses to accept the sentencing guideline as established in *Rarawa v State* [2017] FJHC 50; HAA57.2016 (1 February 2017) and *State v Khan* [2013] FJHC 621 where it was suggested that the proper sentencing range was a term between 3 to 6 years imprisonment.

24. Be that as it may, the offender is a Corporation, wherein Goundar J's remarks at paragraph 23 in *State v Freesoul Real Estate Development (Fiji) Pte Ltd* [2022] FJHC 201; HAC282.2021 (28 April 2022) is reproduced herein for context as follows:

“[23] Imprisonment is out of question because the offender is a corporation. There is no suggestion that the offender does not have means to comply with monetary sanctions.”

25. The above remark reflects the usual position when sentencing corporations, that is, it is never a custodial sentence but always a pecuniary penalty via the imposition of a fine. In the *Freesoul case* (supra) the penalty prescribed for the offence charged was a fine and or an imprisonment term.

26. The charges under this case as intended by the legislature have only placed imprisonment as the likely penalty and not a fine. As discussed above-herein at paragraph 24 this cannot be applied as the offender is a corporation.

27. However, a fine can be imposed if the court considers Section 15(1) (f) and Section 31(3) of the *Sentencing and Penalties Act 2009* however the ‘means to pay’ has not been examined by the court because the appeal and sentencing was conducted *in absentia*. As such it is not a prudent option to take.

28. Whilst the situation is not ideal, the court takes solace from Section 15(1)(h) of the *Sentencing and Penalties Act 2009*, which in the opinion of the court based on the circumstances as highlighted above-herein provides a sentencing option which is most suited to this case given the circumstances.

29. That is, pursuant to Section 15(1)(h) of the *Sentencing and Penalties Act 2009* the convictions are recorded against Prime Fiji Limited however the offender is discharged.

30. 28 days to appeal.

  
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**JEREMAIA .N.L SAVOU**  
**RESIDENT MAGISTRATE**

