

IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT LABASA

Criminal File No. MACD 15 /2021 LAB

BETWEEN : Fiji Independent Commission Against Corruption
Prosecution

AND : Filipe Kinikinirausesese Tuisabeto
Accused

For the State : Mr. S.Savumiramira & Ms. L. Bokini-Ratu

For the Accused : Mr. J. Vosikata (***John Rabuku Lawyers***)

Date of Sentence : 15th December 2022

SENTENCE

1. The accused was charged for the following offences:

"

First Count

Statement of Offence (a)

Obtaining Financial Advantage: Contrary to Section 32 6(1) of the Crimes Act 2009.

Particulars of Offence (b)

FILIFE KINIKINIRAUSESE TUISABETO between the 1st of December, 2014 to 31st of March, 2015 in Labasa in the Northern Division, engaged in a conduct namely deposited FJD\$1,200 of the Naseakula District School Free Education Grant into his personal BSP Account number 9970128 without the permission of the School Committee and contrary to the Free Education Grant Manual and as a result of that obtained a financial advantage in the sum of FJD\$1,200 knowing that he was not eligible to received that financial advantage.

Second Count

Statement of Offence (a)

CAUSING A LOSS: Contrary to Section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

FILIFE KINIKINIRAUSESE TUISABETO between the 1st of December, 2014 to 31st of March, 2015 dishonestly caused a loss to the Naseakula District School by misappropriating the Naseakula District School Free Education Grant amounting to FJD\$2,056.96 and knowing that loss will occur or a substantial risk of the loss will occur to the Naseakula District School and the Ministry of Education.

2. The accused in the presence of his counsel had indicated his willingness to take his plea on the charged offences.
3. As such the charges were read to the accused and he indicated that he understood the same. The accused then pled guilty to the offences willingly and also admitted the summary of facts.
4. This Court being satisfied that the accused's guilty plea was voluntary and unequivocal convicts the accused as charged for both offences.

Previous Convictions and Documents Tendered

5. Prosecution informed the court that the accused was a first offender and in addition they tendered the transcript of the accused's caution interview.

Summary of Facts

6. The summary of facts tendered by Prosecution highlights that the accused was elected as the Secretary of the Naseakula District Schools Management Team and was also undertaking the responsibilities of the school management treasurer.
7. During the period of offending (1st December 2014 to 31st March 2015) whilst holding the position of Secretary, his duties included but were not limited to recording minutes of management meetings, requesting funds, preparing cheques, collection of quotations, cashing of cheques, shopping for school needs and filing of invoices.
8. During the period of offending the Naseakula District School received tuition funding from the Fiji Government by way of the Free Education Grant. The grant would be deposited into the school account which had more than three (3) signatories.
9. The funds received for the year 2014 were as follows, that is, Term 1 - FJD\$11,760.00; Term 2 - FJD\$11,797.00 and Term 3 - FJD\$12,367.00.

10. In the year 2015 specifically Term 1, the amount received was FJD\$12,916.00. All the funds were deposited into the schools BSP Account No. 5328572. There was an approved procedure via the Financial Management Guide 2014 which expressly provided for the manner via which purchases and payments were to be made using the Free Education Grant.

11. It specifically provided for cheques to be made out to specific Payees once the Head Teacher and School Management had approved of the same. Cash cheques were reserved for replenishing the petty cash.

12. The Accused had informed the school head teacher and the school manager that cash cheques were convenient as there were multiple suppliers. As a result the school Head Teacher and the School Manager signed on the cheques which the accused had prepared.

13. As a result the accused withdrew four times from the schools BSP Account during the period of offending. He also deposited a part of all the withdrawals into his BSP Account No. 9970128 without the approval of the School Management, in doing so obtained a financial advantage.

14. The accused also failed to effectively reconcile the expenses arising out of all the withdrawals which caused a loss to the school.

15. A tabled representation of the same is listed as follows:

DATE	CHEQUE NO.	Withdrawals from School Account	Amount Deposited into Accused's account (Count 1)	Amount not reconciled (Causing a Loss-Count 2)
8/12/14	355	\$1000.00	\$250.00	\$635.10
6/2/15	364	\$300.00	\$150.00	\$110.00
13/2/15	367	\$2000.00	\$500.00	\$893.36
16/3/15	371	\$800.00	\$300.00	\$418.50

16. When the accused was arrested and interviewed under caution he made full admissions.

Mitigation

17. Learned counsel for the accused has submitted comprehensive written mitigation which this court has considered.

18. The salient points in terms of mitigation are the early plea of guilty, the first offender status, remorse and time spent in remand custody (7 days).

19. As a result learned counsel urges the court to consider a non-custodial sentence in the form of community work, probation or a suspended sentence. The justification on this submission relates to the Corrections Department being overwhelmed with convicted prisoners.

Prosecutions Sentencing Submission

20. The gist of the learned Prosecutor's submission inter alia leans towards a sentence that is proportionate to the offending. However, they also seek a sentence which shall act as a deterrence for like-minded offenders.

21. This is premised on the court accepting that the offender had breached the trust bestowed on him and that he was motivated by gain and greed.

22. Prosecution also alerted the court in its summary of facts that there has been no recovery or restitution on or behalf of the accused.

Maximum Punishment and Tariff

23. The offence of ***Obtaining a Financial Advantage*** has a maximum sentence of ten (10) years imprisonment.

24. The court is leaning towards the sentencing pronouncement expounded in **FICAC v Serau [2020] FJHC 983; HAA31.2020** where *Perera J* set a limit as follows:

- i. Where the sum obtained from a government institution or public entity is more than \$10,000, the sentence should range between five (5) to ten (10) years;
- ii. Where the sum obtained from a government institution or public entity is less than \$10,000, the sentence should range between two (2) to seven (7) years.

25. The offence of ***Dishonesty - Causing a Loss*** has a maximum sentence of five (5) years imprisonment.

26. The court is leaning towards the sentencing pronouncement expounded in **FICAC v Feroz Jan Mohammed [2013] FJHC HAC349.2013 (24 June 2015)** where *Madigan J* stated that the proper sentence when the offence is relative to corruption is a sentence between 4 to 5 years imprisonment.

Sentence

27. In reaching the appropriate sentence the court is mindful of Section 4(1) of the ***Sentencing and Penalties Act 2009*** which it regurgitates herein below as follows:

"Sentencing Guidelines

4. - (1) *The only purposes for which sentencing may be imposed by a court are -*
- (a) *to punish offenders to an extent and in a manner which is just in all the circumstances;*
 - (b) *to protect the community from offenders;*
 - (c) *to deter offenders or other persons from committing offences of the same or similar nature;*
 - (d) *to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
 - (e) *to signify that the court and the community denounce the commission of such offences; or*
 - (f) *any combination of these purposes...."*

28. Considering that the accused now stands convicted of two (2) offences which are related on the basis that they all arose whilst the accused held the position of secretary and

treasurer, pursuant to Section 17 of the **Sentencing and Penalties Act 2009** an aggregate sentence shall be imposed.

29. In **Laisiasa Koroivuki v the State** (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

30. Considering the gravity of offending and the accused's culpability, this Court garnering from the maximum penalties for all offences and the sentencing guideline chooses the aggregate starting point of the sentence as thirty (30) months.

31. This court adds six (6) months as the aggravating feature of the offence due to a breach of trust, bringing the interim sentence to thirty six (36) months.

32. The court notes mitigation presented herein wherein it deducts three (3) months bringing the interim sentence to thirty three (33) months.

33. The Supreme Court specifically his Lordship Marsoof JA in **Qurai v State** [2015] FJSC 15; CAV24.2014 (20 August 2015) set out the appropriate discounts that courts of first instance must have regard to when sentencing accused persons whom have pled guilty. This court regurgitates verbatim the same as follows:

"[56] This Court takes cognisance, as it is bound to in terms of section 4(2)(b) of the Sentencing Decree, the existence in Fiji of a sentencing practice of allowing a discount of one-third of the sentence for an early guilty plea..."

34. As a result this court deducts one third (1/3) from the remaining thirty three (33) months interim sentence, because of the early plea of guilty. This court also deducts the seven (7) days which the accused had spent in remand pursuant to Section 24 of the **Sentencing and Penalties Act 2009**.

35. The final aggregate sentence following the one third (1/3) and remand period deduction stands at twenty one (21) months and three (3) weeks.

36. As the final period of imprisonment falls below two (2) years, the court as per Section 26 of the **Sentencing and Penalties Act 2009** has the discretion to order a suspended sentence.

37. In considering whether or not to suspend the sentence the court garners direction from Goundar, J's sentencing remarks in **Muskaan Balagan v State** [2012] HAA 31/11S 24 April 2012 at [20] as follows:

'Whether an offender's sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purposes of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is - whether punishment fits the crime committed by the offender?'

38. Further in **Sagar v State Fiji Independent Commission Against Corruption** [2020] FJHC 445; HAA025.2020 (17 June 2020) Aluthge J stated at paragraph 20 :

"20. The term of imprisonment imposed by the Learned Magistrate is less than two years. Therefore, the Learned Magistrate had discretion to suspend the sentence if he was satisfied that, in the circumstances of the case, it was appropriate for him to do so."

39. Given the above discussions, it is not proper for this court to suspend the entire part of the sentence on the basis that the offender was in a position of trust and also that the offender

has not made full restitution ever since 2015 or even after his plea of guilty. In addition, it is also as a means of general deterrence noting that the funds were given by Government to assist children in obtaining an education.

40. Therefore the accused shall serve an immediate custodial sentence, for his aggregate sentence which is pegged at twenty (21) one months and three (3) weeks.

41. This court does not wish to impose a non-parole period as the accused is a first offender and may get a further discount whilst incarcerated if he maintains good behaviour.

42. The clerk will explain this sentence to the accused person.

43. 28 days to appeal.


JEREMAI N.L SAVCU
Resident Magistrate

