

**IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT SUVA**  
**Criminal Case No.MACD 08 of 2021 SUV**

**BETWEEN** : Fiji Independent Commission Against Corruption  
**Prosecution**

**AND** : Hari Krishna & Anor.  
**Accused**

For Prosecution : Mr.D. Hickes and Ms. A. Vaganalau (**FICAC**)  
For the Accused : Mr. A. Reddy (**Reddy & Nandan Lawyers**)  
Date of Sentence : 26<sup>th</sup> January 2023.

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**SENTENCE**

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1. The accused person following his trial/hearing had been found guilty of the following offence, that is:

**Count 2**

**Statement of Offence [a]**

**INCITING AN UNAUTHORISED MODIFICATION OF DATA:** Contrary to Section 48 to be read with Section 341 of the Crimes Act of 2009.

**Particulars of Offence [b]**

**HARI KRISHNA** between the 01 November 2012 and 5 February 2013 at Suva in the Central Division, incited the commission of an offence namely the commission of an Unauthorized Modification of Data by one **POE DALITUICAMA** of the Birth, Death and Marriage Registry at the Registrar General's Office, by urging to create a false birth registration number 1569104 for said **HARI KRISHNA**.

**Count 3**

**Statement of Offence [a]**

**INFORMATION FROM FALSE DOCUMENTS:** Contrary to Section 161 (3) of the Crimes Act 2009.

**Particulars of Offence [b]**

**HARI KRISHNA** between 5 February 2013 and 31 January 2014 at Ba in the Western Division. Dishonestly gave a false date of birth to the Land Transport Authority, the information which was derived from a document issued for the purpose of Birth, Death and Marriage Registration Act, namely a Birth Certificate registration number 1569104 which said **HARI KRISHNA** knew to be false, with the intention of obtaining a gain namely the Driver License with the false date of birth from the Land Transport Authority.

### Summary of Facts

2. The facts as relevant in this matter have been aptly discussed in the Judgment, specifically from paragraphs 15 to 44.
3. This court does not wish to regurgitate the same.
4. The accused has been found guilty on both counts as charged and the court convicts the accused as charged for both offences.

### Mitigation

5. The accused person via counsel submitted written mitigation. The court has noted the same.
6. Without regurgitating the entire mitigation submissions the following are the salient considerations, that is:
  - I. The relative old age of the accused being 63 years old;
  - II. A decorated unblemished service career in the Civil service as well the community;
  - III. He has medical issues which require constant Doctor visitation;
  - IV. He is a first offender and someone with previous good character;
  - V. The negative effect that a custodial sentence shall have on his family; and
  - VI. Post charge delay of 6 years.

### Prosecutions Sentencing Submission

7. 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. This in a nutshell is a custodial sentence.

### Maximum Punishment and Tariff

8. The offence of **An Unauthorised Modification of Data** has a maximum penalty of ten (10) years imprisonment whilst the offence of **Information from False Document** has a maximum sentence of seven (7) years imprisonment.

9. There are no established tariffs for both offences.
10. However looking at comparable jurisdictions specifically Australia the court notes that in terms of the offence of **An Unauthorised Modification of Data** the sentence espoused in **Regina v Stevens [1999] NSWCCA 69** appears to be the widely cited sentence.
11. In that matter an appeal by Mr. Stevens was dismissed wherein a sentence of three years, where eighteen months in custody was imposed by the lower court was upheld. This is following the plea of guilty by Mr. Stevens to multiple offences.
12. The Appellate court leaned towards deterrence whilst upholding the lower court's sentence, especially considering computer related offences.
13. The offence of **Information from False Documents** has not been widely published as such there are no comparable jurisdictions to draw inspiration from.
14. Be that as it may this court reminds itself of the pronouncement in **O'Keefe v R (1992) 60 A Crim R 201 at 204**, a case involving nine computer related offences, where Lee AJ (Gleeson CJ and Priestly JA agreeing), said:
- " In these and similar cases, the consideration of general deterrence looms large.  
...  
It is of the utmost importance that employers carrying on business and entrusting members of their staff with control of money as must be done, should be entitled to maximum honesty in that activity and the courts play an important role and must play an important role in imposing sentences in cases of this nature which are often called white collar crimes - which will operate effectively as a deterrent to others"
15. Considering the above and 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...."*

16. Looking at the nature of the offence, the mitigation, it would not be out of place for a final sentence of two (2) years to be imposed.

17. This final sentence is an aggregate sentence imposed pursuant to Section 17 of the ***Sentencing and Penalties Act 2009***.

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

19. 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?'

20. The accused has compelling reasons which could be considered for a full suspension however it is not prudent as a matter of deterrence for like-minded offenders.

21. However, considering the principle of proportionality in sentencing it therefore would not be out of place if part of the sentence would be suspended.

22. Therefore considering Section 15(1)(d) and Section 26 (1) and (5) of the **Sentencing and Penalties Act 2009**, a partly suspended period of imprisonment shall be imposed as follows:

i. The accused shall serve twelve (12) months of his two (2) year aggregate sentence in custody whilst the balance of twelve (12) months shall be suspended for a period of two (2) years.

ii. The twelve (12) month custodial period of imprisonment shall be served immediately.

iii. The court shall not impose a non-parole period.

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

24. 28 days to appeal.

  
JEREMAI N.L SAVOCA  
Resident Magistrate

