

**IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT SUVA**

**Criminal File No:** MACD 41/2021 SUV

**BETWEEN** : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

**Prosecution**

**AND** : SHALENDRA KUMAR

**Accused**

**Appearances**

**For Prosecution** : Ms. Fatefehi (**FICAC**)

**For the Accused** : Mr. Cakau (**Vosarogo Lawyers**)

**Date of Sentence** : 19<sup>th</sup> February 2024

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**SENTENCE**

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

**Count One**

**Statement of Offence [a]**

**OBTAINING FINANCIAL ADVANTAGE:** Contrary to Section 326 (1) of the **Crimes Act 2009**.

**Particulars of Offence [b]**

**SHALENDRA KUMAR** between 1<sup>st</sup> January 2010 and 31<sup>st</sup> May 2010 at Suva in the Central Division whilst being the Director of Professional Stationeries engaged in a conduct namely caused payments amounting to FJ34,236.77 to be made to Professional Stationeries and as a result of that conduct obtained a financial advantage amounting to \$34,236.77 from the Public Works Department and knowing that he was not eligible to receive the said financial advantage.

**Count Three**

**Statement of Offence [a]**

**ATTEMPT TO PERVERT THE COURSE OF JUSTICE:** Contrary to Section 190 (e) of the **Crimes Act 2009**.

**Particulars of Offence [b]**

**SHALENDRA KUMAR** sometimes on and about the 1<sup>st</sup> February 2014 and 31<sup>st</sup> December 2015 at Toorak, Suva in the Central Division attempted to pervert the course of justice by creating false back dated Professional Stationery delivery dockets in order to be used as evidence in the case against the said Shalendra Kumar.

### Summary of Facts

2. The facts as relevant in this matter have been aptly discussed in the Judgment. This court does not wish to regurgitate the same.
3. The accused has been found guilty on two counts (1& 3) as charged and the court convicts the accused as charged for both offences.

### Mitigation

4. The accused person via counsel submitted written mitigation and also called a character witness. The court has considered the same.

### Prosecutions Sentencing Submission

5. 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.

### Maximum Punishment and Tariff

6. The maximum punishment in terms of the Offence of **Obtaining Financial Advantage** is 10 years, whilst the maximum punishment in terms of the Offence of **Attempting to Pervert the cause of Justice** is 5 years.
7. The court in terms of the offence of Obtaining Financial Advantage 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 more than \$10,000, the sentence should range between two (2) to seven (7) years.

8. The court in terms of the offence of Attempt to Pervert the Course of Justice is leaning towards the sentencing pronouncement expounded in **FICAC v Mohammed [2015] FJHC 479; HAC 349.2013 (24 June 2015)** where a sentence of 6 months to 3 years was the recommended tariff.

9. 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...."*

10. The court shall adopt the Instinctive Synthesis Approach and pursuant to Section 17 of the **Sentencing and Penalties Act 2009** shall issue an aggregate sentence as the offences are related.

11. Looking at the nature of the offence, the mitigation, the fact that there is no restitution and sentencing submissions from the State, this court shall impose an aggregate sentence of seven (7) years imprisonment for both offences.

12. Pursuant to Section 18(1) of the **Sentencing and Penalties Act 2009** a non-parole period of five (5) years is imposed.

13. 28 days to appeal.

14. The matter is disposed.

  
JEREMIAS N.L. SAVOCA  
Resident Magistrate

