

IN THE MAGISTRATES COURT
AT NADI
CRIMINAL JURISDICTION

Criminal File No. MACD: 003/2021

BETWEEN : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

PROSECUTION

AND : JUSTIN STEVEN MASIH HO

ACCUSED

For the State : Ms Mausio. L and Ms Ravuikadavu. L

For the Accused : Mr. Anthony. M and Mr. Bancod. R

SENTENCE

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1. The accused was charged for the following offence:

Statement of Offence

FALSE OR MISLEADING DOCUMENTS: Contrary to Section 335 of the Crimes Act 2009.

Particulars of Offence

JUSTIN STEVEN MASIH HO on the 22nd day of October, 2014 at Nadi in the Western Division, produced two documents in purported compliance with the law, namely the TIN letters of **Mr JIM STEWART**, TIN #: 09-03559-0-6 and of **Mr TOM KEEN**, TIN #: 09-09526-0-6 to one **SAKIUSA BOSE LASAQA** knowing that the said documents were false.”

2. The accused in the presence of his counsel pleaded guilty to the above charge on 10th September, 2024.
3. I am satisfied that you fully understood the charge and the legal effect of your guilty plea and that your plea was given voluntarily and without influence.

Summary of Facts

4. The summary of facts tendered by Prosecution highlights that in the month of August, a consignment to a Tom Keen arrived in Fiji through FEDEX Courier with its clearing agent as United Parcels Services (UPS). Nadi and Customs detained it because it contained prohibited goods.
5. On the 22nd day of October 2014 at around 12.30pm at the Customs Intelligence office situated at Level 1, Airport Central Building in Namaka, Nadi the accused came to release two consignments and tendered 2 TIN letters, purporting to belong to a Mr Jim Stewart with TIN Number 09-03559-0-6 and a Mr Tom Keen with TIN Number 09-09526-0-6 to Senior Customs Officer Sakuisa Bose Lasaga both of which were confirmed to be false as well.
6. The Accused did not submit any TIN letter belonging to Andrew Tiko hence Senior Customs Officer Sakuisa Bose Lasaga only released the shipment belonging to Jim Stewart. Once released the Accused left the office and drove to Nadi before heading to Lautoka where he was arrested at Loma Lane at around 4.30pm to 5.00pm.
7. The Accused was caution interviewed in the Lautoka FICAC office in the presence of his lawyer on the 22nd of October, 2014. The Accused did not make comment during his entire caution. The Accused was later charged and produced in court on the 24th day of October 2014 for one count of bribery contrary to section 4 (1) (a) of the Prevention of Bribery Act 2007 and one count of False or Misleading documents contrary to section 335 of the Crimes Act 2009. On the 15th of November, there was an amendment to the charge.
8. On 9th September, 2024 the Prosecution withdrew the first count of bribery against the Accused and on 10th September, 2024 the Accused pleaded guilty to one count of false or misleading document contrary to section 335 of the Crimes Act.
9. I am satisfied that each element of the offence has been established beyond reasonable doubt. I find you guilty as charged.

Both Counsels were asked to file Mitigation and Sentencing Submissions to which they have done so and relied on when the hearing was done on 12th September, 2024. The Accused counsel and prosecution also made oral submissions as well on the date of hearing.

Defence also filed supplementary mitigation submissions on 17th September, 2024 in support of their case.

MAXIMUM PENALTY AND TARIFF

10. The maximum penalty for this offence is 5 years' imprisonment.
11. There is no set tariff for this offence.
12. In **State v Ramarama [2012] FJMC 340; Criminal Action 857.2012 (10 December 2012)**, the accused was charged for Producing False or Misleading Information contrary to section 335 of the Crimes Act 2009 which has a maximum sentence of 5 years. He was also charged on a 2nd count of Obtaining Financial Advantage by deception. He was sentenced to 10 months' imprisonment on the first count and 1 ½ years' imprisonment on the second count – both suspended for a period of 2 years. In this case, the accused was able to obtain money from NLTB after producing the false or misleading documents.

PROSECUTIONS SENTENCING SUBMISSION

13. Have stated that the actions of the Accused in this instance were prejudiced to the rights of FRCS and did not affect just one person.
14. Conclude that the case is serious in nature
15. As per paragraph 5.2 of the States submissions they also stated that Accused had pleaded guilty, therefore saving courts time in a case that had been in the court system for 10 years. However, it need be noted that this plea of guilty only came about on the eve of the trial and only upon prosecution withdrawing the first count.

STARTING POINT

16. 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".

17. As per 3.1 of your mitigation the accused stated that he was only instructed to pick up the package but ignorance of the law is not an excuse and cannot be relied upon or used to justify one's actions. Considering the objective seriousness of your offending especially that you knew the document was false, which is an element of the offence itself and part of the summary of facts (paragraph 5), I take 18 months as the Starting point.

AGGRAVATING FACTORS

18. I do not find any aggravating factors apart from the offending itself

PERSONAL CIRCUMSTANCES

19. Accused is 24 years of age, a casual employee. He is a high school graduate and Fiji's former number 1 Squash Player.

MITIGATION

20. Your counsel submitted the following mitigation on your behalf:

- a. Nil previous convictions and therefore a first offender;
- b. You cooperated with the police;
- c. Seeks forgiveness from the court;
- d. You have learnt your lesson and promises to live a crime free life from here onwards;
- e. Accused is remorseful and submit that it was a lapse of judgement on his part that led to the offending;

- f. You did not gain any financial advantage and there was no financial loss to anybody.
- g. You now acknowledge the gravity of the offending and promise not to reoffend.
- h. You seek leniency of court.

21. Considering all your mitigation, I reduce your sentence by 6 months.

GUILTY PLEA

22. You have pleaded guilty though not at the earliest opportunity, courts time and resources were saved from a full hearing and as a result some weight will be given. I deduct a further 3 months.

REMAND PERIOD

23. You were granted bail by this court at the first call of this matter hence you have not spent any time in remand therefore no discount is given

CONVICTION OR NON-CONVICTION

24. Defence submitted and sought that for a non-conviction to be entered.

25. The factors that need to be considered by the court in exercising its discretion whether to record a conviction or not, have been stipulated under Section 16 (1) of the Sentencing and Penalties Decree, where it states that;

"In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including-

- a) The nature of the offence.
- b) The character and past history of the offender; and
- c) The impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects

26. In **State v Batiratu [2012] FJHC 864; HAR001.2012 (13 February 2012)**, the High Court on revision had said that a non-conviction would only be given for morally blameless persons or if there is a technical breach of the law.

In my view, you are not morally blameless neither is this case a technical breach of the law. In my view, giving a non-conviction would not be in the public interest.

As per the recent case of any **Qalodamu v State [2024] FJHC 549; HAA4.2024 (13 September 2024)** stated

"It is essential to provide compelling evidence or facts to the Court establishing that the recording of a conviction certainly affects the Accused's employment prospects if the Accused seeks a fine without a non - conviction. A mere statement that the conviction might affect in such a manner is undoubtedly not sufficient."

Justin Steven Masih Ho, you are convicted as charged

SUSPENSION

27. Pursuant to section 26 of the **Sentencing and Penalties Act 2009**, I can suspend your imprisonment term wholly or partly, if the final sentence falls below 2 years imprisonment. I also consider the provision of section 4(1) and (2) of the **Sentencing and Penalties Act 2009** in deciding whether to suspend your sentence or not.

28. 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?

29. Noting the above sentiments, considering that the Accused was a first offender and maintained an unblemished character until this offending, your age when the case had commenced as well as the fact that no loss was suffered by the Government entity, overrides the need for a custodial sentence to be imposed as means of deterrence. I therefore decide to fully suspend your sentence for a period of 3 years.

SUMMARY

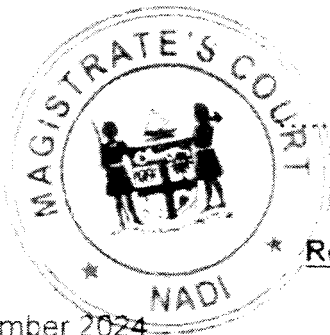
30. Your final sentence is 9 months' imprisonment.

31. Your sentence of 9 months' imprisonment will be wholly suspended for a period of 3 years.

32. If you commit any other offence within the next 3 years, your sentence may be activated.

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

34. 28 days to appeal.



Talei Kean

Resident Magistrate

27th September 2024