IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

000203

Criminal Appeal No. 7 of 1984.

Between:

SILIVENUSI KOROI BULIVAKARUA Appellant

and

REGINAM Respondent

Mr. I. Khan for the Appellant
Mr. Sabharwal for the Respondent

JUDGMENT

This is an appeal against conviction from the Suva Magistrate's Court where on 25th March 1983 appellant was convicted after trial on three charges, namely forgery contrary to section 341(1) of the Penal Code, uttering a forged document contrary to section 343(1) of the Penal Code and obtaining money on a forged document contrary to section 345(a) of the Penal Code and was sentenced to a fine of $300, presumably to cover all three offences, which is somewhat anomalous.

The two main grounds of appeal are -

1. That the trial Magistrate erred in law in ruling at conclusion of the prosecution evidence that there was a case to answer; and

2. That the trial Magistrate erred in law in not applying the proper test of "forgery" and "intent to defraud" to the facts of the case.

The evidence traversed at the trial ranged over a wide variety of matters of fact. With respect much of the evidence which was led was quite unnecessary for disposal of

the real issue before the Court, namely whether at all material times the appellant had an intent to defraud in regard to all three charges.

The basic facts giving rise to the three charges with which appellant was convicted can be briefly summarised. On or about 17th December 1981 appellant, the head of the Yavusa "Walakewa" on Cicia Island in Lau obtained $3,110.67 from the Native Land Trust Board on the authority of a letter dated 16th December 1981 which was written by appellant himself on behalf of members of his mataqali (Exhibit 3).

It appeared he wrote the letter after having consulted and obtained the consent of the majority of members of his mataqali and the assumed consent of two or three others who were not present at the village meeting which decided the withdrawal of mataqali's lease money from the Native Land Trust Board for reconstruction of their mataqali house in their village, Tarakua on Cicia Island. On the authority of the letter the money was in fact paid to appellant who used the money in connection with the rebuilding of their mataqali house which has been completed and is now serving a very useful purpose in the community life of the village.

In the letter of authority what appellant did was that he not only wrote down the instruction to the Board for the withdrawal of certain lease monies standing to the credit of his mataqali but also purported to sign for each of the named members of his mataqali on the letter. Although the signatures were false in the sense that they were not signed by the purported signatories themselves, the instruction contained in the letter for withdrawal of lease money was on the evidence genuine so far as the majority of the members of the mataqali was concerned.

One of the essential ingredients to be proved by the prosecution beyond any reasonable doubt with regard to the three offences concerned is that the appellant had acted with intent to defraud. The main question therefore in this appeal is whether

the prosecution had satisfied the standard of proof required in relation to such an intent to defraud on the part of the appellant.

From the basic facts which I have referred to it seems clear that the money which appellant withdrew from the Board on behalf of his mataqali had in fact been used for the reconstruction of the mataqali house as was originally approved in the village meeting which was held for that purpose. In my view in these circumstances it is difficult to see from the evidence how appellant could be said to have acted with an intent to defraud. No doubt the way appellant went about getting the money from the Board was highly unorthodox but it is clear that he was motivated more by a strong desire to get the mataqali house in Tarakua rebuilt than any criminal designs against mataqali funds.

In the circumstances of this case I am satisfied on the evidence adduced that the prosecution could not properly be said to have proved beyond all reasonable doubt an intent to defraud by the appellant so as to justify his conviction on all three offences in respect of which he was convicted.

The appeal will therefore be allowed and the conviction of appellant on all three charges is set aside and the fine, if already paid, must be refunded.

T. Tuivaga

Chief Justice

Suva,
11th May 1984.