

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 067 of 2023
[High Court Criminal Case HACD 001 of 2021S]

BETWEEN : **SHEENAL DEVI** *Appellant*

AND : **FIJI INDEPENDENT COMMISSION**
AGAINST CORRUPTION [FICAC] *Respondent*

Coram : **Mataitoga, RJA**

Counsel : **Sharma D for the Appellant**
: **Fatafehi S for the Respondent**

Date of Hearing : **2 August 2024**

Date of Ruling : **15 October 2024**

RULING

1. The appellant [Sheenal Devi] was charged by Fiji Independent Commission Against Corruption [FICAC] in the High Court (Anti-Corruption Division) as follows:

FIRST COUNT

Statement of Offence

FORGERY: Contrary to Section 156 of the Crimes Act No. 44 of 2009.

Particulars of Offence

SHEENAL DEVI between the period of 1st January 2017 and 11th May 2020, at Sigatoka in the Western Division, made a false document namely the Land Transport Authority Application for Transfer or ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 by forging the signature of Jean Ravikash Mami Chetty and entering her mobile number 8675590 under the present owner section on the said application with the intention to dishonestly induce the duty of a public officer at the Land Transport Authority to accept the document as genuine and it being accepted, dishonestly obtained the legal ownership for motor vehicle registration number IA 649.

ALTERNATIVE TO COUNT ONE

Statement of Offence

GIVING FALSE OR MISLEADING DOCUMENTS: Contrary to Section 156 of the Crimes Act No. 44 of 2009.

Particulars of Offence

SHEENAL DEVI on the 11th May 2020 at Sigatoka in the Western Division, produced a document namely the Land Transfer Authority Application for Transfer of ownership or Motor vehicle/Trailer for the motor vehicle registration number IA 649 to Kelera Dreudreu Vakaudekoro and does so knowing that the said document is false and it was produced in purported compliance with the Land Transport/vehicle (Registration and Construction) Regulation 2000.

SECOND COUNT

Statement of Offence

FORGERY: Contrary to Section 156 (1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

BHIMLESH CHAND between the period of 1st January 2017 and 11th May 2020, at Sigatoka in the Western Division, made a false document by certifying that the information contained in the Land Transport Authority namely the Land Transport Authority Application for Transfer of ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 as true and correct without verifying the details contained therein and in the absence of the legally registered owner Jean Ravikash Mami Chetty with the intention that ***SHEENAL DEVI*** will use it to dishonestly induce the duty of a public official at the Land Transport Authority, to accept the document as genuine and it being accepted, dishonestly influence the exercise of a public duty or function.

THIRD COUNT

Statement of Offence

USING FORGED DOCUMENT: *Contrary to Section 157(1) of the Crimes Act No. 44 of 20009.*

Particulars of Offence

SHEENAL DEVI *between the period of 11th May 2020, at Sigatoka in the Western Division, knowing that the Land Transport Authority Application for Transfer or ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 is a false document used it with the intention of dishonestly inducing the duty of a public official to accept the document as genuine and it being accepted dishonestly obtained legal ownership of motor vehicle registration number 1A 649.*

2. At the end of the trial, the finding of the court was recorded as follows:

“Findings of Court

47. *On the above analysis, this Court makes the following determinations:*

- i. *Acquit the 1st Accused from Count 1 and make no determination on the alternative Count.*
- ii. *Acquit the 2nd Accused from Count 2.*
- iii. *Convict the 1st Accused for Count 3 for Using a Forged Document under Section 157(1) of the Crimes Act of 2009.”*

FICAC v Sheenal Devi [2023] FJHC 382

3. The appellant was convicted only of Count 3 for **USING A FORGED DOCUMENT**, contrary to section 157 (1) of the Crimes Act 2009. The particulars of that charged was:

SHEENAL DEVI *between the period of 11th May 2020, at Sigatoka in the Western Division, knowing that the Land Transport Authority Application for Transfer or ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 is a false document used it with the intention of dishonestly inducing the duty of a public official to accept the document as genuine and it being accepted dishonestly obtained legal ownership of motor vehicle registration number 1A 649.*

Amended Ground of Appeal

4. As earlier noted, there were 5 grounds of appeal in the initial application made on behalf of the appellant by her previous solicitors. These were filed in court on 14 February 2024. Those grounds were abandoned by the new counsel who merely submitted 1 ground of appeal.
5. The one ground of appeal is 'that the trial judge erred in law and fact in holding **that PEX3 (the Vehicle Transfer Form) was a false document.**

Governing Law

6. This application concerns issues of mixed law and fact, therefore section 21 (1) (b) Court of Appeal Act is applicable. The guiding principle in determining whether leave to appeal is granted is if after assessing the grounds of appeal the court determines that the grounds have a reasonable prospect of success on appeal to the full court: **Caucu v State [2018] FJCA 171; Sadrugu v State [2019] FJCA 87.**

Assessment of the Ground of Appeal

7. In support of this ground, counsel for the appellant made submission which focused on the elements of the offence of **Using a Forge Document**, under section 157 of the Crimes Act. In the judgement, at paragraph 9, the elements that had to be established by the Prosecution for this offence were:
 - i. The Accused
 - ii. With the knowledge that the document is a false document
Uses the false document;
 - iii. With the intention of dishonesty inducing another person in the other persons capacity as a public official to accept it as genuine; and
 - iv. If the document is accepted, dishonesty obtains a gain, dishonesty causing a loss, or dishonesty influence the exercise of a public duty or function.
8. The document in question PEX 3, is a copy of the Vehicle Transfer Form. The Trial Judge held that this document was a false document and his reasoning was stated as follows at paragraph 43 and 44 of the judgement:

"In this regard, Section 153 (1)(e) of the Crimes Act 2009 defines a false document, as below:

"153. False documents

1. *For this purposes of this subdivision, a document is a false document if, and only if-*
 - (e) *the document, or any part of the document, purports to have been made or altered on a date which, at a time at which, at a place at which, or otherwise, in circumstances in which it was not made or altered".*

In this matter, though PW1 had signed PEX 3 in 2016, when this was submitted by Sheenal Devi to the LTA the date is carried was 11/05/2020. Therefore, it is clear that by PEX 3, the 1st Accused had submitted a false document to the LTA. Further, as a result of the submission of PEX 3 as a genuine document to PW2, a public officer employed at LTA, vehicle bearing registration no IA 649 had been transferred to the 1st accused. That being so, Sheenal Devi the 1st Accused has gained ownership of the vehicle IA 649. Considering the above analysed circumstances, this Court is satisfied that all the required elements for Count 3 has been established by the Prosecution beyond reasonable doubt."

9. Counsel for the Appellant submits that if one analyses the Trial Judge's logic i.e:
 - i. PEX 3 was signed in 2016 but it was submitted to the LTA on 11th May 2020
 - ii. For this reason, the Judge felt that this was a false document.
 - iii. Following on from this the Learned Judge then said that she had submitted this false document to LTA passing it off as a genuine document and the public officials relied on this false document to transfer vehicle no. IA 649 to her, which was a gain to her.

Was PEX 3 a False Document?

10. Counsel for the appellant submits that PEX 3 was **not a false document** for the following reasons.
 - i. The Appellant never lied about the date when the PEX 3 was signed.
 - ii. She admitted it was signed in 2016
 - iii. PEX 3 was however not dated by either her or Jean Ravikash Chetty Mani.

- iv. She didn't lodge the document in 2016 because she had not acquired ownership of the vehicle at that time.
- v. She only acquired ownership of the vehicle in May 2020.
- vi. When she acquired ownership of the vehicle in May 2020 she gave the undated PEX 3 to **Apenisa Naqaravatu PW3** who had agreed to lodge the document on her behalf with LTA.
- vii. Apenisa then lodged the document with **Kelera Vakaudekoro (PW2)** on 11th May 2020.
- viii. In her evidence Kelera confirmed she completed Part 4 of the PEX 3 **and added the date 11/5/2020.**
- ix. This was clearly borne out by the evidence in Court.

11. Paragraphs 17 and 18 of the Judgment set out the evidence of Kelera Vakaudekoro i.e

17. *The second witness for the Prosecution was **Kelera Vakaudekoro (PW2)** who was a customer service officer at LTA. According to her, on 11/05/2020 she had been at work at Sigatoka LTA office and when she receives an application form she will check the signatures and the signature of the witness and compare with what is in the system. Thereafter, she will amend the names in the system in LTA soft and the driving license number of the new owner and save the transfer form in the system. After that the wheel tax and transfer fee will be collected and stickers will be given to the new owner.*

18. *She testified that she completed the official use part of the **PEX 3**, and her handwriting and initials are there. According to her the certifying person of the form has to know the buyer and the seller but doesn't need to be there. She claimed that **PEX 3** had been brought to her by **Apenisa Naqaravatu**, a road safety officer at LTA. She claimed that this form was completely filled except for part 4 and the date which she filled as 11/05/2020. Apenisa had approached her 3 times expecting her to complete the transaction soon. She mentioned that for the transfer one of the parties should be present and for **PEX 3** the buyer the 1st Accused had been present and she had seen her in the car from the side door. Though she had not seen the seller at all, signature of the seller had been the same as the system. She further informed Court that **PEX 3** was certified by **Bimlesh Chand**, who was a manager at LTA. For this transfer, **Apenisa** had brought ID copies of the buyer and the seller.*

12. The conclusion of the trial judge set out at paragraph 8 above is not supported by the evidence of PW2 set out in paragraph 11 above.

13. Counsel for the Respondent submit in response that:

- 2.1 The trial Judge correctly established that PEX 3 is a false document as stated at paragraph 37 – 44 of his judgment. The analysis put forward by the Appellant is misconceived.
- 2.2 The time that PEX 3 was made in 2016 used 4 years after was not the only consideration the learned Trial Judge considered when he deemed it a false document as per section 153(1). The Learned Trial Judge also took into consideration the background of how PEX 3 was presented as a genuine document to the LTA, which in fact was not as it was made in 2016.
- 2.3 PEX should reflect an accurate representation of both parties having a mutual agreement for the transfer of IA 649 on the terms stipulated on the document at the time of its presentation of the LTA to facilitate the transfer. It is a false document as it purports to express the knowledge, consent, express terms (sale price etc) and authority of PW1 as the owner and seller of IA 649, which in actual fact was not given or existed at the time of transfer. The consent and terms stated in PEX 3 is a false representation as it did not reflect the actual circumstances that PW 1 faced when he wanted the Appellant to return his vehicle after he found her with another man.
- 2.4 It is immaterial whether the document was produced within 7 days in 2016, 2018 or 2020 when acquiring the vehicle. The crux of the matter is that the application form enables the Land Transport Authority to execute its executive functions provided under law when the particulars of the document truthfully and accurately demonstrate the intents of both the seller and buyer as reflected in the said document at the time it was presented. This was clearly not the case.

14. In assessing the submission from counsel for the appellant and the response of the respondent, I am satisfied that the arguments advance for the appellant has reasonable prospect of success. I allow leave to appeal.

ORDER:

1. *Application for leave to appeal against conviction is allowed.*



[Handwritten Signature]
Hon. Isikeli'U Maitoga
Resident, Justice of Appeal