

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 018 OF 2006

STATE

v.

PENIASI KUNATUBA

Hearing: 25<sup>th</sup> September - 13<sup>th</sup> November 2006  
Judgment: 15<sup>th</sup> November 2006

Counsel: Mr. D. Goundar and Ms H. Tabete for State  
Mr. T. Fa for Accused

JUDGMENT

The five assessors have given their unanimous opinions that the Accused is guilty of the offence of Abuse of Office on each count, and that he committed the offences for the purpose of gain.

On Count 1, having directed myself in accordance with my summing up, I am satisfied beyond reasonable doubt that the Accused is guilty of this offence. I am satisfied beyond reasonable doubt that he implemented or initiated a free farming assistance scheme without Cabinet approval,

when as a seasoned public servant he must have known that such authority was required. I am satisfied also that the acquiescence of the Minister of Agriculture did not excuse or exonerate the Accused in the implementation of this Scheme. I am satisfied that this act, which was the Accused's and his alone, was an arbitrary act, an unreasonable act, a dishonest act and one not guided by government procedure. I conclude that on the basis of all the evidence before me.

I am also satisfied beyond reasonable doubt that in implementing the Scheme he abused the authority of his office, in that he managed a system whereby suppliers would get orders to provide implements in breach of all public service procedures.

Further I am satisfied beyond reasonable doubt that he did so for the purpose of gain not only for himself, but also for the suppliers and to entrench political sympathies for a number of politicians under the interim administration.

I am satisfied beyond reasonable doubt that the interests of the Government of Fiji, to expect proper financial procedures to be followed, without waste of the public purse, were prejudiced.

I convict the Accused accordingly on Count 1 of the felony of Abuse of Office.

On Count 2, I am satisfied beyond reasonable doubt that the Accused knowingly breached all rules and

procedures in the expenditure of public funds in the way the Scheme was implemented. The evidence of the breaches in relation to the purchase of goods, the supply of goods, the obtaining of quotations, and the maintaining of accounts is overwhelming. It is evidence of dishonesty and arbitrariness. As Chief Accounting Officer the Accused must have known of these breaches. Certainly his signature is on a number of Local Purchase Orders issued in breach of government procedure. Further, there is evidence which I accept of his personal involvement in the Scheme from politicians who went to see him personally with requests. I am satisfied beyond reasonable doubt, that these persistent, dishonest and deliberate breaches of procedure were known to the Accused, and were countenanced by him. I am satisfied beyond reasonable doubt that in the total expenditure by the end of 2001, of over \$18 million with a further \$5 million in commitments, was in abuse of his office. I am also satisfied beyond reasonable doubt that he incurred such expenditure for personal financial gain, that he assisted politicians to use the Scheme for political gain and that he assisted in the payments to certain suppliers in breach of regulations. Lastly, the Scheme and the expenditure under it were clearly prejudicial to the Government. Firstly the Ministry of Finance was misled as to the nature of the expenditure, listed as it was under a non-existent budgetary allocation. Secondly, the Government was forced to honour the commitments and to regularize the accounts by December 2001 despite the lack of authority for the Scheme. Thirdly, there was over-expenditure on the Scheme to the tune of \$5.1 million with \$18 million spent within the Ministry's total budget but without proper authority.

I convict him on Count 2 of the felony of Abuse of Office for Gain.

Nazhat Shameem  
JUDGE

At Suva  
15<sup>th</sup> November 2006