

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**High Court Criminal Case Number HAC 146of 2010**

**BETWEEN : STATE**

**AND : ROBIN SURYA SUBHA SHYAM**

**BEFORE : HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Ms J. Prasad with Ms. J. Fatiaki for State  
Mr F. Vosorogo for the Accused

Dates of hearing : 1 - 4 and 7 October 2013

Date of Summing up: 11 October 2013

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**SUMMING UP**

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- [1] Ladies and Gentleman, you have heard all of the evidence in this case that you are going to hear; there will be no more evidence; and you have heard Counsel sum up the case from their respective viewpoints. Whatever Counsel have said in their closing speeches is not evidence and you do not have to accept what they say, unless of course you agree with what they say.

- [2] I am now going to sum up the case to you and I am required to direct you on the legal points involved as well as remind you of what I think is the important evidence for you to consider. As with Counsel's speeches, you do not have to accept what I say about the evidence, for the very reason that you are the Judges of the facts. It is what you decide about the evidence that is important, not what I say. Having said that I will do my best to be impartial in my rehearsal of the evidence but if I do appear to be favouring one side over the other, it is for you to agree or disagree with me, as the case may be.
- [3] On the other hand I am the Judge of the law and you must accept what I say about the law. Whatever I say about the law you will accept and apply those principles to the evidence as you find it. You will then after discussing it and deliberating on it, tell me whether you find the accused ("Robin") guilty or not guilty of this count of money-laundering against him.
- [4] When you decide on this case, you must not speculate on the evidence. You cannot assume something has happened if there is no evidence of that fact before you. You can judge the case **only** on the evidence you have heard and seen in the last week or so in this Courtroom. That evidence in this case is from the witnesses who have gone into the witness box and told you of their involvement with Robin or have gone through the documents with you; documents which the Prosecution say prove that improper practices were going on in the Inland Revenue department.
- Apart from not speculating, it is also not proper for you to judge this case with sympathy for or prejudice against any one particular party. For example, if you resent paying tax and you hate the Inland Revenue for levying tax upon you, you might think that someone who might fraudulently divert Inland Revenue money away from the Department is a bit of a hero. I am afraid you cannot let such thinking affect your judgment of this case. You will assess the evidence dispassionately and analytically.

- [5] Before I go any further it is most important that I remind you of what I said to you when you were being sworn in. Before you can find Robin guilty of the money-laundering count that he faces, you must find beyond reasonable doubt that he is guilty. In other words you must be **sure** of it. Nothing less will do. Remember that Robin doesn't have to prove anything to you; it is a burden on the State throughout to prove the case against him. If you have a reasonable doubt, and I stress that it must be reasonable, not fanciful, then you will find him not guilty.
- [6] I now turn to the legal definition of money laundering.
- [7] Money laundering in our law is engaging, directly or indirectly in a transaction, or transactions that involve money that is the proceeds of crime and that the person who engages in this activity knows or ought reasonably to know that the money is derived, directly or indirectly from some form of unlawful activity.
- [8] That is the proper legal definition but I will try to break that down for you in the context of this case and direct you on the elements of the offence that you must find proved beyond reasonable doubt.
- [9] The charge, or information, that you have before you states that between 1st March 2008 and 30th September 2010, Robin engaged directly or indirectly in transactions involving nearly \$350,000 in various itemized bank accounts, knowing or ought reasonably to be knowing that the monies had been derived from some form of illegal activity.
- [10] First you must find that Robin is involved somehow in transactions involving money. That involvement could include depositing money, transferring money between accounts or receiving money. Secondly you must find proved that the money he is dealing with represents the proceeds of crime. And thirdly you must find that Robin **knew** that the money was generated by crime, by some kind of unlawful activity. Even if you can't be sure that Robin criminally created the illegal funds himself, it is enough for

you to find that he, or any right thinking person, would have known that the funds were the product of illegal activity.

- [11] Ladies and Gentlemen; you will be aware that a large amount of the Prosecution evidence came from witnesses who had been involved in this affair, had been charged with offences at one stage, but had then been given Immunity by the authorities in return for their giving true and honest evidence against the accused. You have seen the immunity letters in each instance and seen that they are immunized in return for giving true and honest evidence in this case.
- [12] In law these witnesses are accomplices. Accomplices often give evidence against accused persons and of course their evidence must always be approached with caution. This is because accomplices may want to implicate others to save themselves or may exaggerate other people's roles in the offence and diminish their own. For this reason the law says that it is dangerous to convict on the evidence of accomplices alone and that even if you accept the evidence as credible and reliable you should look for other independent evidence to corroborate the evidence of an accomplice. However, even if you find no such corroboration, it is still open to you to convict the accused on the evidence of accomplice witnesses alone, as long as you have warned yourselves about the danger of it.
- [13] What sort of evidence can corroborate the evidence of an accomplice? Firstly, I must tell you that accomplices cannot corroborate each other. You must look for evidence which is independent of the accomplices. The independent evidence you are looking for must obviously implicate the accused. In this case there is a body of circumstantial evidence capable of corroborating the evidence of the accomplices but it is a matter for you whether you accept these pieces of evidence as corroboration in fact. Before going on to discuss the evidence, I must also now direct you on another legal point.

- [14] That is the issue of circumstantial evidence. A lot of evidence relied upon by the State in this case is not capable of proof of guilt in itself, but when it is looked at altogether it creates a body of evidence that could lead to an irresistible inference of guilt. This is the evidence which has been led in the first part of the trial in connection with the documents and actions of the accused in his role as an assessor in the Inland Revenue Department. The later evidence of the immunity witnesses is **direct** evidence, if you accept it, of Robin's involvement in the monetary transactions. The prosecution is saying that apart from this and by way of corroboration of the immunity witnesses' evidence, the evidence of the finding of documents in Robin's home, the falsity of some of the contractors' Certificates, the changing of details on the computer records of various taxpayers is all circumstantial evidence which would lead to the conclusion that Robin is guilty of being involved in these illegal transactions.
- [15] Now circumstantial evidence is powerful evidence, but it is important that you examine it with care and consider whether it is reliable and does prove guilt or on the other hand it reveals any other circumstances which are or may be of sufficient reliability and strength to cast doubt upon or destroy the Prosecution case.
- [16] Finally you should be careful to distinguish between arriving at conclusions based on reliable circumstantial evidence and mere speculation. Speculating in a case amounts to no more than guessing or making up theories without good evidence to support them and neither the Prosecution, the Defence, nor you should do that. Similarly the State is asking you to draw an inference of guilt from some of the circumstances. But you may only do that if that inference is the only reasonable inference to draw from the proved facts. So, if from a set of facts you find proved there is a reasonable inference to draw against the accused as well as one in his favour, then you must not draw the adverse inference.
- [17] The first part of the Prosecution case dealt with witnesses giving evidence of procedures and records in the offices of the Inland Revenue Department

("IRD"), where Robin used to work. It is an agreed fact that he was a tax assessor and acted as a Senior Tax Assessor for various periods in 2009 and 2010. Mr Solomone told us that he was the National Manager Internal Assurance and it was his job to oversee internal audit, risk management and to conduct internal investigations. When the Police came to him in July 2010 with their search warrant, neither he nor any other IRD staff had any knowledge of irregularities within the Department. He assisted the Police to detain two suspected staff members for their enquiries and to search for IRD records. He was unable to find a lot of the records listed on the search warrant; records that should have been there in the records Office. In his evidence he was taken by the Prosecutor through various returns, purportedly being for one Abdul Jamal Aziz ( a person we were all later to come to know as "Jimmy"). In amongst these returns that he looked at for Jimmy (Exhibits P13, P14,P15 and P16) there was an application for VAT Registration which had been oddly filed after the tax returns had been filed. He took us through the computer entries for Jimmy's documents which he said were impossible to reconcile, and concluded that one of the returns must have been filed much earlier than recorded on the document. Mr. Solomone told us that a week after the Police came, they came back to him at the office with more returns that they had found at Robin's home pursuant to a search there. He added that returns should not have been removed from the IRD offices without authority. Amongst the documents round in Robin's home were documents, such as a depreciation schedule, in the name of Farzana Shah, documents that should have been attached to returns and kept in the IRD offices. He then analyzed many other documents found in Robin's home. He said that some of the Contractors' Certificates found which would support a tax payer's return were found to be bogus. He finally said that it was the case sometimes that IRD employees would take documents home for verification but they would not keep them there for one year. It would be pointless to work on documents at home because there was no access to their "F.I.T.S." system at home.

- [18] The prosecutor called 3 witnesses from different companies to say that Contractors Certificates found were forgeries and that the persons to whom the Certificates were said to relate were not employed by their companies.
- [19] We then heard from Bank Officers who validated the copies of the relevant bank statements from their banks and they pointed out the dates and the amounts that had been deposited from Inland Revenue into the accounts of Abdul Jamal Aziz, Prakash Shiu Narayan Sharma, Mohammed Nawaz Shah, Razia Nasreen Khan, Naizal Rahman Khan, Haizal Rahman Khan, Farzana Nisha, Ajit Singh, Ajit Narayan Sharma and Nitesh Nand Lal.
- [20] Then Ladies and Gentlemen we heard from the 9 immunity witnesses - all of whom were the bank holders of the various accounts that the Bank witnesses had produced. You will recall how I have just told you that you must approach these witnesses' evidence with care. You can accept what they say as long as you have warned yourself about the possibility that they may be protecting themselves by playing down their role and building up the role of Robin. At the end of the day, it is a matter for you.
- [21] Each of these 9 witnesses told us of the bank accounts they had,; some had one, some had two and some had three. They had given the details of their bank accounts either to Jimmy or to Robin because Robin was getting money in that he didn't want his wife to know about or in Nitesh Lal's case, it was Jimmy who said that he needed an account for his real estate commissions to come to. Even so, he said he was told by Jimmy and Robin to open the account. Jimmy himself said that he gave the money to Robin at Nasoqo House, the former offices of IRD, Jimmy told us of giving Robin large sums of money, of going to Rakiraki at the request of Robin to cash a cheque with Prakash Sharma. When these matters came to the attention of the Police, Jimmy said that Robin told him and a couple of others to take the blame and he would look after their families.

- [22] Razia, Jimmy's wife had given her bank accounts to be made use of and the withdrawals were handled by Jimmy. She didn't see any cash given to Robin.
- [23] Naizal, Razia's brother withdrew money from his account and went with Jimmy to the IRD offices and saw Jimmy go in to take the money he thinks to Robin.
- [24] Prakash Sharma was Jimmy's friend and wanted to help him. Jimmy told him when money was in his account, he withdrew it and gave it to Jimmy. He went with Jimmy to the IRD offices and saw Jimmy give the money to Robin in the cafeteria of IRD. He gave his brother Ajit's bank details on Jimmy's request. When he did, money came in and there was a cheque to be cashed. He and Jimmy went to Rakiraki to meet Ajit and cash the cheque. Robin had given the cheque to Jimmy a couple of days earlier. They cashed the cheque and the money was taken back to Suva. Money was later withdrawn from a bank in Tavua and the money was taken to Denarau and given to Robin who was there with 3 or 4 girls. Prakash saw Jimmy give the money to Robin and Robin gave him \$50 or \$100 to buy grog.
- [25] Ajit confirmed these details in his evidence although he didn't see the money given to Robin
- [26] Mohammed Nawaz Shah said that he knew that the money coming in to his account was from Robin. He had met Robin in 2005 and knew him from boxing. He had given his bank account details because Robin wanted to keep details of income from his wife. Jimmy told him when the money was in his account. When he withdrew the money he "didn't have proper pockets" so he gave it to Jimmy . It was taken on various occasions to Robin's home and Robin's work. Robin told him to use the money not withdrawn on himself for grog and taxis. At one time (21st May 2010) he had withdrawn \$6,000, given it to Jimmy and saw Jimmy give it to Robin in the cafeteria at his office. He was one of the few people called to Robin's



home in July 2010 when matters came to a head. Robin told them that "there was a problem with the money coming in" and that if the money was still in the account don't withdraw it - it should go back to FRCA. The witness went to the Police the next day.

- [27] You will recall that in cross examination of this witness, Mr Vosorogo put a lot of things to him that were very prejudicial against Jimmy. For example that Jimmy was buying stamps (or seals) in Toorak, and that he was paying \$10,000 for a taxi. Now three issues arise here as a result of that questioning - one is that matters put to a witness which are denied (and they certainly were in this case) are not evidence. Secondly if these matters concern Jimmy (which they obviously did) they should have been put to Jimmy and they weren't. Thirdly there is no evidence from any quarter that these matters occurred so it was unfair to put them to an independent witness because there was no evidentiary foundation for the allegations. Therefore these matters carry very little evidentiary weight if any at all. I ask you to put them from your mind.
- [28] Farzana Nisha is Mohammed Nawaz Shah's wife. The money that went into her account was given to her husband and she did not know what happened to it after that, although she knew that it was Robin's money.
- [29] Haizel gave Robin two account numbers. He knew that the money coming into his accounts was from Robin. On 28 October 2009 he withdrew \$12,000 and gave it to Jimmy who said we will go and give it to Robin. They went to the IRD complex at Nasese and he stayed in the car while Jimmy took the money inside. This happened on two occasions but he admitted in cross-examination that he didn't actually see Jimmy give the money to Robin - he just assumed he did.
- [30] Nitesh Nand Lal was the last accomplice witness. He was a friend of Robin because he used to service his car. He thought the money coming into his account was Jimmy's real Estate commission. In answer to questions from me, he admitted that both Jimmy and Robin had instructed him to

withdraw the money and in the latter stages it was Robin who told him to withdraw \$10,000 and the smaller amounts thereafter.

- [31] The last witness for the Prosecution was the Investigating Officer, Inspector Nand. He told us that the affair first came to the attention of the authorities because the "accomplices" had come to report the matter to C.I.D. Headquarters. As a result he had the appropriate bank accounts searched and the FRCA offices where he liaised with Mr. Solomone to retrieve Inland Revenue documents. He was able to seize a few return forms from FRCA as well as electronically generated records from the taxation computer system. Not all the returns that he was searching for were at the offices of FRCA but other forms were found at Robin's residence. He made other investigations and discovered that some of the details of Contractor Certificates attached to the forms he was interested in were false - the employees were not so employed as claimed. The Inspector also interviewed Robin under caution in connection with alleged fraud in the Inland Revenue Office.
- [32] I must now Ladies and Gentlemen give you directions on how to approach this interview under caution which has been placed before you as Exhibit P3.
- [33] It is agreed between the parties that the interview can be produced in evidence before you as an Exhibit. It is therefore evidence for you to consider in the normal way, either for the accused or against him. There is one condition to that however; it is stated in the agreed facts that Robin reserves his position on certain answers in that they are not complete. Two issues arise out of that partial hesitation about the authenticity of the record of interview and they are these; the Inspector who was the interviewer says in his evidence that the answers to those particular questions were as given by Robin and there was nothing left out and secondly there is no evidence before you as to what the complete answers should have been. It can be left then to you to consider the content as it is. You will recall in that interview that Robin after detailing his role in assessing the subject tax returns admitted having forms at home which he

said was not allowed, but he denied fabricating documents such as the Contractors' Certificates or forging other documents at all. He denied having been given cash by the people to whom refunds were made and he denied any involvement in the fraudulent activities at all. He certainly didn't receive any money he says.

[34] When the Prosecution had closed its case, you heard me tell Robin his options in defence. He could remain silent and say that the State had not proved their case to the requisite standard; he could give evidence in his own defence and be cross-examined. In either case he could call witnesses in his defence. You are aware that Robin chose to remain silent which he is quite entitled to do and to call no witnesses. The accused does not have to prove anything to you because that burden is on the State. You must not assume that he is guilty because he has not given evidence. On the other hand it means that there is no evidence from the accused to undermine, contradict or explain the evidence put before you by the prosecution apart from what is in Robin's cautioned interview. However, you still have to decide whether, on the prosecution evidence you are sure of the accused's guilt.

[35] So Ladies and gentleman, that is all I wish to say about the evidence and I am coming to the end of this Summing Up. Before finishing, and to help you decide the issues on this charge I wish to clarify my earlier directions on the Law.

[36] Remember this is not a case of theft; it is a case of money laundering. It is not a case about Jimmy - it is a case about Robin. You need to have found proved by the State that Robin knew that these monies were illegally obtained, or he should have reasonably known that they were illegally obtained and with that knowledge he played a part in depositing, withdrawing or receiving that money.

[37] By the cross-examination of the witnesses, Counsel for the accused appears to have been raising the defence that it was all Jimmy's doing and

that Robin was just an innocent party. Even if you find that Jimmy was involved to any extent, it is not Jimmy who is on trial - he has immunity. You will look at what Robin did and not at the suspicious dealings of anybody else. But you will bear in mind the warnings I have given you on accomplice witnesses.

[38] Well Ladies and Gentleman that is all I wish to say. You will retire now and consider your opinions. Your possible opinions will be "guilty" or "not guilty". It would be best if the three of you could all agree but that is not strictly necessary. You will be asked individually for your opinions when you return. Please let a member of my staff know when you are ready and I will reconvene the Court.

[39] You may now retire but before you do I ask Counsel if there is anything in this Summing Up they would want amended or added.

**Paul. K. Madigan**  
**Judge**

At Suva

11 October 2013