

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case Number HAC 146 of 2010

BETWEEN : **STATE**

AND : **ROBIN SURYA SUBHA SHYAM**

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

Dates of hearing : 1 – 4, 7 and 9 October 2013

Date of judgment : 11 October 2013

Date of Sentence : 14 October 2013

SENTENCE

Money Laundering

1. The accused has been convicted after trial of the following offence :

Statement Of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act of 1997.

Particulars of Offence

ROBIN SURYA SUBHA SHYAM between the 01st day of March 2008 and the 30th day of September 2010 at Suva in the Central Division engaged directly or indirectly in transactions involving the sum of \$349,870.63 held in bank accounts specified in Schedule A, that is the proceeds of crime, knowing or ought reasonably to have known, that the said sum of money had been derived or realized, directly or indirectly, from some form of unlawful activity.

2. The brief facts of the case revealed at trial are that at the relevant times the accused was an employee of the Fiji Revenue & Customs Authority (“FRCA”). He worked in the Inland Revenue Section assessing various types of income tax returns, checking data input and with authority to approve refunds of income tax to business and personal taxpayers.
3. In July 2010 it was discovered that many of the refunds assessed and approved by him were in fact unjustifiable and had been predicated on forged supporting documents. A Police search for the underlying documents at the offices of FRCA proved futile, with many of those documents missing from the Department’s Registry. FRCA documents were found in the home of the accused; they had been removed from the offices of FRCA without authority.
4. The evidence of nine accomplices revealed that his “*modus operandi*” was to ask friends for their bank account details so that the refunds could be paid into those accounts, then withdrawn in cash and given to him. He told the majority of these accomplices that he was owed money but did not want his wife to know that. He was assisted in getting bank account

details and getting the cash withdrawn by one of the accomplices, known to all as “Jimmy”. Six or seven of the account holders being used for this scheme were family or friends of Jimmy and it was Jimmy, usually along with Robin, who orchestrated the opening of accounts and later withdrawals of the money to give to Robin. A total of nearly \$350,000 was obtained by Robin as a result of these false income tax refunds. Robin alone was responsible for funding the various accounts by illegal means and he, often with the help of Jimmy, received the cash realized.

5. **Mitigation**

The convicted accused is 41 years old, married with two children aged 11 and 8. On discovery of these offences, his employment was terminated by FRCA and he has been unemployed ever since.

6. His counsel claims that he is remorseful and is “sorry for what has happened”. Yet, at the same time he denies receiving any of the laundered funds and still blames Jimmy (one of the accomplice witnesses) for coming up with the idea to generate those funds. An unrepentant criminal cannot be said to be remorseful, and in addition to that there has been not one shred of evidence of remorse on the part of the accused throughout the trial.

7. The maximum penalty for money laundering is a fine not exceeding \$120,000 or imprisonment for a term not exceeding 20 years, or both. In the very few cases that have come before the Courts in Fiji, a tariff for imprisonment in the range of five to twelve years has been set. (see **Monika Aurora** HAC 125 of 2007 and **Johnny Albert Stephen** HAC 88 of 2010). In the **Stephen** case, this Court said that a sentence at the lower end of the band would be passed for unsophisticated domestic money laundering on a small scale with little benefit to the accused.

8. Mr. Vosarogo refers to the **Monika Aurora** and **Stephen** cases, as well as another case of this Court (**Anand Kumar Prasad** HAC 24 of 2010 Ltk)) in which sentences of two and four years were passed for money laundering. The **Prasad** case however can be distinguished because the Court was restricted in that case by the decision of the Court of Appeal in **O'Keefe** AAU 0029.2007 to pass a sentence commensurate with the offence generating the funds. There is no such restriction in this case.
9. On the basis that a possible sentence could be two years (based on **Prasad**) Mr. Vosarogo urges the Court to pass a lenient term and to suspend the sentence. For such a serious case as this the submission is not only legally misconceived on an misunderstanding of the sentences passed in **Prasad**, it is a submission that is surprising in the context of the seriousness of this offending.
10. Counsel even further submits that this may be a suitable case for weekend detention only, as was the sentence passed in **Vocea** HAC 129 of 2009. He makes this submission on the basis of his client's "early guilty plea, remorse, age, character, previous good record and community standing". Apart from the fact that there was no early guilty plea (Counsel has just finished unsuccessfully defending his client at trial), there is no remorse whatsoever, nor any evidence placed before the Court of his character or community standing. His clear record is of only limited value given his total lack of remorse.
11. While a good Defence Counsel should be obdurate as well as persuasive in his submissions in mitigation, he does not serve his client well if he is totally unrealistic.
12. The present case is very much different from the factual scenario in **Stephen**. The money laundered (some \$350,000) was actually generated

by the accused himself in a long term sophisticated deception on his employer. By laundering the monies through the accounts of others, he directly benefited by receiving cash for all the funds that he had dishonestly diverted. The victim of the crime was the Government Revenue, and therefore every citizen of this country. Very often the money being laundered by a natural person (as opposed to a corporation) will be ill-gotten gains generated by others and as such it should attract a lesser sentence than a person laundering funds that he himself has obtained illegally.

13. There are several major factors of aggravation in this particular case:

- The proceeds of crime being laundered are funds that are the rightful property of FRCA; therefore it is a fraud on the Government Revenue.
- The fraud generating these illegal funds was planned over a lengthy period from March 2008 to September 2010.
- The method used was highly sophisticated and designed not to be detected (in fact it wasn't detected by the FRCA authorities).
- At least seven of the account holders used were naïve and unsophisticated innocent "dupes".
- The accused has displayed a total lack of remorse throughout these proceedings, and is still in a state of denial.
- In the face of overwhelming evidence against him he has attempted to lay the blame on others who were once his "friends".
- There is no trace of any of the \$350,000 generated by this "scheme" which could be returned to the Government Revenue.

14. A starting point at the top of the range of the tariff for money-laundering would be for an offence with international connotations, and which would impact on the probity of the nation's banking reputation. Whilst this offence does not have international implications, it is nevertheless very serious domestic offending with its long sophisticated planning and a fraud operated by the launderer himself on the Government Revenue. As such it is best sentenced by a starting point at the mid point of the tariff and then weighted for the serious aggravating features.

15. I take a starting point for this offence of eight years imprisonment. For the serious aggravating features referred to in paragraph 13 (*supra*), I add a further five years imprisonment. From this interim total, I deduct one year for the accused's family circumstances and his clear record. The accused is sentenced to a term of twelve years' imprisonment and he will serve a minimum term of ten years before being eligible for parole.

Paul Madigan

Judge

At Suva

14 October 2013