

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: HAA 32 OF 2013

BETWEEN: NEW WORLD LIMITED T/A NEW WORLD SUPERMARKET

Appellant

AND: FIJI COMMERCE COMMISSION

Respondent

Counsels: Mr A Patel for the Appellant
Mr A Reddy for the Respondent

Date of Hearing: 16 May 2014

Date of Judgment: 4 June 2014

JUDGMENT

1. The appellant was charged before the Lautoka Magistrate Court with the following offence;

STATEMENT OF OFFENCE

Was offering for sale by retail certain fixed price control goods at any excessive price contrary to schedule 1 of the Commerce (Price Control) (Wheat Products Wholesale and Retail) Order 2012, Section 52 (a) and Section 129 (3) of the Commerce Commission Decree No. 49 of 2010.

PARTICULARS OF OFFENCE

New World Limited T/A New World Supermarket did on the 20th day of October 2012 at Lautoka in the Western Division being a trader was offering for sale certain fixed price control goods at an excessive price namely; approximately 34 bags of 10kg of FMF Normal flour at \$12.38 per bag instead of \$12.36 per bag the maximum calculated price in excess of \$0.02 per bag.

2. By letter dated 14th February 2013, the appellant had pleaded Guilty to the offence.

3. The appellant was imposed a fine of \$15,000.00 with \$34.50 as Court costs.
4. On 19.4.2014 the appellant had appealed against the said sentence within time.
5. The grounds of appeal are:
 - (i) That the learned Magistrate erred in law by imposing a sentence that is harsh, excessive and in disparity with the sentences imposed in similar offences.
 - (ii) That the learned Magistrate erred in law and in fact by failing to properly consider the letter dated 14th February 2013 where the appellant admitted the offence, pleaded Guilty in writing and confirmed the price overcharged was a nominal amount of \$0.02.
6. Both parties have filed written submissions.

1st Ground - Sentence is harsh and excessive

7. It is also submitted under this ground in written submissions that the respondent failed to exercise the discretion of ordering on-spot penalty as provided in Section 59 of the Commerce Commission Decree 2010. However, this position was never raised in the Magistrate Court. Further the appellant is not a first offender.
8. The appellant had failed to satisfy this court that the respondent acted on a wrong principle, mistake of facts or influenced by extraneous considerations or failed to take account of relevant considerations. It does not appear that on the facts, the decision to charge the appellant in the Magistrate Court is unreasonable or plainly unjust.
9. The learned Magistrate had stated that:

“The maximum fine under Section 129 (3) of the Commerce Commission Decree No. 49 is five times the fine provided for in the provision. According to subsection (1) of the Section 129, the maximum fine is \$10,000.00. Therefore, the maximum fine under subsection (3) of the Section 129 is \$50,000.00.”
10. The learned Magistrate had identified the maximum fine correctly.
11. Then the Magistrate had stated:

“Being a retail vendor, you should be aware of the rules and regulations in force and especially the fixed prices of essential goods like normal flour. You have 03 previous convictions for similar offences. Therefore, I am unable to consider this as a genuine mistake.”
12. This court totally agrees with the observations made by the learned Magistrate.

13. Accordingly, a fine of \$15,000.00 was ordered by the learned Magistrate with 40 days imprisonment in default and \$34.50 as Court costs.
14. It is submitted that this sentence is in disparity with the sentences imposed in similar offences and following three cases were submitted by the appellant.
- (i) **Bargain Box (Fiji) Ltd. V Fiji Commerce Commission** [2012] FJHC 1001; HAA 001.2002 (30 March 2012) – The appellant was charged with the offence of selling price controlled items at excessive price and was fined \$2,000.00 after pleading guilty at the Magistrate Court. The Appeal was not allowed as the Court considered the fine as reasonable as the company was a first offender. (It should be noted that Hon. Mr. Justice Daniel Goundar had stated “*A fine of \$2,000.00 that was imposed on the appellant could hardly be considered excessive when you consider the maximum fine that is available for the offence.*”)
- (ii) **Rajendra Prasad Brothers Ltd V Fiji Commerce Commission** [2012] FJHC 839; HAA 001.2012 (7 February 2012) – The appellant was charged for offering for sale price controlled items at excessive prices and the appellant was sentenced to a fine of \$1,000.00 and costs of \$35.50. On appeal it was dismissed as the company could not show why the fine was harsh and excessive. (Hon. Mr. Justice Paul Madigan had stated “*The maximum fine being \$5,000.00, this fine is well within the authority of the Magistrate to impose although it is higher than fines usually passed for the same offence. The accused company appears to have an overly optimistic view of the effect of its early guilty plea.*”)
- (iii) **Marimuttu & Sons Fiji Ltd V Fiji Commerce Commission**[2012] FJHC 1235; HAA 008.2012 (26 July 2012) – The appellant was charged for failing to mark the maximum ceiling price of a price controlled item and pleaded guilty. They were fined \$7,000.00 and \$35.00 costs. On appeal, court allowed the appeal and reduced the fine to \$800.00. (Hon. Mr. Justice Paul Madigan had stated “*Fines passed on very large corporate supermarkets traders are usually in the range of \$500.00 to \$1,000.00 and this fine would therefore appear to be very much higher than the fine normally imposed.*”)
15. However, all these cases cited by the appellant were in respect of first offenders and therefore different from the range for re-offenders. Appellant had failed to cite any such case to allege disparity.
16. If a person had been previously charged and convicted for similar offences, he should be extra cautious at latter occasions. One has to satisfy Court that the subsequent offence was committed despite all the precautionary measures initiated by him.

17. The fine ordered by the learned Magistrate is less than 1/3 of the maximum fine of \$50,000.00. Thus the fine is neither harsh nor excessive in the circumstances. There is no merit in this ground and it fails.

2nd Ground - Failure to consider the mitigation letter

18. The appellant had submitted in that letter that pricing error happened due to oversight and it was not intentionally done. Appellant had further submitted that the price over charged was only nominal amount of \$0.02 per bag and the total number of bags was 34 and the overcharged amount would come to only \$0.68.

19. The learned Magistrate had considered this in his sentence in paragraph 4. He had stated that:

"In your letter dated 14th February 2013, you said that this is a genuine mistake and your company immediately rectified this and apologized. However, the person appeared in court did not make any mitigations."

20. Thus there is no merit in the second ground and it fails.

21. For the reasons given above the appeal against the sentence is dismissed.




Sudharshana De Silva
JUDGE

AT LAUTOKA
04th June 2014

Solicitors: Sherani & Co. for the Appellant
Reddy & Nandan for the Respondent