

IN THE HIGH COURT OF FIJI  
CRIMINAL JURISDICTION  
AT LAUTOKA

CRIMINAL CASE: HAA 162 OF 2015

BETWEEN : MACIU RATU  
APPELLANT

AND : THE STATE  
RESPONDENT

Counsel : Ms. Diroiroi for the Appellant  
Mr. A. Singh for the Respondent

Date of Hearing : 13th of November 2015

Date of Judgment : 3rd of December 2015

JUDGMENT

1. The Appellant files this appeal against the sentence delivered by the learned Magistrate in the Magistrates' court in Nadi on 23rd of June 2015, contending that the sentence is harsh and excessive on the following grounds, *inter alia*:
  - i. *The Appellant is a first offender,*
  - ii. *The Appellant has paid \$ 148.50 in order to get a non- custodial sentence without any criminal conviction,*
  - iii. *The Appellant is given a custodial sentence suspended for 3 years,*
2. The Appellant was charged in the Magistrate court for one count of Damaging Property contrary to Section 369 (1) of the Crimes Decree. The Appellant pleaded

guilty for this offence on 17th of April 2015 on his own free will. The learned Magistrate has then convicted and sentenced him for a period of 6 month imprisonment and suspended it for a period of three years. The Appellant now appeals against the said sentence.

3. The maximum penalty for the offence of damaging property is imprisonment for 2 years. The tariff limit for this offence is 6 months to 18 months imprisonment period. (Singh v State [2014] FJHC 191; HAA024.2013S (21 March 2014), Nasigaya v State [2011] FJHC 425; HAA015.2011 (10 August 2011)). However, Justice Temo in State v Baleinabodua [2012] FJHC 981; HAC145.2010 (21 March 2012) has set 3 months to 12 months imprisonment period as the tariff, which the learned Magistrate has adopted in this sentence.
4. The learned Magistrate has selected 12 months as the starting point. She has considered that the accused is a first offender, willing to pay the damages to the complainant and entered an early plea of guilt as mitigating factors. She has finally reached to 6 month imprisonment. The learned Magistrate then suspended the said 6 month imprisonment for a period of 3 years on the ground that the Appellant had expressed his genuine remorse and regrets for the crime.
5. In view of the reasons discussed above, I do not find the sentence imposed by the learned Magistrate is harsh and excessive as it is within the accepted sentencing practice and tariff limit.
6. The Appellant mainly contended that the learned Magistrate should have entered a non conviction on the ground that he was willing to pay the damages.

He stated that the criminal conviction entered against him could adversely affect his employment.

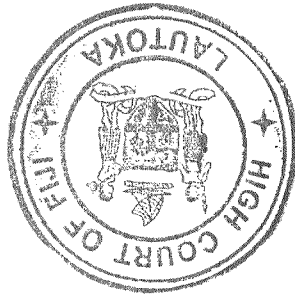
7. Justice Gounder in **Fiji Independent Commission Against Corruption v Mau [2011] FJHC 222; HAC089.2010 (14 April 2011)** has outlined the application of Section 15 (1) of the Sentencing and Penalties Decree, where his lordship found that;

*“Section 15(1) provides that if a court finds a person guilty, it may consider the sentencing options that are provided. Clearly, the use of the word ‘may’ means that the court has a discretion to consider the option of whether to record a conviction, and that, it is not mandatory that the court has to consider the option following a guilty verdict. If the court exercises its discretion to consider not recording a conviction, then the court must consider all the factors in section 16 of the Decree in the exercise of its discretion. To substitute the word ‘must’ for the word ‘may’ in section 15 to argue that it is mandatory for the court to consider the option of not recording a conviction after a guilty verdict, is misleading”.*

8. Justice Madigan in **Botaki v State [2012] FJHC 1250; HAA015.2012 (1 August 2012)** held that the effect on the employment and economical situation of the accused does not mean that it is mandatory for a Magistrate to exercise his discretion in recording a non conviction.
9. In this instant case, it appears that the Appellant has been suspended from his employment due to the complaint made by the husband of his girl friend. It was a disciplinary action taken by his employer on his alleged conduct. Hence, it appears that the learned Magistrate has correctly considered the applicable

principles and exercised her discretion by not entering a non-conviction against the Appellant.

10. In my conclusion, I find that the grounds advance by the Appellant in this appeal have no merits. I accordingly dismiss this appeal.



**R. D. R. Thushara Rajasinghe**  
**Judge**

**At Lautoka**

**3rd of December 2015**

**Solicitors : Office of the Director of Public Prosecutions  
Office of Legal Aid Commission**