

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 40 OF 2014

BETWEEN : STATE

AND : PENIASI SUKANAKONIFEREDI

Counsel : Mr. A. Singh for State
Ms. L. Tabuakuro for the Accused

Date of Hearing : 03rd of November – 10th of November, 2016

Date of Closing Submissions : 10th of November, 2016

Date of Summing Up : 14th of November, 2016

Date of Judgment : 18th of November, 2016

JUDGMENT

1. The Accused is being charged with one count of Unlawful Importation, contrary to Section 4 of the Illicit Drugs Control Act. The particulars of the offence are that;

“Peniasi Sukanakoniferedi on the 18th day of Match 2014 at Nadi in the Western Division, imported 408.1 grams of illicit drugs, namely Cocaine without lawful authority”

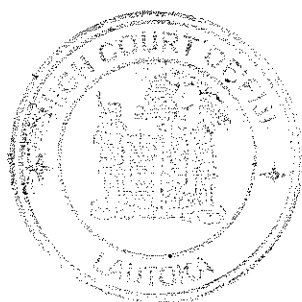
2. The hearing of this matter commenced on 3rd of November 2016 and concluded on 10th of November, 2016. The prosecution called eleven witnesses during the course of the hearing. The accused neither gave evidence nor called any other witnesses for his defence. The learned counsel for the prosecution and the defence then made their respective closing submissions. I then made my summing up.


3. The three assessors returned with unanimous opinion of not guilty. The assessors' opinion was not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
4. Having considered the evidence adduced during the course of the hearing, the respective closing submissions of the counsel, my summing up and the opinion of the three assessors, I now proceed to pronounce my Judgment as follows.
5. The prosecution alleges that the accused has unlawfully imported 408.1 grams of Cocaine into the county. The said drugs were packed in two aluminum foil packages and sent to Fiji via EMS postal service. The package was consigned to the Energy Supplement Fiji Limited c/o Allied Custom Brokers. The accused is one of the two directors of the Energy Supplements Fiji Limited and was looking after the day to day business of the company in Fiji. It was agreed by the prosecution and the defence that the accused received instruction from the other director Mr. Stanly Leon on daily basis via Skype in regard to the day to day business of the company.
6. The accused denies this allegation and has stated in his caution interview that he had no knowledge about the importation of illicit drugs. He has admitted in his caution interview that his boss Mr. Stanley Leon informed him about a parcel coming to Fiji with shoe deodorizer. However, he denied that he was aware that the parcel contains illicit drugs.
7. Having carefully considered the evidence adduced by the prosecution, I find the prosecution case is mainly founded on the circumstantial evidence. The prosecution adduced evidence to establish that;
 - i) The accused is one of the two directors of the Energy Supplements Fiji Limited,
 - ii) He was the only person running the day to day business of the company in Fiji
 - iii) The accused was sending pills and tablets overseas as per the direction received from Mr. Stanly Leon,

- iv) The alleged parcel was consigned to Energy Supplement Fiji Limited,
 - v) The accused has previously obtained the service of Allied Custom Brokers to import an airfreight shipment in September 2013,
 - vi) The accused signed the detention notice,
8. Mr. Satya Nadan, who is the Managing Director of the Allied Custom Broker in his evidence stated that one Stan Marshall informed him via an e-mail on the 15th of March 2014, that a parcel was coming. He provided him the tracking number and the details of the parcel. There is no evidence that Mr. Satya had asked Mr. Sten Marshall or anyone for the commercial invoice for the said parcel. Neither Mr. Marshall had provided any commercial invoice.
9. When the parcel was detained by the Custom Officer at the Nadi International Air Port, Mr. Satya promptly sent an e-mail to Mr. Stan Marshall informing about the detention and asking him to come and sign the detention notice. Mr. Tiatia in his evidence stated that Allied Custom Brokers did not want to commit themselves by signing the detention notice and send the accused to sign it. Mr. Tiatia has only contacted the Allied Custom Broker in order to inform them to come and sign the detention notice. He did not contact the accused or anyone at the Energy Supplements Fiji Limited. Mr. Satya has then sent his driver to look for Mr. Stan Marshall and/ or someone of Energy Supplements Fiji Limited. Mr. Satya then found Mr. Stan Marshall was not at the office of Energy Supplement Fiji Limited and it was only Mr. Peniasi was at the office. He then called Mr. Peniasi and asked him to come and sign the detention notice.
10. Mr. Satya and Sgt. Vikash in their respective evidence stated that there was no mention or any reference about the accused in any of the emails that has exchanged between Mr. Stan Marshall and Mr. Satya about the importation of this parcel. It was revealed that only Mr. Stan Marshal had dealt with Mr. Satya in regard to this parcel. Neither the accused nor any other person from Energy Supplements Fiji Limited had contacted or dealt with Mr. Satya in respect of this parcel.

11. Moreover, Mr. Satya in his evidence did not state that he was instructed by Stan Marshall to deliver the Parcel to the accused or to the Energy Supplement Fiji Limited after it was cleared from the Custom. Mr. Stan Marshall in his reply email only stated that he was out of the country. He did not instruct Mr. Satya to contact the accused or any one at the Energy Supplements Fiji Limited. There is no evidence presented by the Prosecution to establish that Mr. Satya or the Allied Custom Brokers were going to deliver the parcel to the accused or to the office of Energy Supplement Fiji Limited upon its clearance from the Custom. The accused has not contacted or dealt with the Allied Custom Brokers regarding this parcel at any time material to this alleged importation of the parcel. It was a decision of Mr. Satya to call the accused and asked him to come and sign the detention notice.
12. Moreover, Mr. Satya in his evidence stated that the first consignment that they cleared for Energy Supplements Fiji Limited in September 2013 was picked by the accused. The accused then requested the contact details of Mr. Satya, stating that his boss wanted it. However, there is no evidence to identify who was this boss as referred by the accused. The accused in his caution interview has stated that his boss was Stanley Leon. However, the sender of the email dated 15th of March 2014 was one Stan Marshall. It was Mr. Stan Marshall had contacted Mr. Satya via E-mail and informed him about this parcel. There is no evidence presented by the prosecution about this Stan Marshall. It is not clear whether this Stan Marshall and Stanley Leon is a same person or not.
13. In view of these reasons, I find the mere fact that the accused was one of the two directors of the Energy Supplements Fiji Limited and was ruining the day to day business of the company in Fiji do not lead to indisputable and conclusive inference that the accused imported this parcel containing 408.1 grams of illicit drugs namely Cocaine on the 18th of March 2014.
14. Accordingly, I find there is no cogent reasons for me to disregard the unanimous opinion of not guilty given by the assessors.

15. In conclusion, I hold that the Prosecution has failed to prove beyond reasonable doubt that the accused is guilty for this offence of Unlawful Importation contrary to Section 4 of the Illicit Drugs Control Act. Therefore, I find the accused is not guilty for the offence as charged and acquit him accordingly.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
18th November, 2016

Solicitors : Office of Director of Public Prosecution
Messrs K Law & Associates