

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION  
CRIMINAL CASE NO. HAC 088 OF 2010S

**STATE**

vs

**JOHNNY ALBERT STEPHEN**

Counsels : Ms. J. Prasad for State  
Mr. J. Savou and Ms. L. David for Accused  
Hearing : 30 November, 1, 2, 5 and 6 December, 2016  
Summing Up : 7 December, 2016

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## **SUMMING UP**

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**A. ROLE OF JUDGE AND ASSESSORS**

1. Madam and Gentlemen Assessors, it is my duty to sum up to you. In doing so, I will direct you on matters of law, which you must accept and act upon. On matters of fact however, what evidence to accept and what evidence to reject, these are matters entirely for you to decide for yourselves. So if I express my opinion on the facts of the case, or if I appear to do so, then it is entirely a matter for you whether you accept what I say or form your own opinions. You are the judges of fact.
2. State and Defence Counsels have made submissions to you, about how you should find the facts of this case. That is in accordance with their duties as State and Defence Counsels, in this case. Their submissions were designed to assist you, as the judges of fact. However, you are not bound by what they said. It is you who are the representatives of the community at this

trial, and it is you who must decide what happened in this case, and which version of the evidence is reliable.

3. You will not be asked to give reasons for your opinions, but merely your opinions themselves and they need not be unanimous. Your opinions are not binding on me, but I will give them the greatest weight, when I deliver my judgment.

**B. THE BURDEN AND STANDARD OF PROOF**

4. As a matter of law, the onus or burden of proof rest on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation on the accused to prove his innocence. Under our system of criminal justice, an accused person is presumed to be innocent until he is proved guilty.
5. The standard of proof in a criminal trial, is one of proof beyond reasonable doubt. This means that you must be satisfied, so that you are sure of the accused's guilt, before you can express an opinion that he is guilty. If you have any reasonable doubt so that you are not sure about his guilt, then you must express an opinion, that he is not guilty.
6. Your decision must be based exclusively upon the evidence which you have heard in this court, and upon nothing else. You must disregard anything you might have heard about this case outside of this courtroom. You must decide the facts without prejudice or sympathy, to either the accused or the victims. Your duty is to find the facts based on the evidence, and to apply the law to those facts, without fear, favour or ill will.

**C. THE INFORMATION**

7. You have a copy of the information with you. I will now read the same to you:

*"... [read from the information]..."*

**D. THE MAIN ISSUES**

8. In this case, as assessors and judges of fact, each of you will have to answer the following questions:
  - (i) On Count No. 1, did the accused, between 6 August and 24 September 2009, at Suva in the Central Division, receive \$17,420.90 and dispose of the same, that is, proceeds



of crime, knowing or ought to have reasonably known that the said money was derived directly or indirectly from some form of unlawful activity?

- (ii) On Count No. 2, did the accused, on 25 September 2009, at Suva in the Central Division, receive \$21,440.56, that is, proceeds of crime, knowing or ought to have reasonably known that the said money was derived directly or indirectly from some form of unlawful activity?

**E. THE OFFENCE AND IT'S ELEMENTS**

9. In Count No. 1 and 2, the accused was charged with "money laundering", contrary to section 69(3)(b) of the Proceeds of Crime Act 1997. Section 69(3)(b) of the Proceeds of Crime Act 1997 reads as follows:

"...(3) A person shall be taken to engage in money laundering if, and only if:

(a)...

(b) the person receives, possesses, conceals, uses, disposes of or bring into Fiji any money or other property that are proceeds of crime... and the person knows, or ought reasonably to know, that the money or other property is derived, or realised, directly or indirectly, from some form of unlawful activity..."

10. For the accused to be found guilty of the offence, the prosecution must prove beyond reasonable doubt, the following elements:

- (i) the accused
- (ii) receives, possesses, conceals, uses, disposes of or bring into Fiji
- (iii) any money
- (iv) that are proceeds of crime; and
- (v) the accused
- (vi) knows, or ought to reasonably know
- (vii) that the money
- (viii) is derived or realised
- (ix) directly or indirectly
- (x) from some form of unlawful activity

11. In order to understand the terms used in describing the elements of "money laundering" as described above, you must consider them within the context of this case. Here, we are dealing with an accused, who was a 39 year old foreign national from Vanuatu, residing in Fiji. At all material times, he was unemployed in Fiji. He opened a Westpac Bank Account No. 9802117029. It was an Electronic Transaction Account. He came to Fiji in 2008 as a tourist. He was previously married in Vanuatu with three children. He married in Fiji and resided in Makoi Stage 1. His wife worked at CWM Hospital as a ward assistant. He opened his Westpac Bank Account with an initial deposit of \$40 on 25 February 2009. On 17 March 2009, he deposited another \$450, which was allegedly sent to him from Vanuatu.
  
12. For an accused to be found guilty of "money laundering", the prosecution must make you sure that the accused had committed one or more acts, as defined in paragraph 10(ii) above, that is, "receives, possesses, conceals, uses, disposes of or bring into Fiji". In the Oxford Advanced Learner's Dictionary, Oxford University Press, 2002, the word "receives" means "to get or accept something that is sent or given to you"; "possesses" means "to have or own something"; "conceals" means "to hide somebody or something"; "uses" means "the act of using something"; "disposes of" means "to get rid of somebody or something that you do not want or cannot keep" and "bring into" means "to cause somebody or something to be in a particular condition or place". The above physical acts must relate to money, and the money must be proceeds of crime. In other words, the prosecution must make you sure that the accused "receives, possesses, conceals, uses, disposes of or brought into Fiji" money, and the money must be proceeds of crime. The money must be the result of some criminal or unlawful activity. For example, the money was stolen from others, by whatever means, and deposited in someone's bank account. That money would be proceeds of crime. The above are the physical elements of the offence.
  
13. In addition to the above physical acts, the prosecution must make you sure that the accused, at the time he was performing the above physical acts, knew or ought to reasonably know, that the money was derived or realised directly or indirectly from some form of unlawful activity. So, in the context of this case, if the accused knew or ought to reasonably know that the money coming into his Westpac Bank Account were derived or realised directly or indirectly from some form of unlawful activity (for example, theft or fraud), then he is liable for money laundering. This is the mental element or fault element of the offence.



14. There are two counts in the information. You must consider them separately and come to a considered separate decision on each of them, in the light of the total evidence presented at the trial.

**F. THE PROSECUTION'S CASE**

15. The prosecution's case were as follows. Between 6 August and 25 September 2009, the accused was 39 years old. He was a national of Vanuatu. His parents and siblings lived in Vanuatu. He had two brothers and a sister. He was previously married in Vanuatu and had three children. He came to Fiji in 2008 as a tourist. He met Ilisapeci Viwa (PW4) in 2008 and married her on 19 November 2008. PW4 is a Fiji Citizen and worked at CWM Hospital as a ward assistant. The accused was unemployed at all material times, and appeared to live off his wife and monies sent from Vanuatu, and some other sources, the subject of this proceeding.
16. According to the prosecution, while still in Vanuatu, the accused was in contact with most people from Nigeria. They wanted to send some money to the accused's bank account, and it appeared they had a lot of money at their disposal. On 25 February 2009, with a deposit of \$40, the accused opened a Westpac Bank Electronic Transaction Account in Suva. His Account No. was 9802117029. The Account balance reached \$8.00 on 27 February 2009, and with an injection of \$450 on 17 March 2009, the balance went up to \$458.00.
17. According to the prosecution, the accused met a David Turner from Nigeria through e-mail. They had been communicating with each other by e-mail for approximately one year. They started a scheme. According to the prosecution, the so called David Turner was going to send Fiji \$15 million to the accused's Westpac Account from a bank in America in future. However, taxes were to be paid first before the above sum was released. The so called David Turner would send money to the accused's Westpac Bank Account. The accused was to take 20% of the same and use it on himself, and send the 80% balance to a Sherrill Stramper in America.
18. According to the prosecution, on 6 August 2009, the so called David Turner sent a total of \$12,420.90 into the Accused's Westpac Bank Account. On 18, 21, 22 and 23 September 2009, a total of \$5,000 was transferred to the accused's Westpac Bank Account. On 25 September 2009, \$21,440.56 was transferred from "Coconut Rental Ltd" in the Cook Islands to the Accused's Westpac Bank Account. The Westpac Bank conducted an internal investigation on the above transactions as some customers had complained of unauthorised withdrawals from



their accounts. They found that some customers had been tricked into releasing their confidential customer number and password to fraudulent Westpac Bank websites.

19. The above transactions were reported to police. An investigation was carried out. The accused was arrested by police in September 2009. He was interviewed by police. He was later charged with "money laundering". Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged on both counts. That was the case for the prosecution.

**G. THE ACCUSED'S CASE**

20. On 30 November 2016, the first day of the trial, the information was put to the accused, in the presence of his counsel. He pleaded not guilty to both counts. In other words, he denied the allegations against him. When a prima facie case was found against him, at the end of the prosecution's case, wherein he was called upon to make his defence, he choose to remain silent and called no witness. That was his right.
21. In choosing to remain silent, nothing negative whatsoever should be imputed to the accused, for choosing to exercise this opinion. This is because the burden to prove his guilt beyond reasonable doubt is not on him, but on the prosecution, from the start to the end of the trial. This burden never shift to the accused, at any stage of the trial. They are entitled to sit there, fold their arms and demand that the prosecution prove their case against them beyond a reasonable doubt.
22. However, all is not lost for you. Although the accused had choosen to remain silent, his position on the case had been revealed to the police when they caution interviewed him on 25, 26 and 27 September 2009. His caution interview statements were tendered in evidence as Prosecution Exhibit No. 12(A) and 12(B). They did not challenge the admissibility of these statements. Please, read the same carefully.
23. The defence's position on the case, was revealed when his counsel made their closing submission. They did not dispute the fact that the money mentioned in Count No. 1 and 2 went into the Accused's Westpac Bank Account, at the material time. Their defence appear to be that the accused did not know, nor could have reasonably known, that the funds coming into his Westpac Bank Account were proceeds of crime, or were derived from some form of



unlawful activity. Because of the above, the accused is asking you, as assessors and judges of fact, to find him not guilty as charged, on both counts. That was the case for the defence.

## H. ANALYSIS OF THE EVIDENCE

### (a) Introduction:

24. In analysing the evidence, please bear in mind the directions I gave you in paragraphs 4, 5 and 6 hereof on the burden and standard of proof. In the acceptance and/or rejection of the evidence presented at the trial and your role as assessors, please bear in mind the directions I gave you in paragraphs 1, 2 and 3 hereof. In analyzing the evidence, we will first discuss the "Agreed Facts" and its significance. Then we will discuss the prosecution's exhibits and their significance. Then we will discuss the State's case against the accused. We will then discuss the defence's position. Then, we will discuss the need to look at all the evidence.

### (b) The Agreed Facts:

25. The parties submitted an "Agreed Facts", and it consisted of two paragraphs of "Agreed Facts". In paragraph 1, they are admitting Ms. Sinifa Lakalaka's witness statement, which was also tendered as Prosecution Exhibit No. 19. In paragraph 2, they are not disputing the admissibility of the following documents, which were tendered as follows:

- (i) Copy of the Westpac Internet Banking site: Prosecution Exhibit 3
- (ii) Copy of Sun Vacation (Fiji) Ltd Letter: Prosecution Exhibit 4
- (iii) Copy of Accused's Westpac New Account Form, Marriage Certificate, copies of passport, copies of accused's photo: Prosecution Exhibit No. 6
- (iv) Copy of Accused's Electronic Transaction Account from Westpac: Prosecution Exhibit No. 7
- (v) Accused's Police Caution Interview Statements: Prosecution Exhibit 12 (A) and 12 (B).

Because the parties are not disputing the above, you may take them as established facts and that the prosecution had proven those facts beyond a reasonable doubt.

### (c) Documentary Evidence: The Prosecution's Exhibits:

26. A major part of this trial consisted of the tendering of documentary evidence in the form of Prosecution Exhibits. The contents of the exhibits were not seriously contested by the parties, and you may take that into account.



27. A summary of the Prosecution Exhibits were as follows:
1. Fraudulent e-mail from Westpac - used by fraudster to entice unsuspecting Westpac customers to fraudulent Westpac Bank Website;
  2. Fraudulent Westpac Bank website – used by fraudster to entice unsuspecting Westpac customers to reveal their customer number and password;
  3. Genuine Westpac Bank website;
  4. Sun Vacation (Fiji) Ltd 8 September 2009 letter of complaint;
  5. Sun Vacation (Fiji) Ltd Westpac Bank Statement;
  6. Accused's Westpac Account Opening Form;
  7. Accused's Westpac Account Statement;
  8. Bruce Moonie's Westpac Bank Statement;
  9. Coconut Rental's Ltd's Westpac Cook Island Account Statement;
  10. Western Union Money Transfer 107691;
  11. Western Union Money Transfer 15174;
  12. (A) Accused's Unamended Police Caution Interview Statements;  
(B) Accused's Amended Police Caution Interview Statements;
  13. Western Union Money Transfer 18343;
  14. Western Union Money Transfer 20972;
  15. Western Union Money Transfer 20944;
  16. Western Union Money Transfer 20984;
  17. Western Union Money Transfer 22218;
  18. Western Union Money Transfer 107689;
  19. Sinifa Lakalaka's statement.

You must read those documentary evidence carefully. These will be relevant when we consider the accused's alleged confession and the State's use of circumstantial evidence in support of its case.

**(d) The State's Case Against the Accused:**

28. In connecting the accused to the crime, the State fundamentally relied on two types of evidence. The first, is the accused's alleged confession, when he was caution interviewed by police. The second was the State's use of circumstantial evidence. We will discuss the alleged confession first.
29. The police caution interviewed the accused in the English language at CID HQ Suva on 25, 26 and 27 September 2009. 441 questions were asked by police and 441 answers were given by the accused. The interview statements were tendered as Prosecution Exhibit 12(A) and 12(B). Exhibit 12 (A) is the unamended form, and is reserved for the Superior Courts. Exhibit 12 (B) is





you can use a telephone available here for such consultation. Do you understand what you have been advised on?

A8: Yes

Accused

Interviewing Officer

Witnessing Officer

Q9: What do you think you want to do, do you wish to consult a lawyer?

A9: I will seek the assistance from one with the Legal Aid Department later.

Q10: Do you wish to consult a family member, Church Pastor or a Social Worker for counselling before we continue with this interview?

A10: No need.

31. In question and answer 72, the following were recorded:

Q72: What can you say in regards to the allegation levelled against you?

A72: Yes, it is true..."

32. The above questions and answers, when taken in its totality and within the context in which it was taken, amount to a confession by the accused to the crimes alleged against him. When approaching the above alleged confessions, I must direct you as follows, as a matter of law. A confession, if accepted by the trier of fact – in this case, you as assessors and judges of fact – is strong evidence against its maker. However, in deciding whether or not you can rely on a confession, you will have to decide two questions. First, whether or not the accused did in fact make the statements contained in his police caution interview statements? If your answer is no, then you have to disregard the statements. If your answer is yes, then you have to answer the second question. Are the confessions true? In answering the above questions, the prosecution must make you sure that the confessions were made and they were true. You will have to examine the circumstances surrounding the taking of the statements from the time of his arrest to when he was first produced in court. If you find he gave his statements voluntarily and the police did not assault, threaten or made false promises to him, while in their custody, then you might give more weight and value to those statements. If it's otherwise, you may give it less weight and value. It is a matter entirely for you.

33. If you accept the accused's above confession, you will have to find the accused's guilty as charged. If you don't accept the same, you will have to work on the other evidence to find out whether or not the accused was guilty as charged.



34. We will now discuss how the State intends to use circumstantial evidence to support its case. It was the State's contention that when you put all the evidence together, that is, the five prosecution's witnesses' verbal evidence and the 19 exhibits together, it was apparent that the irresistible conclusion was that the accused was guilty as charged. That simply means that the prosecution is relying upon evidence of various circumstances relating to the crime and the defendant which they say when taken together will lead to the sure conclusion that it was the defendant who committed the crime. It is not necessary for the evidence to provide an answer to all the questions raised in a case. You may think it would be an unusual case indeed in which a jury can say "We now know everything there is to know about this case". But the evidence must lead you to the sure conclusion that the charge which the defendant faces is proved against him.

Circumstantial evidence can be powerful evidence, but it is important that you examine it with care, and consider whether the evidence upon which the prosecution relies in proof of its case is reliable and whether it does prove guilt. Furthermore, before convicting on circumstantial evidence you should consider whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the prosecution case.

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.

35. In this case, we begin with the accused's alleged confession discussed above. Then we consider the fraudulent e-mail (Prosecution Exhibit No. 1) sent to unsuspecting Westpac Bank customers. Mr Epli Racule (PW1), an experience Bank Officer of 30 years, said the fraudulent e-mail was designed to guide the unsuspecting Westpac Bank customers to the replica fraudulent Westpac Bank website (Prosecution Exhibit No. 2). In the fraudulent Westpac Bank website; the unsuspecting Westpac Bank customers reveal their customers number and password to the fraudsters. The fraudsters then use the unsuspecting Westpac Bank customers' number and password to access their account or accounts through the genuine Westpac Bank website (Prosecution Exhibit No. 3), and steal their funds by transferring them to the accused's Westpac Bank Account No. 9802117029. Sun Vacation (Fiji) Ltd was the first to lodge a written complaint to Westpac Bank (see Prosecution Exhibit No. 4). PW1 said, as a result, he lead an internal Westpac Bank investigation into the matter.



36. PW1 said, he examined Sun Vacation (Fiji) Ltd's Westpac Bank Statements (Prosecution Exhibit No. 5). He traced the transfer of funds from the Sun Vacation (Fiji) Ltd's account to the accused's Westpac Bank Account. PW1 said, he examined the accused's Westpac Bank Account (Prosecution Exhibit No. 7) and his new Account opening form for Westpac (Prosecution Exhibit No. 6). In the course of his investigation, PW1 said he also looked at Mr. Bruce Moonie's Westpac Bank Account (Prosecution Exhibit No. 8). PW1, said he traced the transfer of \$5,000 from Mr. Moonie's account to the accused's account. PW1 said, he also discovered that \$21,440.56 were transferred from Coconut Rental Ltd's Cook Island Westpac Account to the accused's account by telegraphic transfer. PW1 said, all the above Westpac Bank customers did not authorize the transfer of their funds to the accused's Westpac Bank Account.
37. In his caution interview statement [Prosecution Exhibit 12(B)], the accused described how he opened his Westpac Bank Account in 2009. [See questions and answers 55 to 66]. He also described how he used his account for fraudulent activities [see questions and answers 73 to 79, 88 to 103]. He described how he worked with one David Turner in the transfer of funds to his account [see questions and answers 104 to 158, 159 to 167, 168 to 229, 237 to 270 and 276 to 406] It would appear that the so called David Turner were accessing the Westpac customer's bank accounts from the outside and transferring them to the accused's Westpac Bank Account. Then the accused withdrew the money and send the same overseas, on the instruction of David Turner. Please, refer to the Western Union Money Transfer Forms in Prosecution Exhibit Nos. 13, 14, 15, 16, 17 and 18. What does the above circumstantial evidence tell you? Does it tell you that the accused was well aware of the unlawful transfer of funds to his account, and knew it well or ought reasonably to know they were proceeds of crime? How you answer these questions is a matter entirely for you.

**(e) Accused's Position on the Case:**

38. In their closing submission, the defence admitted that Sun Vacation (Fiji) Ltd's, Mr Bruce Monnie's and Coconut Rental Ltd's funds went into the accused's Westpac Bank Account. However, in his police caution interview statement (Prosecution Exhibit 12(B), he said he never knew the funds were proceeds of crime (see questions and answers 246, 254, 437 and 438). As a result, he denied the allegation against him.




**(f) Looking at and Considering All the Evidence:**

39. Five witnesses gave evidence for the prosecution, that is, Mr. Epeli Racule (PW1); Ms. Lyanne Carlos (PW2); Ms. Kalesi Sobu (PW3); Ms. Ilisapeci Viwa (PW4) and D/Sgt 2640 Tomasi Tukana (PW5). Nineteen Exhibits were produced by the prosecution in court. You must carefully read and consider the above evidence. You must compare and analyse them. You must decide whether or not the total evidence do prove the accused's guilt beyond a reasonable doubt? It is a matter entirely for you.

**I. SUMMARY**

40. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies on the prosecution throughout the trial, and it never shifts to the accused, at any stage of the trial. The accused is not required to prove his innocence, or prove anything at all. In fact, he is presumed innocent until proven guilty beyond reasonable doubt. If you accept the prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of the accused's guilt, you must find him guilty as charged. If you do not accept the prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the accused's guilt, you must find him not guilty as charged.
41. Your possible opinions are as follows:
- |      |             |   |                  |   |                      |
|------|-------------|---|------------------|---|----------------------|
| (i)  | Count No. 1 | - | Money Laundering | - | Guilty or Not Guilty |
| (ii) | Count No. 2 | - | Money Laundering | - | Guilty or Not Guilty |
42. You may now retire to deliberate on the case, and once you've reached your decisions, you may inform our clerks, so that we could reconvene, to receive the same.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for Accused** : **Legal Aid Commission, Suva.**