

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 250 OF 2014

STATE

vs

SAKIUSA VAKAREWA

Counsel : **Ms J Prasad & Ms M Konrote for the State**
Mr M Yunus for the Accused

Date of Hearing : **9th May 2016**

Sentence : **6th June 2016**

SENTENCE

- [1] Mr. Sakiusa Vakarewa, after being convicted to two charges of Money Laundering, Contrary to Section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree No. 61 of 2012, you are now brought before this Court for imposition of your sentence.
- [2] You pleaded guilty to these two charges upon your free will and admitted the summary of facts.
- [3] This Court, having considered contents of the summery of facts, was satisfied that all the elements of the offence of Money Laundering, namely:
- a. *that you were engaged directly or indirectly in transactions involving \$114,611.00 and \$2500;*

- b. *that were proceeds of crime;*
- c. *knowing or ought to have known that the money is derived from some form of unlawful activity.*

are established. It then considered your voluntary plea of guilt and and convicted you on these two counts on 9th May 2016.

[4] At the Sentencing Hearing, Your Counsel submitted to this Court that:

- (i) *you should be convicted to a minor offence; namely Larceny by Servant, "because, the date of offending is before the Crimes Decree came into force";*
- (ii) *the proceedings against you in this Court are estopped as you have already been dealt by your employer FRCA by dismissing you from its services considering the same facts and you rely on section 14(1)(b) of the Constitution in support.*

[5] In relation to the first ground, it is noted that it is based on a mistaken notion. You were charged by DPP under the Proceeds of Crime Act 1997 as amended and not under the Crimes Decree. Proceeds of Crimes Act became Law in 1997 and the time period stated in the amended information is 2005 to 2009. Beyond this point it needs no further consideration.

[6] The second ground also raised on the mistaken premise that your dismissal by FRCA is equated to a conviction as mentioned in section 14(1)(b) of the Constitution. In your Sentencing Mitigation Submissions you have annexed your letter of dismissal. It is crystal clear from this letter that you have been no longer employed as per clause 9.1.1 [iv] of your Contract of Employment. The words "*acquitted or convicted*" appearing in the section 14(1)(b) of the Constitution essentially means acquitted or convicted by a Court of law, established under Chapter 5 and no other.

[7] Returning to your sentencing, the relevant facts are briefly as follows. You were employed by FRCA as an auditor. There were 27 fictitious tax payers and their TIN numbers were generated by FITS. Over a period of 4 1/2 years, bogus tax returns were lodged under these TINs with false certificates from certain companies of PAYE tax deductions. You have manipulated the data available under these false tax payers and caused tax refunds were made to these bogus tax payers. You with an accomplice, collected these refund cheques and encashed them.

[8] The prescribed punishment for the offence of Money Laundering is a 20 year term of imprisonment, or a fine not exceeding \$120,000 or both.

[9] In mitigation you said you will pay \$13,500 as a fine and requested this Court to impose a suspended term of imprisonment.

[10] In relation to the applicable tariff, the High Court of Fiji has generally accepted a range of sentences between 5 to 12 years of imprisonment (as per sentences of **State v Shyam** [2013] FJHC 529, **State v Singh** [2013] FJHC 74, **State v Arora** [2012] FJHC 1004, **State v Prasad and others** [2011] FJHC 218.

[11] In determining the starting point within the said tariff, Goundar J, in **Koroivuki v State** (Criminal Appeal AAU 0018 of 2010) has formulated the following guiding principles;

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

[12] Considering the nature of offending, in the light of the above guiding principles, I commence your sentence at 6 years of imprisonment for each count of Money Laundering.

[13] The aggravating factors are:

- (i) *Breach of trust your employer placed in you;*
- (ii) *Money belongs to FRCA never recovered;*
- (iii) *Significant degree of planning and executed over a long period of time.*

[14] I add 4 years for the above aggravating factors. Now your sentence is 10 years for each count.

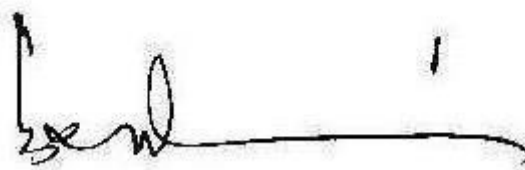
[15] The mitigating factors are:

- (i) *You are a first offender as conceded by the State;*
- (ii) *You are 42 year old;*
- (iii) *your are married and supports three young children;*
- (iv) *You support your elderly mother;*
- (v) *You are the sole bread winner of your family.*

- [16] I deduct 3 years and 4 months for the above mitigating factors. Now the sentence is 6 years and 8 months.
- [17] You pleaded guilty on the date of the trial. Your plea cannot be considered as a one tendered on earliest available opportunity. Even in sentencing submissions you chose to challenge the validity of your plea of guilt. You cannot be given a 1/3 discount but I would grant you a discount of 1/10 on your total sentence. You are therefore is entitled to 8 month reduction on your final sentence. Your final term is 6 years on each count after this deduction.
- [18] Considering Section 18 (1) of the Sentencing and Penalties Decree, I impose 4 years and six months of of non- parole period.
- [19] This Court has no power to suspend a term of imprisonment, which is more than three years as per section 26(2)(a) of Sentencing and Penalties Decree.
- [20] Both these sentences to run concurrently.

Summary

- [21] You are sentenced to 6 years of imprisonment. You will not be eligible for parole until you complete serving 4 years and 6 months of your term of imprisonment.
- [22] You have 30 days to appeal to the Court of Appeal.



Achala Wengappuli
JUDGE



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