

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.: HAA 25 OF 2017**

**BETWEEN:**            **TANIELA SAMUTITOGA**

**Appellant**

**A N D:**                **STATE**

**Respondent**

**Counsel:**            Mr. Yunus M. for Appellant  
                             Ms. Khan M. for Respondent

**Judgment:**            25<sup>th</sup> September 2017

**JUDGMENT**

**Introduction**

1. The appellant had been charged in the Magistrate's Court for two counts of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act. The appellant pleaded guilty for the both counts on the 12th of May 2017. The learned Magistrate then convicted the appellant and sentenced him for a period of two years for each of the two counts with a non-parole period of eighteen months. The learned Magistrate further ordered that the both sentences to be served concurrently. Aggrieved with the said sentence, the appellant filed this Petition of Appeal on the following grounds, *inter alia*:

*Appeal against Conviction*

- i) *The learned Magistrate erred in law and in fact to convict the appellant for the offence of Obtaining Financial Advantage by Deception when the*

*summary of facts outlined and tendered by the prosecution failed to prove all elements of the offence.*

*Appeal against Sentence*

- i) The learned sentencing Magistrate took irrelevant and unlawful aggravating factors for enhancing the sentence,*
  - ii) The learned Magistrate erred in law when he failed to give one-third discount for early guilty plea,*
  - iii) The learned Magistrate erred in predetermining the appellant's sentence to be more than and above the two years qualification for a suspended sentence provided under Section 26 (1) and (2) of the Sentencing and Penalties Act,*
  - iv) The sentence is harsh and excessive taking into consideration of all the circumstances of the matter.*
2. The learned counsel for the respondent conceded that the learned Magistrate has erred in law in convicting the appellant when the summary of facts has not sufficiently proved the main elements of the offence of Obtaining Financial Advantage by Deception. Accordingly the learned counsel for the appellant and the respondent consented to limit this appeal to the first ground of appeal against the conviction. The appellant and the respondent then filed their respective written submissions in respect of the appeal ground against the conviction.
3. Having considered the ground of appeal, the respective written submissions of the parties and the record of the proceedings in the Magistrate's court, I now proceed to pronounce my judgment as follows.

**Law and Analysis**

4. The ground of appeal against the conviction is mainly founded on the contention that the summary of facts as admitted by the appellant has not disclosed and proved the essential elements of the offence of Obtaining of Financial Advantage by Deception.

5. An appeal against conviction arising from guilty plea can be allowed in limited circumstances. The limitation of appeal on plea of guilty is stipulated by section 247 of the Criminal Procedure Decree. Section 247 states:

*"No appeal shall be allowed in the case of an accused person who has pleaded guilty, and who has been convicted on such plea by a Magistrates Court, except as to the extent, appropriateness or legality of the sentence."*
6. However, the limitation only applies to unequivocal pleas. If a plea is equivocal, then section 247 does not apply and the court can proceed to hear the appeal against conviction.
7. Section 174 of the Criminal Procedure Act stipulates the procedure of recording the plea of the accused in the Magistrate's court, where it states that:
  - i) *The Substance of the charge or complaint shall be stated to the accused person by the court, and the accused shall be asked whether he or she admits or denies the truth of the charge,*
  - ii) *If the accused person admits the truth of the charge, the admission shall be recorded as nearly as possible in the words used by the accused, and the court shall convict the accused and proceed to sentence in accordance with the Sentencing and Penalties Decree 2009.*
8. Accordingly, the court shall first provide the appellant the substance of the charge, including the facts pertaining to all essential elements of the offence and give him an opportunity to inform the court either he admits or denies the truth of the charge. If the court satisfies that the appellant admitted the truth of the charge, the court shall then proceed to convict the appellant and sentence him accordingly.
9. Justice Gates (as his Lordship then was) in **State v Isaia Saukova (2000) 1 FLR 135** has discussed the duty of the Magistrate in respect of recording the plea of guilt, where his Lordship held that:

*"It is essential that a Magistrate be satisfied that an Accused is admitting facts which amount to all of the legal elements that go to prove the charge in question. Where the Accused is represented by counsel, the Magistrates task is easier. Where the Accused is unrepresented a more onerous burden is cast on the court. But the Magistrate should ensure that the Accused is not simply pleading guilty out of a feeling of remorse for being involved in a result as opposed to causing a result".*

10. The appropriate manner in the Magistrate's Court in recording the plea of the accused constitutes four main steps. The first step is to read and explain the charge to the accused. Having satisfied that the accused properly understood the charge, the court then proceed to record his plea. If he pleaded guilty, the Court is then required to provide the summary of facts, outlining the alleged incident to the accused. The learned Magistrate must satisfy that the summary of facts has outlined all essential elements of the offence as charged. The learned Magistrate could then record the conviction if the accused admits the truth of the summary of facts.
  
11. The main elements of the offence of Obtaining Finance Advantage by Deception are that:
  - i) The accused,
  - ii) by deception,
  - iii) dishonestly obtained,
  - iv) a financial advantage,
  - v) from another person.
  
12. I will now reproduce the summary of facts in verbatim as outlined in the Magistrate's Court, where it states that:

*Count 1 – Obtaining Financial Advantage by Deception*

- *On 15/01/15, at day to day Travel office, Renwick Road, Suva, JOVILISI KOROI (A-1), 45 years, Crusher of Caubati Settlement, Caubati Road visited the said office to enquire about the job offer to Australia.*

- (A-1) was talking with the travel agent TANIELA SAMUTITOGA (B-1), 42 years, Businessman of 16 Rako Street, Nailuva, Suva and he informed him everything.
- On the said date, (A-1) submitted all his documents, passport and \$1,800.00 cash and was issued with receipt #0901 which was signed by (B-1) for processing visa application.

Count 2 – Obtaining Financial Advantage by Deception


- On 25/01/16, (A-1) went back to the said office and paid \$200.00 for the balance of his application fee and was issued with receipt #0907.
  - (A-1) waited for a while then he made few calls in regards to his visa arrangement but no one answer the phone.
  - (A-1) went to the said office to check his application but the said office was no longer located in the same place.
  - (B-1) failed to provide (A-1)'s visa arrangement to Australia.
  - On 28/11/16, (A-1) reported the matter to Totogo Police Station.
  - On 11/5/17, (B-1) was arrested by WDC 4863 TIMA (A-3) as he voluntarily came to Totogo Police Station.
  - (B-1) was cautioned interview through Video Recording interview where he admitted that he misplaced the file.
  - (B-1) was formally charged by WDC 4489 Sereana (A-4) for the offence of 2 x Counts of Obtaining Financial Advantage by Deception: Contrary to Section 318 (1) of the Crimes Act Number 44 of 2009.
  - (B-1) will appear in custody today, 12/5/17.
13. It is clear that the summary of facts as outlined, has not disclosed the elements of deception and dishonestly obtaining of financial advantage. Accordingly, the appellant has not admitted the truth of the main elements of the offence as charged. Under such circumstances, the learned Magistrate has no jurisdiction to enter a conviction against the appellant pursuant to Section 174 (2) of the Criminal Procedure Act. I accordingly find the plea of guilt of the appellant is not unequivocal.

14. The learned counsel for the respondent in her supplementary submissions, submitted that the State is not considering to proceed this charges against the appellant, if the court orders a retrial in the Magistrate`s court. By submitting such, the learned counsel for the respondent requested the court not to order a retrial. I accordingly do not order a retrial.
15. In view of these reasons, I set aside the conviction and the sentence entered against the appellant for the two counts of Obtaining a Financial Advantage by Deception.

**The orders of the court are:**

- i) The appeal is allowed.
  - ii) The conviction entered against the appellant for the two counts of Obtaining a Financial Advantage by Deception is quashed, and the sentence is set aside.
16. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Rajasinghe  
**Judge**

**At Suva**  
25<sup>th</sup> September 2017

**Solicitors**

Office of the Legal Aid Commission for the Appellant  
Office of the Director of Public Prosecutions for the Respondent.