

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 036 OF 2018S

BETWEEN : TUIMATEO BUATAVA SOGOTUBU

APPELLANT

AND : THE STATE

RESPONDENT

Counsels : Appellant in Person
Mr. T. Tuenuku for Respondent

Hearing : 26 October, 2018

Judgment : 28 December, 2018

JUDGMENT

1. On 3 October 2017, in the presence of his counsel, the appellant pleaded guilty to the following counts, in the following charge, at the Nausori Magistrate Court:

"First Count

Statement of Offence [a]

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to section 318 of the Crimes Decree No. 44 of 2009.

Particulars of Offence [b]

TUIMATEO BUATAVA SOGOTUBU on the 20th day of November 2013, at Nausori in the Central Division by deception, dishonestly obtained \$1,000.00 from Westpac Banking Corporation, Nausori.

Second Count

Statement of Offence [a]

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to section 318 of the Crimes Decree No. 44 of 2009.

Particulars of Offence [b]

TUIMATEO BUATAVA SOGOTUBU on the 5th day of December 2013, at Nakasi in the Central Division by deception, dishonestly obtained \$772.00 from Westpac Banking Corporation, Nausori”.

Third Count

Statement of Offence [a]

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to section 318 of the Crimes Decree No. 44 of 2009.

Particulars of Offence [b]

TUIMATEO BUATAVA SOGOTUBU on the 5th day of December 2013, at Nausori in the Central Division by deception, dishonestly obtained \$772.00 from GMR Mohammed & Sons Limited.

Fourth Count

Statement of Offence [a]

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to section 318 of the Crimes Decree No. 44 of 2009.

Particulars of Offence [b]

TUIMATEO BUATAVA SOGOTUBU on the 20th day of November 2013, at Nausori in the Central Division by deception, dishonestly obtained \$456.00 from Lotus Foreign Exchange, Nausori”.

2. The prosecution presented the following summary of facts:

“On 26 May 2014, the AML & POC Unit received a documentary report through STR from the Financial Intelligence Unit against one Tuimateo Buatava Sogotubu (Accused), 47 yrs, plumber of Lomanikoro Village, Rewa in relation to excess of his M Paise credit account in the sum of \$3,000 between November to December 2013 from three (3) different M Paise agents.

Investigations Finding

Between the above mentioned period, (Accused) was working for the Public Works Department under the Building section, Walu Bay as a plumber. (Accused) was a

team leader of his team based at QVS, Tailevu carrying out realignment works project. One Ritesh Nand (PW3), 36 yrs, Pay Clerk of Waituri, Nausori confirmed that M Paisa was introduced to them sometimes in 2012 for the purpose of distribution of country allowances to workman at the Jobsites. (Accused) was selected since he was the team leader in which the accounts office at PWD sent to him through to his M Paisa account the sum of \$2,410.00 on 20 November 2013 and \$2,790.00 on 4 December 2013 for their country allowance to be equally distributed to them.

(Accused) is a registered member of this M Paisa account with Vodafone through mobile no: 9687727. On the following occasions (Accused) carried out fraudulent withdrawal to the total sum of \$3,000 and used the money to buy liquor for him and his friends:

- 20 November 2013 the sum of \$1,000 withdrew at Westpac Bank, Nausori Branch;
- 5 December 2013 the sum of \$772.00 withdrew at GMR Mohammed & Sons, Nakasi;
- 5 December 2013 the sum of \$772.00 withdrew at Westpac Bank, Nausori, and
- 5 December 2013 the sum of \$456.00 at Lotus Foreign Exchange.

(Accused) fraudulently carried out the above after discovering that his phone SMS inbox was full on all the above transactions was carried out. The agent was only receiving the message and not accused on his phone. In order for a transaction to be completed both the agent and the customer needs to receive the corresponding receipts message on their phone. If only the agent is receiving this message then after the withdrawal done by the customer the same amount will be reversed thus causing the balances to remain the same. Having known about this (Accused) took advantage of it and carried out the above withdrawals knowingly that he was not supposed to receive it.

Caution Interview

(Accused) fully admitted in his video cautioned interview dated 10 November 2016 at the CID/HQ Interview room that he knew what he did was wrong. He had utilized the money for buying drinks for his friends and he was also sorry and apologies for what he had done. He has been using this M Paisa services for quite sometimes and knew the process of how to carry out a withdrawal or send money.

Despite the fact that \$456.00 and \$772.00 was recovered again by GMR and Lotus Foreign Exchange, as confirmed by Rajneel Kumar (PW1), M Paisa Territory Executive Officer of Vodafone Fiji Limited, the offences have been committed by the (Accused). Apart from that the sum of \$1,772.00 was never recovered and the (Accused) is currently making payments to Westpac Bank through deductions from his pay”.

3. The appellant, presumably through his counsel, admitted the above summary of facts. As a result, the court found him guilty as charged on all counts, and convicted him accordingly on those counts. The matter was then adjourned 6 December 2017 for plea in mitigation.
4. On 6 December 2017, the appellant made his plea in mitigation. He was 48 years old and married. He was a plumber and earns \$190 per week. He was a first offender, he pleaded guilty and was the sole bread winner. He said, he had paid \$1,550 to the complainant, and will reimburse the rest in due course. He asked for a non-custodial sentence.
5. On 16 April 2018, the court sentenced him to 12 months imprisonment. He was not happy with the above conviction and sentence and appealed to the High Court. His appeal was 2 months out of time.
6. Because he was not legally represented, his appeal against conviction were not properly drafted and it is difficult for me to understand it. His appeal against sentence can be summed up in one sentence, that is, it was harsh and excessive.
7. I had read all the papers submitted by the parties. I had carefully listened to their verbal submissions and carefully considered their written submissions. The appellant pleaded guilty voluntarily and out of his free will. He admitted the prosecution's summary of facts. In my view, he was rightfully found guilty of the offence, and rightfully convicted for the same.
8. As to his appeal against the sentence, he said, out of the \$3,000 he stole, he had repaid \$1,772. The balance was \$1,228. During the appeal hearing, the prosecution said, the balance of \$1,228 had been recovered by the complainants. As a result of the above,

the appellant was set free on 26 October 2018. His prison sentence of 12 months imprisonment was set aside, and substituted with a sentence of 6 months 10 days.

9. Appeal against conviction is dismissed. Appeal against sentence partially allowed to the above extent.



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JUDGE

Solicitor for Appellant : In Person.
Solicitor for Respondent : Office of DPP, Nausori.