

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 60 of 2016**

**STATE**

**V**

**ARTIKA ANJANI**

**Counsels:** Mrs. D. Kumar for the State  
Mr. A. Kohli for the Accused

**Date of Judgment:** 14 August 2018

**Date of Sentence:** 16 August 2018

**SENTENCE**

1. The accused has been convicted by this Court of one count of theft of \$43,000 from Post Fiji Ltd. In September 2016 and one count of arson of the Post Fiji Building at Seaqqa on 14 September 2016.
2. At the time the accused was the Post Mistress and sole employee of Fiji Post at Seaqqa. She fell victim to an on line scam in which she was promised a loan of \$150,000 if she paid a deposit and fees of \$50,000 to a Fijian agent of the fraudster.

The fraudster was said to be in France but bogus documents provided to her suggest that the scam originated in Africa.

3. Not having \$50,000 of her own money to use as fees she used \$43,000 belonging to Post Fiji without the authority of Post Fiji. Post Fiji knew that she was supposed to be holding this money and sending it to Labasa Regional Head Office but she was not doing that.
4. On the 14<sup>th</sup> September 2016, her superiors made their final demand that she send the \$43,000 they knew she was holding in Seaqaqa. That night the Fiji Post Office in Seaqaqa burnt to the ground.
5. When the accused was interviewed by the Police, she admitted that she had used \$43,000 belonging to Post Fiji without their authority. That she used it by paying fees to the fraudster's agent in Sigatoka in the hope of getting a loan of \$150,000 to buy property.
6. She also admitted setting fire to the Post Office (arson) on September 14<sup>th</sup>, by bringing a candle from home and lighting it in a wooden cupboard under the counter.
7. She also told one of her superiors that the \$43,000 was in that cupboard and must have been destroyed in the fire.

### **The Law**

8. The maximum penalty for **theft** is 10 years imprisonment. However, the usual tariff for a first offence is a term of 2 to 9 months. For any subsequent offence a term of more than 9 months is to be imposed. This Court said in **Ratusili** [HAA11 of

2012 (Lbs)], that thefts of large sums and thefts in breach of trust whether a first offence or not could attract a sentence of up to 3 years. It was also said in that case that the relationship between the accused and the victim was important and that planned thefts would attract greater sentences than spontaneous thefts. Finally it was said that thefts in breach of trust from an employer should start at the point of three years.

9. The maximum penalty for **arson** is life imprisonment.

10. In the case of Lesu AAU 58.2011, the Court of Appeal said:

*“Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment”.*

11. Very recently Perera J. sought to depart from this tariff in Macdonald HAC 181.2016 (15 June 2018) stating that the Court of Appeal had not been properly assisted when it confirmed this tariff.

12. This Court however is bound to follow the tariff endorsed by the Court of Appeal until such time it is revisited. That does not preclude the Court from passing a sentence outside the tariff for good reason stated.

### **Mitigation**

13. In written submissions placed before the Court, Counsel for the accused emphasizes the personal pressure on the accused from a very critical mother-in-law; pressure that induced her to apply for a loan to buy property.

14. Unfortunately she was duped into paying up-front sums in order to secure the loan, not realizing that the offer was bogus.
15. In the expectation of a large loan, she assumed that she could pay the money back to Post Fiji without anybody knowing it had been used.
16. Counsel stresses her co-operation in admitting the theft to Police and in Court while denying the arson offence.
17. The accused is 38 years old, married with two young children (Aged 7 and 5).
18. She has a clear record. She is remorseful and did not plan to steal the money, and by using the funds she did not gain anything.
19. The State confirms that the accused has a clear record, but prays that there are appreciable aggravating features in the case:
  - Using the money was a breach of trust by an employee
  - The amount used (\$43,000) is substantial
  - It was a systematic and planned theft

And with regard to the arson:-

- There was complete damage to the building
- Considerable inconvenience was caused to the public of Seaqaqa by depriving them of postal and telecom services.

### **Determination**

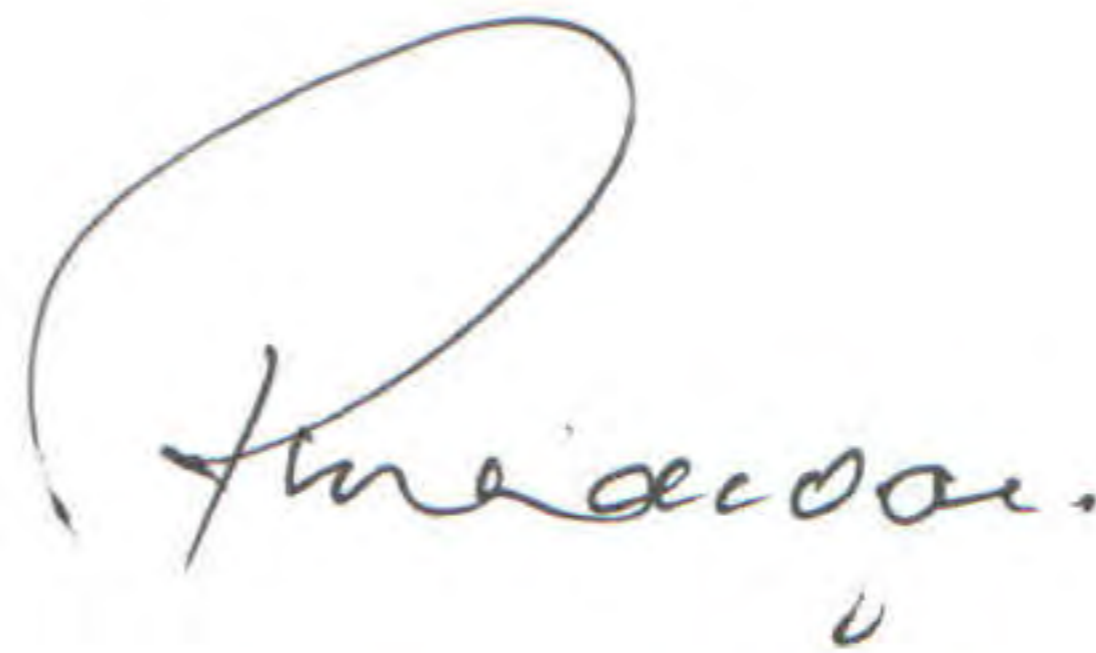
20. Arson being the more serious offence will be dealt with first.

21. Post Fiji Ltd is a private entity and the only shareholder is the Fiji Government. To destroy what is in effect a Government Building with its contents not only deprives the government of a very valuable asset, but imposes an added burden on Fijian taxpayers to replace the building and the services of Post Fiji. This is a seriously aggravating feature.
22. I agree that the deprivation of normal Post Office services was an inconvenience to the Seaqaqa public, and is an added aggravation feature.
23. I take a starting point of 4 years imprisonment for the arson and would increase that by 2 years for the aggravation of burning a Government Building and the consequent inconvenience to the public. I deduct one year for her personal circumstances and I sentence her to a term of imprisonment of five years.
24. The theft of the money from Post Fiji, although she didn't gain from it, gave her what she thought was access to a cheap loan. From a starting point of three years I increase that by two years for the breach of trust of an employee and for the systematic planned manner in which she used the money. From that interim of five years I again deduct one year for her personal circumstances meaning that for this offence she will serve a term of four years imprisonment .
25. The personal circumstances referred to in the sentencing process include her removal from a family of a husband and two small children as well as the pressure she was under from an over-bearing mother-in-law to better herself.

26. The tragedy of being duped by on-line fraudsters from abroad and usually Africa arouses sympathy but it can in no way be mitigation for criminal acts in Fiji.
27. The members of the public in Fiji have been warned before in strong terms about being wary of on line fraud or cyber crime. The sentences passed in this case may be a further warning for the public to be vigilant.
28. The two terms are to be served concurrently and I impose a minimum term of three years before she is eligible for parole.

**Orders**

1. On the first count of theft, the accused is sentenced to four years imprisonment to be served concurrently with the sentence on count 2.
2. On the second count of arson the accused is sentenced to five years imprisonment, to be served concurrently with the sentence on Count 1.
3. She is to serve 3 years on each sentence before she is eligible for parole.
4. For the avoidance of doubt, the total minimum period is three years.



**P. K. Madigan**

**Judge**

At Labasa

16 August 2018

