

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No.: HAC 069 of 2019

BETWEEN : **FICAC**

AND : **LAISIASA VALESU**

Counsel : **Mr S Miramira for the State**
Ms L Ratidara for the Accused

Date of Hearing : **25 February 2020**

Date of Sentence : **20 March 2020**

SENTENCE

- [1] The offender has pleaded guilty to one count each of abuse of office, forgery and obtaining a financial advantage. All three charges are founded on the same facts.
- [2] Between 1 June 2013 and 31 May 2016 the offender was employed in the public service as a Land Acquisition Officer at the Water Authority of Fiji (WAF). His position required him to facilitate compensations for owners of property affected by WAF projects. Compensations were paid to the affected property owners in accordance with WAF guidelines. The process involved consultations with the relevant stakeholders including the property owners, assessment of compensation, negotiating and reaching an agreement and completing claim forms.
- [3] The charges arose from projects known as Muanikau 5G, Nabukalou and Samabula North 5F. These projects were initiated by WAF Executive Management and carried out by the officers from the Projects Team and Land Management Unit. The main objective

of the projects was to improve water and wastewater services for the people living in the affected areas. Compensations were paid for the use of private land for easement and any damage to crops from laying of pipelines.

- [4] The offender instead of following WAF's policies and procedures to compensate the legitimate property owners affected by the projects, implemented a dishonest scheme to divert the funds for his own benefit. He obtained a total of \$334,496.18 by submitting false easement agreements and crop compensation claims. He used identities of four men he had known through a local rugby club he had affiliation with as the purported property owners to draw up easement agreements and crop compensation forms. He falsified the compensation forms with false details of damaged crops and signatures of the purported property owners.
- [5] The false agreements were submitted to the Land Compensation Unit to process payments without any validation from the WAF Legal Department. The offender deliberately withheld the documents from the Legal Department to avoid any scrutiny. The offender completed the Internal Requisition Order (IRO) form for every false crop compensation claim and got the Team Leader Land Management Unit to countersign the IRO before submitting it to the General Manager for approval. The payments were made by cheques. After the claims were approved, cheques were drawn under the names of the offender's four acquaintances.
- [6] The offender collected the cheques from the Accounts section and deposited them in the respective bank accounts of his acquaintances. The offender was instrumental in opening the accounts by providing the minimum deposits. Once the cheques were honoured, the offender either withdrew the funds himself using the ATM card he had control of or got his acquaintances to withdraw the funds and hand it over to him.
- [7] Over a period of four years, the offender used this method to obtain a total of 54 payments – one in 2013 to a total amount of \$400.65, nine in 2014 to a total amount of \$75,000.00, thirty six in 2015 to a total amount of \$229,120.19 and eight in 2016 to a total amount of \$21,375.34. Of the 54 payments, 20 payments were for crop compensation, 33 were for land compensation and one payment of \$8600.00 to a person

who was not living within the area affected by the Samabula North 5F Project and who did not own a property there. This payment was also collected by the offender.

[8] The gravity of the offences is reflected in their maximum penalties. The abuse of office was committed for a gain. The maximum punishment for abuse of office for a gain is 17 years imprisonment. The tariff range from 1 to 12 years imprisonment and the factors that may be relevant to determine the level of culpability are:

- i. The level of contribution or the influence made by the accused in the commission of the offence,
- ii. The level of authority, trust and the responsibility reposed in the position held by the accused,
- iii. Has the accused influenced or pressured others to involve in the offence,
- iv. Nature and the manner in which the offence was committed or planned,
- v. Number of victims,
- vi. Whether the accused involved in the offence through force, coercion, exploitation or intimidation,
- vii. Not motivated by personal gain,
- viii. Opportunistic “one-off” offence with little or no planning. (*FICAC v Laqere* [2017] FJHC 337; HAC56.2014 (10 May 2017 at [26]))

[9] The maximum penalty for forgery is 10 years’ imprisonment. The tariff range from 3 to 6 years’ imprisonment and the factors to be considered are:

- i. High gain – actual or intended.
- ii. Whether the accused a professional or non-professional.
- iii. Sophisticated offending with high degree of planning.
- iv. Target individuals rather than institutions.
- v. Vulnerable victim. (*State v Prasad* [2011] FJHC 218; CRC024.2010 (19 April 2011) at [31]).

[10] The maximum penalty for obtaining financial advantage is 10 years’ imprisonment and the tariff range from 2 to 5 years’ imprisonment (*FICAC v Mohammed* [2015] FJHC 479; HAC349.2013 (24 June 2015) at [29]).

[11] Apart from the objective seriousness the offences, the Court must also consider the seriousness of the actual conduct of the offender. The offender had engaged in a premeditated defrauding of his employer for a period of four years involving a significant amount of money. He grossly breached the trust that his employer reposed on him and he

also breached the trust of the public by diverting funds that were assigned for improving public service for his own benefit. The level of dishonesty involved is high. These are serious aggravating factors.

- [12] When a person in a public service flout policies and procedures designed to protect the public purse for his own benefit, the harm is to the employer's reputation and to the public who are deprived of services as a result of loss of public funds. The courts duty is to denounce such conduct and send a clear message that a substantial prison sentence will be imposed on those who abuse public funds for their own benefit.
- [13] Apart from the aggravating factors, the Court is obliged to also consider the mitigating factors. The offender is 39 years old and single. He now earns a living by farming and selling root crops. He has a good character but that factor has little mitigating value because only people of good character are given positions of trust and responsibility (*State v Bole* [2005] FJHC 470; HAC0038S.2005S (4 October 2005)).
- [14] The only compelling mitigating factor is the offender's guilty plea. Although it is not a first opportunity plea, the guilty plea was entered before the case was set for trial. There is a utilitarian value to the guilty plea as it has saved the court's time and resources. The offender has cooperated during investigation but he has not made any attempt to compensate for the loss he caused to his employer. If he had done so that may have indicated genuine remorse. For these reasons I incorporate a discount of 15 % in the final sentence to reflect the offender's guilty plea. A further reduction of 1 week is made to reflect the offender's remand period.
- [15] Section 17 of the Sentencing and Penalties Act allows the courts to impose an aggregate sentence on an offender who is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character. The only caveat against the power to impose an aggregate sentence is that the aggregate term of imprisonment must not exceed the maximum sentence for each offence. In this case the maximum ceiling is 10 years imprisonment.

[16] The offender is convicted and sentenced to an aggregate sentence of 6 years' imprisonment with a non-parole period of 4 years.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Fiji Independent Commission Against Corruption for the State
Legal Aid Commission for the Accused