IN THE HIGH COURT OF FIJI

AT SUVA

ANTI-CORRUPTION DIVISION

CRIMINAL CASE NO. HACD 004 of 2022S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC))

vs

RATU SULIANO MATANITOBUA

Counsels: Mr. Aslam R and Mr. Hickes D - for the Prosecution
with Mr. Work J and Mr. Nand A
Mr. Vosarogo F, Ms. Qica J and. - for the Accused
Ms. Tosokiwai V

Dates of Trial: 16th – 20th May, 30th May – 17th June
Date of Judgment: 06th July 2022
Date of Sentence: 15th August, 2022

SENTENCE

1. In this matter you, **RATU SULIANO MATANITOBUA,** were charged with two counts, as below:

FIRST COUNT

Statement of Offence (a)

False information to a public servant: Contrary to **Section 201(a)** of the **Crimes Act No. 44 of 2009.**

Particulars of Offence (b)

Ratu Suliano Matanitobua on or about 26th November 2018 at Suva in the Central Division gave Viniana Namosimalua the Acting Secretary General to the Parliament of Fiji, a person employed in the Civil Service, false information that his permanent place of residence is in Namosi Village, Namosi which he knows to be false, knowing it to be likely that he will thereby cause Viniana Namosimalua to approve allowance claims submitted by him, which Viniana Namosimalua ought not to do if the true state of facts with respect to the permanent place of residence of **Ratu Suliano Matanitobua** were known to her.

SECOND COUNT

Statement of Offence (a)

OBTAINING FINANCIAL ADVANTAGE: Contrary to **Section 326(1)** of the **Crimes Act No. 44 of 2009**.

Particulars of the Offence (b)

Ratu Suliano Matanitobua between 1st August 2019 and 30th April 2020 at Suva in the Central Division engaged in conduct, namely, submitted Allowance Claims to the office of the Acting Secretary General to the Parliament of Fiji and as a result of that conduct obtained a financial advantage amounting to $38,378.22 from the office of the Acting Secretary General to the Parliament of Fiji knowing or believing that he does not permanently resides in Namosi Village, Namosi and therefore was not eligible to receive the said financial advantage as per the Parliamentary Remunerations Act of 2014.

2. At the trial, **16 witnesses** were called for the Prosecution and **68 documents** were marked **(PEX1 – PEX68).** For the Defense case, you opted to remain silent on the dock, but **2 witnesses** gave evidence and **14 documents (DEX1 – DEX5 (c))** were marked. On pronouncing the verdict in this matter on 06/07/2022, you were convicted on both counts by this Court and today this matter is coming up for sentence.

3. In comprehending the gravity of the offences committed by you in this matter, I am mindful that the maximum punishment for the offence of tendering false information to a public servant, contrary to **Section 201(a)** of the **Crimes Act No. 44 of 2009,** is an imprisonment term of five (05) years and the maximum punishment for obtaining financial advantage, contrary to **Section 326(1)** of the **Crimes Act No. 44 of 2009,** is an imprisonment term of ten (10) years.

4. In the absence of a confirmed tariff regime enunciated by the Superior Courts in our country for the two offences you have committed in this matter, without venturing into a mathematical jujitsu, I intend to take guidance from the pronouncement made by **His Lordship Justice Marsoof** of the **Supreme Court of Fiji** in the case of **Solomone Qurai v The State**[1], where His Lordship observed the sentencing methodology followed in Fiji, as below:

> *"In Fiji, the courts by and large adopt a two-tiered process of reasoning where the sentencing judge or magistrate first considers the objective circumstances of the offence (factors going to the gravity of the crime itself) in order to gauge an appreciation of the seriousness of the offence (tier one), and then considers all the subjective circumstances of the offender (often a bundle of aggravating and mitigating factors relating to the offender rather than the offence) (tier two), before deriving the sentence to be imposed."*

5. However in making reference to the **Sentencing and Penalties Decree 2009** of Fiji, **His Lordship Justice Marsoof** states that:

> *"It is significant to note that the Sentencing and Penalties Decree does not seek to tie down a sentencing judge to the two-tiered process of reasoning described above and leaves it open for a sentencing judge to adopt a different approach, such as "instinctive synthesis", by which is meant a more intuitive process of reasoning for computing a sentence which only requires the enunciation of all factors properly taken into account and the proper conclusion to be drawn from the weighing and balancing of those factors."*

6. Therefore, in determining the appropriate sentence for you in this matter, I intend to depart from the two-tiered process and adopt an instinctive process of reasoning in arriving at the final determination. For this end, I intend to analyze the aggravating and mitigating factors tendered by the Prosecution and the Defense meticulously.

Aggravating Factors

i) <u>Breach of Public Trust</u>

7. At the time of committing the offences in this matter, you were a Parliamentarian of this country for several years. As a consequence, I am of the view that you

[1] [2015]FJSC 15

were well aware that you were reposed with trust and responsibility on behalf of your voters on one hand, and you had a responsibility to the constitution of this country on the other hand by the oath of office and the oath of allegiance you took in the Parliament. As claimed by the Prosecution, the level of trust that was posed on you by your voters was of the highest degree and by breaching the laws, as seen in this matter, you have committed the highest breach of trust in the eyes of the general public and to the Parliament of this country, which the Prosecution expect me to consider as an aggravating factor in passing the sentence. For this end Prosecution brings to the attention of this Court the Canadian case of **R v Bruneau**[2], where the Court has pronounced, as below:

> ***"****The responsibility of a member of parliament to his constituency and to the nation requires a rigorous standard of honesty and behavior, departure from which should not be tolerated."*

8. Considering the circumstances of this case, I observe that this is a case where a Parliamentarian has misused allowances provided to Parliamentarians through the **Parliamentary Remuneration Act of 2014** by the use of public money, in recognition of the onerous duty expected from members of Parliament. Further, during the course of this trial, I observed the utmost trust and respect the people of Namosi extend to you as the Paramount Chief of the Namosi Province. This simply showed that people of Namosi expected you to be the idol reflecting community values deserving their incontrovertible respect and obedience. In hindsight, the money that was wrongfully obtained by you could have been used to upgrade schools in Namosi, maybe to provide better shoes and other equipment for young kids playing football and representing their schools with the dream of playing for the national team one day or to train more health care professionals in Namosi to provide a better health service to the citizenry. In recognizing that if not nipped in the bud, conduct of this nature by the honorable members of Parliament could spread like wild fire and corrupt the political culture of this country and bring the apparatus of the government to a standstill, as recently seen in some jurisdictions, this Court identifies its responsibility to send a profoundly strong signal to the community to discourage potential wrong doers within the contours of the law.

ii) *<u>Serious Damage to the Reputation of Parliament</u>*

9. Prosecution contends that by your conduct, you betrayed the public trust in honorable members of Parliament. It is further stated that the immediate result of such action is a serious damage to the reputation of the Parliament that could result in an overall reduced confidence in the democratic system of our country. In support of this claim, Prosecution highlights the sentiments expressed by the **English Crown Court** in the case of ***R v Chaytor***[3], as below:

[2] [1963] CarswellOnt 22; [1964]1CCC 97

[3] [2011] 1 All ER 805

> *"It is difficult to exaggerate the levels of public concern at the revelation of significant abuse of the expenses system by some members of Parliament. Some of those elected representatives, vested with the responsibility for making the laws which govern us all, betrayed public trust. There was incredulous consequent public shock. The result was serious damage to the reputation of Parliament with correspondingly reduced confidence in our priceless democratic system and the process by which it is implemented and we are governed"*

iii) The large amount of Public Money involved in the offences

10. The Prosecution highlights your culpability in claiming a large amount of Public Money during a short period of time in the commission of these offenses. In this regard, it is contended that the amount of money constitutes the average annual income of two civil servants of this country. Further, it is the submission of the Prosecution that you claimed these reimbursements when there were no actual expenses involved. In support of this claim, the Prosecution brings to the attention of this Court the **New South Wales of Australia Court of Appeal** decision of ***R v Mungomery***[4]**,** *which states as follows:*

> *"In this regard authority makes it clear that the amount of money involved in premeditated deception is important and the period of time over which offences are committed are relevant factors in determining the extent of criminality"*

Mitigating Factors

i) Cooperation during trial

11. The highly commendable and exemplary degree of cooperation provided by the Counsel for the Defense and the Accused in this matter during trial should be given due credence in sentencing. In this regard, due to this cooperation, the length of the trial was significantly shortened, where the contested issues and documents were promptly identified, as concede by the Prosecution. Also the trial was conducted very professionally, offering professional courtesies when warranted. As tendered by FICAC, I should take cognizance of this conduct and award the due discount to you, as pronounced by **Fullerton J** of the **Supreme Court of New South Wales, Australia** in the case of ***R v Macdonald; R v Edward Obeid; R v Moses Obeid***[5]**, as below:**

[4] [2004] NSWCCA 450 (14 December 2004)
[5] [2020] NSWSC 382; BC202002715

"…….the Crown recognized the generally cooperative manner in which the trial was conducted by and on behalf of the offenders. I also acknowledge that the pre-trial directions I issued in 2018 in order that the objections to aspects of the Crown case to be dealt with in an orderly fashion were compiled with to the credit of all participating counsel. I also note that in large part of the continuity and provenance of documents was not disputed and that there were prepared from time to time during the course of the trial lengthy agreed facts."

ii) Previous Character

12. It is the contention of the Defense that I should take into consideration your character in determining the sentence, as demonstrated by the Defense by leading two witnesses and by submitting two character certificates during mitigation submissions. In this regard, **Section 5** of **Sentencing and Penalties Act of 2009** recommends the sentencing Court to consider previous convictions recorded against the Accused and significant contributions made by the Accused to the community in reaching the appropriate sentence. For this end, I take notice that there are no recorded previous convictions against you and, as led in evidence during the trial and during mitigation submissions, as conceded by both Defense and Prosecution, you had actively contributed to the **Namosi** community as the Paramount Leader.

iii) Losing Earnings and Care of the Sick Wife

13. Defense submits that due to this conviction you have lost credibility and integrity in the eyes of the public locally and internationally. Further, Defense claims that as a result of the conviction, you have lost your earnings as a Parliamentarian. As a consequence, Defense is of the view that you have been already punished and you should not be punished anymore.

14. Unfortunately, I cannot agree with this submission in relation to losing of earnings. You lost your Parliamentary seat following conviction not due to any misdemeanor of the judicial system of our country or due to the enmity of FICAC against you. You have been deprived of this position due to your own fraudulent conduct, which resulted in wrongfully claiming public money of this country. Therefore, according to the law of our country, if someone commits an offence, regardless of the designation, i.e. farmer or politician, that person needs to be punished according to the contours of the existing law. **This demonstrates the Rule of Law in operation in our country.** Therefore, this contention of the Defense is without merit.

15. However, with regard to the health of your wife, while being sympathetic for her health condition, I have ventured to provide possible relief, while balancing with other relevant consideration, as required by applicable law and circumstances.

iv) Restitution

16. Defense brings to my attention the provisions stipulated in **Section 4 (2)(h)** of the **Sentencing and Penalties Act of 2009**, where it is stated, as below:

> "*4 (2) In sentencing an offender, a Court must have regard to –*
>
> *(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Act"*

17. On the above, Defense claims that you have now restituted the total sum that you were found guilty of taking advantage of by submitting false information to the Parliament. Therefore, the Defense informs this Court to take due notice of this development.

18. In relation to restitution, I am of the view that restitution should not be used as a fig leaf with the expectation of lenience from Court when everything else has failed. In this matter, you decided to repay the money after the conclusion of a trial that went on for 3 weeks ending up in your conviction. I see a clear distinction between an accused intending to restitute at an early stage of a criminal proceeding, which could also demonstrate a certain level of remorse of the accused, contrary to deciding to restitute at the tail end of a criminal trial.

v) Delay in Prosecuting

19. Defense contends that delay in bringing you to justice by the Prosecution should be considered as a factor in mitigation when imposing the sentence against you.

20. However, in this matter, the offending period runs up to the 30th of April 2020 and the charges were filed in Court against you on 21.01.2022. Though you pleaded on 03rd of January 2022, due to the objection raised by you regarding this Court hearing this matter without trying in the Magistrate's Court, this case got delayed by 3 months. Months, where the case commenced on 16th May 2022. Considering the above circumstances, there was no delay on the part of the Prosecution in commencing this trial. Therefore, this claim is unfounded.

vi) Suspension of Sentence

21. Defense brings to the attention of this Court the provisions available under **Section 26** of the **Sentencing and Penalties Act 2009** to suspend a sentence imposed by Court against a convict. In this regard, the decision of the **Court of Appeal of New Zealand** in ***R v. Petersen [1994]***[6]is highlighted**.**

22. In considering this judgment, this Court is compelled to consider the below pronouncement of **Chief Justice Eichelbaum** in this matter, as well:

> *"The principal purpose of s 21A was to encourage rehabilitation and to provide the Courts with an effective means of achieving that end by holding a prison sentence over an offender's head. It was available in cases of moderately serious offending but where it was thought there was a sufficient opportunity for reform, and the need to deter others was not paramount."*

23. Considering the circumstances that lead to the prosecution in this case, it is paramount that any punishment imposed by Court in this matter should have a reprehensible deterrent effect that could also send a profoundly strong signal to any potential wrongdoer in the interest of the reputation of our Parliament.

24. Considering the above espoused circumstances of this case, I notice that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence against you for Count 1 & 2.

25. **Mr. Ratu Suliano Matanitobua,** consequent to your conviction, I sentence you to **36 months** imprisonment. Further, in considering your exquisitely extensive service to the Namosi community and your active representation of your community in Parliament for a considerable period, with the authority given to me by **Section 26** of the **Sentencing and Penalties Act of 2009 (the Act),** your sentence is partially suspended, where you shall serve 26 months of your sentence forthwith with an applicable non-parole period of 20 months under **Section 18 (3)** of the **Sentencing and Penalties Act of 2009**, and the remaining period of **10 months** is suspended for **five (05) years**.

26. If you commit any crime punishable by imprisonment during the above operational period of five (5) years and found guilty by the Court, you are liable to be charged

[6] 2 NZLR 533

and prosecuted for an offence according to **Section 28** of the **Sentencing and Penalties Act of 2009.**

27. You have thirty (30) days to appeal to the Fiji Court of Appeal.

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Hon. Justice Dr. Thushara Kumarage

At Suva

15th of August 2022

Cc: Office of Fiji Independent Commission against Corruption

Office of Vosarogo Lawyers