

IN THE HIGH COURT OF FIJI
AT SUVA
ANTI-CORRUPTION DIVISION

Criminal Case No. HACD 001 OF 2021L

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

-v-

- 1. SHEENAL DEVI**
- 2. BHIMLESH CHAND**

COUNSELS:

Ms. FATAFEHI S.	-	FOR FICAC
MR. PRASAD A. & MR. HERITAGE S.	-	FOR ACCUSED 1
MR. NIUDAMU J.	-	FOR ACCUSED

JUDGMENT

INTRODUCTION

1. The two Accused in this matter, 1) **SHEENAL DEVI**; 2) **BIMLESH CHAND** WERE charged by the **FIJI Independent Commission Against Corruption** with **one count of forgery** separately and as an alternative count to the count of forgery against the first Accused she was charged for **giving false or misleading documents**. In addition, as the third count, the first Accused was charged for **using a forged document** as below:

FIRST COUNT

Statement of Offence

FORGERY: Contrary to Section 156 of the Crimes Act No. 44 of 20009.

Particulars of Offence

SHEENAL DEVI between the period of 1st January 2017 and 11th May 2020, at Sigatoka in the Western Division, made a false document namely the Land Transport Authority

Application for Transfer or ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 by forging the signature of Jean Ravikash Mani Chetty and entering her mobile number 8675590 under the present owner section on the said application with the intention to dishonestly induce the duty of a public officer at the Land Transport Authority to accept the document as genuine and it being accepted, dishonestly obtained the legal ownership for motor vehicle registration number IA 649.

ALTERNATIVE TO COUNT ONE

Statement of Offence

GIVING FALSE OR MISLEADING DOCUMENTS: Contrary to Section 156 of the Crimes Act No. 44 of 20009.

Particulars of Offence

SHEENAL DEVI on the 11th May 2020 at Sigatoka in the Western Division, produced a document namely the Land Transfer Authority Application for Transfer of ownership or Motor vehicle/Trailer for the motor vehicle registration number IA 649 to Kelera Dreudreu Vakaudekoro and does so knowing that the said document is false and it was produced in purported compliance with the Land Transport/vehicle (Registration and Construction) Regulation 2000.

SECOND COUNT

Statement of Offence

FORGERY: Contrary to Section 156 (1) of the Crimes Act No. 44 of 20009.

Particulars of Offence

BHIMLESH CHAND between the period of 1st January 2017 and 11th May 2020, at Sigatoka in the Western Division, made a false document by certifying that the information contained in the Land Transport Authority namely the Land Transport Authority Application for Transfer of ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 as true and correct without verifying the details contained therein and in the absence of the legally registered owner Jean Ravikash Mani Chetty with the intention that **SHEENAL DEVI** will use it to dishonestly induce the duty of a public official at the Land Transport Authority, to accept the document as genuine and it being accepted, dishonestly influence the exercise of a public duty or function.

THIRD COUNT

Statement of Offence

USING FORGED DOCUMENT: Contrary to Section 157(1) of the Crimes Act No. 44 of 20009.

Particulars of Offence

SHEENAL DEVI between the period of 11th May 2020, at Sigatoka in the Western Division, knowing that the Land Transport Authority Application for Transfer or ownership of Motor Vehicle/Trailer for the motor vehicle registration number No. IA 649 is a false document used it with the intention of dishonestly inducing the duty of a public official to accept the document as genuine and it being accepted dishonestly obtained legal ownership of motor vehicle registration number 1A 649.

2. When these charges were read over to the accused in open Court on 31/01/2022, the accused understood the charges and pleaded not guilty to the charges. The trial to this matter on the above counts commenced on 17/05/2022 and proceeded till 20/06/2022.
3. For the Prosecution case 06 witnesses gave evidence and marked **55 documents (PEX1 – PEX55)**, which included admitted documents by both parties. At the end of the Prosecution case, since the Court was satisfied that a prima facie case has been established against the accused, acting under **Section 231** of the **Criminal Procedure Act of 2009**, the Defense was called from the two Accused and the standard options available for the Defense were spelt out. For the Defense case, the first Accused opted to give evidence in Court under cross-examination and another witness was summoned. The second Accused gave evidence in Court under cross-examination. On both the Prosecution and the Defense making final oral submissions and tendering written submissions, this case is now pending for the Judgement of this Court.

BACKGROUND

4. In this matter, the Complainant, **Jean Ravikash Chetty Mani** and the 1st Accused, **Sheenal Devi**, had been having a relationship for over 7 years, where they had been sharing and using their possessions, including motor vehicles. The vehicle bearing registration number IA 649 had been purchased in the name of the Complainant in 2015 and the 1st Accused had been using this vehicle for her day-to-day activities on mutual agreement with the Complainant, but the registered ownership of the vehicle had remained with the Complainant. However, it has been complained to the police by the Complainant that in May 2020 that the ownership of this vehicle had been transferred to the 1st Accused without his knowledge.
5. This case is based on the conduct of the 1st Accused and the 2nd Accused in relation to the transfer of the ownership of the motor vehicle bearing the registration number IA 649 by submitting a Land Transport Authority Application for motor vehicle transfer. In this regard, the 1st Accused has been charged for making a false Application Form for this transfer and the 2nd Accused is charged for certifying the information contained in this Application Form as true and correct without verifying the details contained therein.

BURDEN OF PROOF

6. The Accused are presumed to be innocent until proven guilty. As a matter of law, the onus or burden of proof rests on the Prosecution throughout the trial, and it never shifts to the Accused. There is no obligation or burden on the Accused to prove their innocence. The Prosecution must prove the guilt of the Accused, beyond reasonable doubt. If there is a reasonable doubt, so that the Court was not sure of the guilt of the Accused, or if there be any hesitation on the part of the Court of the establishment of the ingredients or on the of

evidence led by the Prosecution the Accused must be found not guilty of the relevant charge and accordingly acquitted. Both Accused have given evidence in this case. Thus, if this court accepts the Defense evidence or is unable to reject or accept the Defence evidence, then too the relevant Accused is entitled to a finding in his or her favour.

ELEMENTS OF THE OFFENCES

Forgery

7. The elements of this offence that needs to be established by the Prosecution are, as follows:
 - i) The Accused;
 - ii) Makes a false document;
 - iii) With the intention to use it by himself or by another person;
 - iv) To dishonestly induce a third person in the third person's capacity as a public official to accept the said false documents as genuine;
 - v) If the said document is accepted, to dishonestly obtain [sic] a gain, dishonestly cause a loss or dishonestly influence the exercise of a public duty or function.

Giving False or Misleading Documents

8. Elements of this offence are, as follows:
 - i) The Accused person (**Sheenal Devi**);
 - ii) Produces a document to another person;
 - iii) Knowing that the document is false or misleading; and
 - iv) The document is produced in compliance or purported compliance with any law.

Using a Forged Document

9. The elements that have to be established by the Prosecution for this offence are:
 - i) The Accused
 - ii) With the knowledge that the document is a false document
 - iii) Uses the false document;
 - iv) With the intention of dishonestly inducing another person in the other persons capacity as a public official to accept it as genuine; and
 - v) If the document is accepted, dishonestly obtains a gain, dishonestly causing a loss, or dishonestly influence the exercise of a public duty or function.

10. In order to establish the guilt of the accused for Counts 1, 2 & 3, the Prosecution must prove beyond reasonable doubt all the elements as elaborated above. From the evidence lead in the trial by the Prosecution and the Defense, this Court needs to determine whether the Prosecution managed to prove element of each count beyond reasonable doubt or whether the Defense created a reasonable doubt in relation to any of the elements in any of the counts, warranting the acquittal of the accused for that count. To achieve this objective, this Court intends to analyse the impact of the Prosecution and Defense evidence lead in this Court.

Prosecution Case

11. As mentioned, for the Prosecution 6 witnesses gave evidence. In this regard, the first witness was **Jean Ravikash Mani Chetty (PW1)**, the Complainant in this matter.

According to him, he had known the 1st Accused **Sheenal Devi** from Primary school and had been in a relationship with her and had been knowing her over 10 years, where they started their relationship in 2012 and continued till 2020. Their families also had now of this relationship, where though they expected to get married that had not materialized. In addition, he admitted that his passport, his tax confirmation and his national provident fund card remained in the custody of the 1st Accused, which was given to her by him for overseas travel together.

12. He testified that in 2020 he had been working at Maui Palms Resort Singatoka. On one Saturday in May on the directions of his manager he had reported to check whether all the electricity circuits of the hotel were shut down to cater for the Covid lock-down. On his way back home, he had got some take-away food from Singatoka town and consumed the food in his motor vehicle by the road near Singatoka hospital. After his meal when he tried to merge his vehicle back to the road he had seen the 1st Accused sitting on the passenger seat of her vehicle (IT902) from his rear view mirror going towards Nadi driven by some man, where he realized that something was wrong.
13. He further affirmed Court that he overtook the car that the 1st Accused was traveling in and stopped his car in the middle of the road and approached their car on foot. When he reached their car the driver had swerved the car hitting both of his knees on the back door of the car and sped away. This had been on the 9th of May 2020. At that point, he had gone to the Singatoka police station and reported the matter, where the Police had called him and them and charged both parties for dangerous driving. Troubled with this situation, this witness had informed this incident to the family of the 1st Accused and requested the father of the 1st Accused whether he could collect his car IA 649, since at that time this car had been with the 1st Accused.
14. According to him, the next day he had gone to the house of the 1st Accused to collect his car (IA 649), but at her place **Sheenal Devi** had refused to give him the car and mentioned that her car got damaged due to the altercation with him, and she will return his car only after doing the repair of her car. On hearing this, on returning home he had called the bailiff in Singatoka (Keshwa) on Monday and had asked him to get his car. However, on the direction of the Bailiff he had gone to the Singatoka LTA and obtained his car history that identified him as the owner (**PEX1**) and a letter of authority (**PEX2**) on 11th May 2020 and given to the Bailiff. But in the afternoon Bailiff had informed him that he is not the owner of the car IA 649 as per LTA records and the ownership had been transferred to the 1st Accused during that day.
15. Being aggrieved by this situation, on 12/05/2020 he had visited the Singatoka LTA office with the Bailiff and met the manager Mr. Salesh who had shown the transfer form to him (**PEX3**). This witness claimed that he identified the handwriting of the 1st Accused on the alleged transfer form and the signature of the transferor had not been his and he claimed that his signature had been forged. According to him the 1st Accused had filed the following information in PEX3:
 - The TIN number of the present owner
 - The sale price

- The details of the new owner is all her writing
- Mobile phone number

He further asserted that he had never met the 2nd Accused and he had no intention of transferring this vehicle at any point of time, thus did not sign **PEX3**. He also claimed that the new owner's is that of the 1st Accused. Subsequently, he had reported this incident to FICAC and made a statement.

16. In cross-examination by the Defense, he admitted that he was staying with the 1st Accused in 2016, but he didn't sign a transfer form that year or didn't consent to transferring the ownership of vehicle IA 649. However, he admitted that he changed his signature in 2018 and the signatures in his passport (**PEX6**) and that of the seller of **PEX3** are similar.

17. The second witness for the Prosecution was **Kelera Vakaudekoro (PW2)** who was a customer service officer at LTA. According to her, on 11/05/2020 she had been at work at Singatoka LTA office and when she receives an application form she will check the signatures and the signature of the witness and compare with what is in the system. Thereafter, she will amend the names in the system in LT soft and the driving license number of the new owner and save the transfer form in the system. After that the wheel tax and transfer fee will be collected and stickers will be given to the new owner.

18. She testified that she completed the official use part of the **PEX3**, and her handwriting and initials are there. According to her the certifying person of the form has to know the buyer and the seller but doesn't need to be there. She claimed that **PEX3** had been brought to her by **Apenisa Naqaravatu**, a road safety officer at LTA. She claimed that this form was completely filled except for part 4 and the date which she filled as 11/05/2020. Apenisa had approached her 3 times expecting her to complete the transaction soon. She mentioned that for the transfer one of the parties should be present and for **PEX3** the buyer the 1st Accused had been present and she had seen her in the car from the side door. Though she had not seen the seller at all, signature of the seller had been the same as the system. She further informed Court that **PEX3** was certified by **Bimalesh Chand**, who was a manager at LTA. For this transfer, **Apenisa** had brought ID copies of the buyer and the seller.

19. The third witness who testified for the Prosecution was Apenisa Naqaravatu (PW3), who was senior road safety officer at LTA. He claimed that in 2020 he was stationed at Sigatoka office and PW2 worked with him at the Sigatoka LTA office. He claimed that he knew both Accused. He claimed that he knew the 1st Accused, since she was working for Westpac bank and accommodated LTA bank work even if they were late. He confirmed that on 11/05/2020 **Sheenal Devi** contacted him with the expectation of obtaining his help to carry out a vehicle transfer. For this end, when the 1st Accused gave him the transfer form it was filled for the buyer and the seller, certified by 2nd Accused. **PEX3** was this transfer form, and he took this to **PW2**. He confirmed that he went to PW2 several times to expedite this transfer, since he was returning a favor to the 1st Accused for all the help she had done to LTA. He mentioned that on the next day the owner of the vehicle was in the LTA office and complained of the transfer, where he was disappointed with the 1st Accused.

20. In addition to above 3 witnesses, 3 investigation officers from FICAC gave evidence as **PW4, PW5 and PW6**. In this regard, **Frank Tora (PW4)** had analyzed emails and phone records of the 1st Accused. He confirmed that her apple phone was obtained by investigations officers through a Court order. According to him, he had analyzed the data on 05/06/2020. From the text messages he had noticed a series of messages between the 1st Accused and **PW3 Apenisa**. He **marked PEX24** which demonstrated the text communications between the 1st Accused and **PW3**.

Evidence in Rebuttal

21. At the conclusion of the Defense case, since new material was espoused by the 1st Accused, Prosecution made an application under Section 234 of the Criminal Procedure Act to recall **Jean Ravikash Mani Chetty (PW1)**. In the interest of justice, to obtain a clarification from this witness to the conflicting versions of evidence between the Prosecution and the Defense, this application was allowed by the Court.

22. Testified that on 11/05/2020 he went to the Westpac branch in Sigatoka and withdraw funds. He stated that he approached the manager and filled up a form to withdraw money from his joint account with the 1st Accused. He claimed that originally this bank account was under his name and later he made it a joint account. He admitted that by **DEX7 (C) – I** he withdrew \$10000. He mentioned that the 1st Accused also had an ATM card for this account and he was worried that she will withdraw this money. He further confirmed that this \$10000 never came up in the discussion on 09/05/2020 at her place when he went to get his car IA 649 and he never told her that he is withdrawing all the money from the joint account.

Evaluation of Prosecution Evidence

23. In considering the testimony of the Prosecution witness **Jean Ravikash Mani Chetty** what this Court observed was that he had not divulged the entire story in relation to his dealings with the 1st Accused even to FICAC to initiate action for his grievance. As a consequence, Prosecution had to recall this witness again for rebuttal evidence. In view of the close relationship this witness had with the 1st Accused, where they lived together in 2016 and maintained joint accounts depending on each other in venturing to joint business ventures, they have trusted one another to the extent of sharing personal possessions. However, the complained grievance of the questionable transfer of the vehicle IA 649 had taken place due to the break in that trust between them. In this light and in observing the attenuate circumstances, this Court is not willing to accept the evidence of this witness in toto.

24. In this background, in accepting the above analysed testimony in Court of **Jean Ravikash Mani Chetty** in this matter, this Court intends to apply the principle of “Divisibility of

Credibility” as pronounced by the **Fiji Supreme Court** in the case of **Chandra v State [2015]**¹. In this regard, **Justice Priyasath Dep** held as below:

*“In the past, the courts applied the maxim 'Falses in Uno Falses in Omnibus' - meaning "He who speaks falsely in one point will speak falsely upon all" - to a witness who gives false evidence. The present trend is instead of rejecting the totality of evidence, to act on that part of evidence which is true and reliable. This approach is known as **divisibility of credibility**.....the assessors should be informed that they are free to act on his/her evidence provided he/she had given a satisfactory explanation or can act on parts of evidence corroborated by independent evidence.”*

25. Therefore, while accepting the evidence given by **Jean Ravikash Mani Chetty (PW1)** in the most part, especially in relation to the altercation he had with the 1st Accused on the road on 09th of May 2020, which was not challenged by the 1st Accused in cross-examination, Court finds that **PW1** claiming he didn't sign **PEX3** in 2016 to be unacceptable in the light of the testimony of **Kelera Vakaudekoro (PW2)**, where she mentioned that the signature of the seller in **PEX3** matched the signature of **Jean Ravikash Mani Chetty (PW1)** in the LTA system. To further shred doubt to the position of **PW1**, he admitted in Court that he changed his signature in 2018 and his vital personal document were kept in the custody of the 1st Accused. Therefore, this Court will not accept the claim of **PW1** that he didn't see or sign **PEX3** at any point of time.
26. **PW2 Kelera Vakaudekoro** testified in Court of the official duty she did in accepting **PEX3**. In this regard, she had been under pressure due to the interest of **Apenisa Naqaravatu**, a senior officer at the LTA, in completing the transfer soon. This Court was impressed with the demeanour and deportment of this witness, where she had no hesitation to accept that she was under duress to complete this transfer and that she should have been more careful. **PW3 Apenisa Naqaravatu** admitted in Court that he went the extra mile to help the 1st Accused and get her transfer done soon as an act of gratitude for the help she has done for the LTA as an employee at Westpac bank. This Court has no reason to doubt the evidence of **PW2** and **PW3**.
27. FICAC witnesses **PW4**, **PW5** and **PW6** explained Court of the investigation they conducted that through light of the actions of the 1st Accused to eventuate the transfer of ownership of the motor vehicle IA 649.

Defense Case

1st Accused

28. For the Defence case for the 1st Accused she opted to give evidence under cross-examination and summoned one witness. In testifying in Court, the 1st Accused (**Sheenal**

¹[2015] FJSC 32; CAV21.2015 (10 December 2015)

Devi) contended that she is currently employed as a senior customer service officer at Westpac Bank Corporation. She confirmed that she knows PW1, since they were in a relationship for about 14 years from school days till 2020, and since 2019 they had problems in their relationship. She agreed that vehicle IA 649 was purchased under PW1's name during their relationship through a bank loan and she was supporting him for payments and financial management. Further, she confirmed that PW1 allowed her to keep this vehicle for use. She also confirmed that PW1 gave his personal documents to her for safe keeping, like his passport.

29. She testified that in **PEX3** para 1 and 2 were filled by her for the transfer of ownership of IA629 in 2016 or 2017. But, the seller's name, res address was filled by PW1 and signed in 2016 or 2017 in her presence. In addition, in **PEX3** she had filled the new owner details and she had kept the filled transfer form in 2016 (**PEX3**) with her. Further, she recalled that after filling the details in **PEX3** it has been taken to the LTA office, where PW1 and her signed before 2nd Accused. However, this form had not been dated. Thereafter, on 11/05/2020 she had met **Apinissa** in the LTA car park, whom she knew as a customer from LTA, and informed him of her requirement to transfer the ownership of the vehicle IA 649 and handed over the transfer form **PEX3** to him, which had been completed after making required payments.
30. She contended that on 10/05/2020 PW1 agreed for her to transfer the vehicle IA 649 under her and for him to take \$10000 from the joint account. According to her, as a consequence, on 11/05/2020 \$ 10000 had been withdrawn by PW1 from their joint saver account. She claimed that this was agreed on 10/05/2020 when PW1 came to her place and asked for the vehicle. She further alluded that she did not forge the signature of PW1 in **PEX3** and it was a genuine document.
31. In cross-examination, 1st Accused mentioned that in making **PEX3** PW1 gave her the authority to transfer the vehicle in 2016. Also, the day prior to 11/05/2020, PW1 gave her the authority verbally to transfer IA 649 and notified that he would take the money from their joint account, therefore she proceeded to transfer the car IA 469. She greed that she was not sure whether PW1 would allow her this transfer to proceed after he found her with another man.

2nd Accused

32. In giving evidence in Court, he testified that he started work with LTA in 2011 as a road safety officer and became a team leader in 2015 in Singatoka. Thereafter, he was the branch manager in Rakiraki in 2018. He claimed that during the FICAC investigation, he couldn't remember the transfer date of **PEX3**, but after receiving further information, he remembered the 1st Accused but not PW1. Later, he had recognized PW1 in this Court, where he remembered that he came to his office for him to witness **PEX3** in 2016 with the 1st Accused.
33. In this regard, he mentioned that the transfer form was already filled when they came to him, where he checked their signatures with the LTA system and certified this form

PEX3 in 2016. According to him, the 1st Accused had called him on 20/05/2020 and mentioned about the **PEX3** transaction, where he had questioned her why this not happened in 2016 and told her not to call him again. Therefore, the position of the 2nd Accused was that he certified **PEX3** in 2016.

Evaluation of Defense Evidence

34. In relation to the testimony of the 1st Accused, while agreeing that **PEX3** was prepared in 2016 or 2017, her contention was that she proceeded with the transfer under **PEX3** as per the consent expresses by PW1 verbally on 10/05/2020. However, in considering the document marked **PEX24** by the investigating officers of the data extracted from the phone of the 1st Accused, she had been planning and plotting the transfer of ownership of the vehicle IA 649 since 13/04/2020, where she had requested for assistance for this transfer from LTA officer **Apenisa (PW3)**. Therefore, this Court finds that the 1st Accused had been lying to this Court about her taking action to transfer IA 649 upon expressed consent of PW1 on 05/2020.
35. Further diluting the possibility of obtaining consent of PW1 for the transfer of the vehicle IA 649 on 10/05/2020, she mentions that she is not sure whether PW1 would have allowed her this transfer to proceed after he found her with another man on 09/05/2020. Therefore, it is very clear from the evidence of **Sheenal Devi** that she was certain that **Jean Ravikash Mani Chetty (PW1)** would not allow the transfer of ownership of IA 649 in 2020, especially since their relationship has now turned savour and was in tatters.
36. In considering the testimony of the 2nd Accused, this Court is vey much willing to accept his evidence in considering the demeanor of this witness in Court and the high probability of his version of events in relation to his involvement for the transfer of IA 649 in 2016.

Analysis of Court

37. In this matter, the first Count against the first Accused and the second Count against the second Accused are based on the commission of Forgery by the two of them on two different occasions for the transfer of motor vehicle bearing the registration number **IA 649**. In this background, this Court intends to consider the definition of Forgery under **Section 156 of the Crimes Act of 2009**, which states as follows:

“156. Forgery

- (1) *A person commits an indictable offence (which s triable summarily) if the person makes a false document with the intention that the person or another person will use it*
- (a) *to dishonestly induce a third person in the third person’s capacity as a public official to accept it as a genuine; and*
- (b) *if it is so accepted, to dishonesty obtain a gain, dishonestly cause a loss or dishonestly influence the exercise of a public duty or function.”*

38. Further, in considering the definition and development of the word Forgery in common law, this Court referred to the decision of the **House of Lords of the United Kingdom** in the case of *Welham v Director of Public Prosecutions [1960]*², where **Lord Denning** has made the following pronouncement in relation to the offence of **Forgery**:

*“To **forge** (a metaphorical expression borrowed from the occupation of the smith), means, properly speaking, no more than to make or form: but in our law it is always taken in an evil sense; and therefore forgery at common law denotes a false making (which includes every alteration of or addition to a true instrument), a making malo animo, of any written instrument for the purpose of fraud and deceit. This definition results from all the authorities ancient and modern taken together.”*

39. In considering the above stated position in relation to Forgery in our country and in common law, there is the need for the making or alteration of a document for there to be Forgery. In this matter, the only evidence to establish the 1st Accused forging the content of **PEX3** is the evidence of **PW1, Jean Mani Chetty**. However, in the light of this Court rejecting the evidence of **Jean Mani Chetty** in relation to the drafters of **PEX3**, this Court finds that there is a lack of evidence available in this matter to find that **Sheenal Devi** forged the LTA Application form to transfer the ownership of the motor vehicle IA 649. Further, on the same vein of sentiment, in considering this Court accepting the testimony of the 2nd Accused in this Court in relation to certifying **PEX3** in 2016, this Court can confidently conclude that there is no evidence deduced in this Court to find that the 2nd Accused made a false document by certifying **PEX3** in 2016 for the transfer of ownership of IA 649.
40. However, as per the **PW2, Kelera Vakaudekoro**, and **PW3 Apenisa Naqaravatu**, the first Accused had submitted **PEX3** to **Kelera Vakaudekoro** on the 11th of May 2020 at the Sigatoka Land Transport Authority office with the objective of transferring the ownership of the vehicle IA 649. In fact, **Sheenal Devi** also in her evidence in this Court did not deny doing so, though she provided a different reason for her conduct.
41. In inspecting **PEX3** with the naked eye, it is perceptible that this document had been altered at two places. In this regard, the mobile number of the present owner had been changed and initialed, in addition to the year of registration expiry of the motor vehicle had been altered. However. There was no evidence in Court as to who altered the registration expiry year in **PEX3**.
42. In the evidence of the 1st Accused in Court she admitted on 3 occasions that **PEX3** was filled in 2016. Further, she confirmed that **PW1** signed **PEX3** in 2016. In addition, she mentioned in Court that she and **PW1** got **PEX3** certified by the 2nd Accused in 2016. Thus, at that point of time both **PW1** and the 1st Accused should have signed **PEX3**. However, in **PEX3** the date of signatures of **PW1** and the 1st Accused mentioned is 11/05/20. According to **PW2 Kelera Vakaudekoro**, when **PEX3** was tendered to her on 11/05/2020 this form had been completely filled, except for part 4 which she filled in her official capacity. This position is brought into more doubt in view of the requirement clearly stipulated in the LTA application form for vehicle transfer that the *buyer must submit this form within 7 days of acquiring the vehicle*. Therefore, when the 1st Accused tendered **PEX3** to the LTA Sigatoka, she was aware that the date mentioned of the signatures of the seller and the buyer

² [1960] 1 All ER 805

were erroneous. In this background, this Court needs to determine whether the 1st Accused used a false document (**PEX3**) in executing this transaction for the transfer of IA 649.

43. In this regard, **Section 153 (1) (e)** of the **Crimes Act 2009** defines a false document, as below:

“153. False documents

- (1) *For this purposes of this subdivision, a document is a false document if, and only if-*
- (e) *the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise, in circumstances in which it was not made or altered”.*

44. In this matter, though **PW1** had signed **PEX3** in 2016, when this was submitted by **Sheenal Devi** to the LTA the date it carried was 11/05/2020. Therefore, it is clear that by **PEX3**, the 1st Accused had submitted a false document to the LTA. Further, as a result of the submission of **PEX3** as a genuine document to **PW2**, a public officer employed at LTA, vehicle bearing registration no IA 649 had been transferred to the 1st accused. That being so, **Shenaal Devi** the 1st Accused has gained ownership of the vehicle IA 649. Considering the above analyzed circumstances, this Court is satisfied that all the required elements for Count 3 has been established by the Prosecution beyond reasonable doubt.

45. Consequent to the above determination, this Court has to now consider the suitability of considering the alternative Count in the information filed by the Prosecution in this matter. On alternate charges, **ARCHBOLD (2022)**³ states as below:

“Alternative counts

Where it is uncertain whether there is one or more conspiracy it is advisable to lay one count charging the whole as one conspiracy and alternative counts charging each possible constituent part as a separate conspiracy leaving it to the jury to decide whether there was one conspiracy or more than one conspiracy.”

46. In this regard. as this Court has now found that Count 1 has not been established by the Prosecution due to lack of evidence and found that Count 3 has been established, there appears to be no uncertainty and cogent reason to consider this alternative Count against the 1st Accused.

Findings of Court

47. On the above analysis, this Court makes the following determinations:

³ [2022] 200th Anniversary Edition (Sweet & Maxwell), 3430

- i) Acquit the 1st Accused from Count 1 and make no determination on the alternative Count.
- ii) Acquit the 2nd Accused from Count 2.
- iii) Convict the 1st Accused for Count 3 for **Using a Forged Document** under **Section 157(1)** of the **Crimes Act of 2009**.



A handwritten signature in blue ink, appearing to read 'Thushara Kumarage', written over a horizontal dotted line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 6th day of June 2023

- cc:
1. *Fiji Independent Commission Against Corruption*
 2. *Iqbal Khan Lawyers*
 3. *Niudamu Lawyers*