

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 2

SENTENCE

1. In this matter **SHEENAL DEVI AND BHIMLESH CHAND** , were charged with the information filed by the **Fiji Independent Commission against Corruption**, 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 2009.

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 2009.

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. At the trial, for the Prosecution case 06 witnesses gave evidence and marked **55 documents**, which included admitted documents by both parties. At the end of the Prosecution case, Defense was called from the two Accused. For the Defense case, both Accused opted to give evidence in Court under cross-examination and for the first Accused another witness was summoned. In pronouncing the Judgement in this matter on 06/06/2023, this Court acquitted the 1st Accused from the 1st count and made no determination on the alternative count against the 1st Accused, but convicted the 1st Accused on the 3rd count. Further, this Court acquitted the 2nd Accused from the 2nd count. On making submissions on aggravation and mitigation by counsel on 02/08/2023, today this matter is coming up to impose the sentence against the 1st Accused on the conviction made by this Court.
3. In comprehending with the gravity of the offence committed by you in this matter, I am mindful that the maximum punishment for the offence of **Using a Forged Document**, contrary to **Section 157 (1)** of the **Crimes Act No. 44 of 2009**, is an imprisonment term of ten (10) years.
4. In relation applicable tariff for this offence of **Using a Forged Document**, though there is no clear determination made by the Superior Courts of Fiji of the applicable

tariff, as yet. Therefore, this Court intends to consider the determinations made by the High Court of Fiji in identifying a suitable tariff for this matter.

5. In considering a suitable tariff for the offence under **Section 157 (1)** of the **Crimes Act of 2009**, it appears that Courts have adopted the tariff promulgated for the offence of Forgery. In this regard, in the case of *State v Prasad [2011]*¹ Justice Paul Madigan has stated, as below:

“There is no reason now why the range for forgery should not be between 3 years and 6 years, with factors to be considered to be –

- *high gain – actual or intended.*
- *Whether the accused a professional or non-professional.*
- *Sophisticated offending with high degree of planning.*
- *Target individuals rather than institutions.*
- *Vulnerable victim”*

6. The above pronounced tariff had been applied in many Forgery cases and cases involving using a forged document, subsequently, as *Sudhakar v State [2014]*², *State v Khan [2013]*³ and *Koiroko v State [2018]*⁴. In the present matter, this Court was convinced that you had used a forged document to transfer the vehicle that was registered under your ex-partner as an act of vengeance, since your relationship was in shatters. Apart from that, this Court did not notice your actions specifically aimed at obtaining any financial advantages, especially since on the same day this transaction took place you have allowed your ex-partner to withdraw \$10,000 from your joint account without any protest, a fact which was unknown to the Prosecution until the trial. However, in the process of several LTA workers attempting to facilitate your intended transaction of the motor vehicle in issue, they were suspended from LTA employment for several months. Considering the background of this transaction and the impact of your conduct on several other public employees, as a starting point I commence your sentence with an imprisonment of 3 years.

¹ [2011] FJHC 218.

² [2014] FJHC 688.

³ [2013] FJHC 621

⁴ [2018]FJHC 216

7. In aggravation, Prosecution highlights the planning that was involved in the commission of the offence. In this regard, you have misused the courtesy offered to you by the employees of LTA due to the assistance tendered by you with the banking activities of LTA. In considering this sophisticated planning for the commission of this offence, I increase your sentence by one (01) more year.
8. In mitigation, your counsel informs this Court that you are the only child present with your aging parents in Fiji and that you look after your sickly father who is a heart patient, where your counsel has tendered a copy of a medical report of your father depicting his condition. In giving due credence to your family situation and recognising the importance of family relations in our society. I reduce your sentence by one (01) year.
9. In this matter, it is unfortunate that an educated professional like you had to get involved in a criminal activity of this nature to settle issues with your ex-partner. However, regardless of your professional standing or education level, the law should apply equally to every citizen of our country,
10. **Sheenal Devi**, in considering all the above detailed factors, I sentence you to **36 months** imprisonment. Further, in considering your young age, the rehabilitation potential and your potential capacity to contribute to the betterment of our country, with the authority given to me by **Section 26** of the **Sentencing and Penalties Act of 2009**, your sentence is partially suspended, where you shall serve **6 months** of your sentence forthwith, and the remaining period of **30 months** is suspended for **five (05) years**.
11. 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 and prosecuted for an offence according to **Section 28** of the **Sentencing and Penalties Act of 2009**.

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

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Hon. Justice Dr. T. Kumarage

At Suva

This 2nd day of August 2023

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