

IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT SUVA

Criminal File No: MACD 34/2021 SUV

BETWEEN : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

Prosecution

AND : SEMI SALAUCA MASILOMANI

Accused

Appearances

For Prosecution : Mr. J. Work and Mr. D. Hickes (*FICAC*)

For the Accused : Mr. D. Toganivalu (*Toganivalu Legal*)

Date of Sentence : 29th April 2022

SENTENCE

1. The accused person following his trial/hearing had been found guilty of the following offence, that is:

Count One

Statement of Offence [a]

OBTAINING FINANCIAL ADVANTAGE: Contrary to Section 326 (1) of the *Crimes Act 2009*.

Particulars of Offence [b]

SEMI SALAUCA MASILOMANI between the period 24th February 2012 and 24th March 2012 at Suva in the Central Division engaged in a conduct, namely falsely claiming subsistence allowances for himself from the Ministry of Health and as a result of that conduct obtained a financial advantage in the sum of \$800 knowing that he was not eligible to receive the said financial advantage.

Summary of Facts

2. The facts as relevant in this matter have been aptly discussed in the Judgment, specifically from paragraphs 13 to 63.
3. This court does not wish to regurgitate the same.

Non-conviction

4. Learned Counsel for the accused asks that a non-conviction be recorded on the basis of the circumstances of the accused.

5. Gates CJ (as he was then) in [State v Batiratu \[2012\] FJHC 864; HAR001.2012 \(13 February 2012\)](#) expounded the following guidelines if the court contemplates discharging the accused without a conviction. He held that;

“ The effect of the cases and the purport of the more detailed provisions of the Sentencing and Penalties Decree with regard to discharges can be summarized. If a discharge without conviction is urged upon the court the sentencer must consider the following questions, whether:

- a. *The offender is morally blameless.*
- b. *Whether only a technical breach in the law has occurred.*
- c. *Whether the offence is of a trivial or minor nature.*
- d. *Whether the public interest in the enforcement and effectiveness of the legislation is such that escape from penalty is not consistent with that interest.*
- e. *Whether circumstances exist in which it is inappropriate to record a conviction, or merely to impose nominal punishment.*
- f. *Are there any other extenuating or exceptional circumstances, a rare situation, justifying a court showing mercy to an offender.”*

6. Considering the guideline set out in *Batiratu* supra, this court is reminded of *Fiji Independent Commission Against Corruption (FICAC) v Buadromo* [2021] FJHC 187; HACDA003.201S (23 March 2021), where *Wimalasena J's(as he then was)* stated at paragraph 48 the following, “48. Offences relating to corruption have a bigger **public interest** value compared to other offences...”

7. The mitigation filed highlights the grave situation which the accused has undergone in his life including his sole bread winner status, however as a corruption related matter the public interest factor does not warrant that the accused escape penalty.

8. As a result a conviction is recorded.

Mitigation

9. The accused person via counsel submitted written mitigation. The court has noted the same.

10. Without regurgitating the entire mitigation submissions the following are the salient considerations, that is:

- I. Loss of employment following the charge;
- II. A decorated service career in the Civil service;
- III. Has lost two daughters due to sickness during his lifetime;
- IV. His spouse and remaining child have medical issues;
- V. He is the sole-breadwinner
- VI. He is a first offender;
- VII. The negative effect that a custodial sentence shall have on his family;
- VIII. He has made full restitution following a finding of guilt.

Prosecutions Sentencing Submission

11. The gist of Prosecution's submission which this court has considered leans towards seeking a sentence which is aimed at deterring future would be offenders from committing similar offences and for public protection. This in a nutshell is a custodial sentence.

Maximum Punishment and Tariff

12. The court is leaning towards the sentencing pronouncement expounded in **FICAC v Serau [2020] FJHC 983; HAA31.2020** where *Perera J* set a limit as follows:

- i. Where the sum obtained from a government institution or public entity is more than \$10,000, the sentence should range between five (5) to ten (10) years;
- ii. Where the sum obtained from a government institution or public entity is more than \$10,000, the sentence should range between two (2) to seven (7) years.

13. In reaching the appropriate sentence the court is mindful of Section 4(1) of the ***Sentencing and Penalties Act 2009*** which it regurgitates herein below as follows:

"Sentencing Guidelines

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*
- (a) to punish offenders to an extent and in a manner which is just in all the circumstances;*
 - (b) to protect the community from offenders;*
 - (c) to deter offenders or other persons from committing offences of the same or similar nature;*
 - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*
 - (e) to signify that the court and the community denounce the commission of such offences; or*
 - (f) any combination of these purposes...."*

14. Looking at the nature of the offence, the aggravation (breach of trust), the mitigation which includes full restitution, it would not be out of place for a final sentence of two (2) years to be imposed.

15. As the final period of imprisonment falls at two (2) years, the court as per Section 26 (2)(b) of the ***Sentencing and Penalties Act 2009*** has the discretion to order a suspended sentence.

16. In considering whether or not to suspend the sentence the court garners direction from Goundar, J's sentencing remarks in ***Muskaan Balagan v State*** [2012] HAA 31/11S 24 April 2012 at [20] as follows:

‘Whether an offender’s sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purposes of rehabilitation. But, if a young and a first time

offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is – whether punishment fits the crime committed by the offender?’

17. The accused has compelling reasons which could be considered for a full suspension, however the fact that a government entity was the victim and the fact the accused was an employee (breach of trust) negates a full suspension.
18. However, given that the accused paid full restitution upon the court’s adjudication of his guilt, in the court’s view is a sign of remorse and it warrants considering the principle of proportionality in sentencing.
19. It therefore would not be out of place if part of the sentence would be suspended.
20. Therefore considering Section 15(1)(d) and Section 26 (1) and (5) of the *Sentencing and Penalties Act 2009*, a partly suspended period of imprisonment shall be imposed as follows:
 - i. The accused shall serve three (3) months of his two (2) year sentence in custody whilst the balance of twenty one (21) months shall be suspended for a period of two (2) years.
 - ii. The three (3) month custodial period of imprisonment shall be served immediately.
21. The clerk will explain this sentence to the accused person.
22. 28 days to appeal.


JEREMAI N.L SAVCU
Resident Magistrate

