

**IN THE MAGISTRATES' COURT OF FIJI**

**AT SUVA**

Criminal Case No: - 641/2016

**STATE**

**V**

**KAMLESH KRISHN KUMAR**

For the Prosecution: Cpl Bola

For the Accused: Bukayaro Lawyers

Date of Sentence: 13<sup>th</sup> of June 2025

**SENTENCE**

1. Kamlesh Krishn Kumar, you were convicted, following a hearing, of one count of Obtaining Property by Deception, in contravention of Section 317 (1) of the Crimes Act.<sup>1</sup>
2. The evidence presented during the hearing established that, between 13 October 2013 and 11 February 2016, the accused, by means of deception, dishonestly acquired various items including laptops, hard drives, printers, and a projector from Bondell Ltd, with the intent to permanently deprive the company of these properties. The total value of the items at the time was \$8,047.30.
3. The maximum statutory penalty for the offence of Obtaining Goods by Deception is ten (10) years of imprisonment.
4. In State v Miller<sup>2</sup> his Lordship Justice Madigan said :

**“The penalty for both offences is the same, that is ten years. Under the old Penal Code the maximum for the offence was a term of 5 years and the tariff was between 18 months to three years. As this Court stated in Atil Sharma**

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<sup>1</sup> No. 44 of 2009.

<sup>2</sup> [2014] FJHC 16; Criminal appeal 29.2013 (31 January 2014).

**HAC122.2010, given that the penalty has doubled, a new tariff should be set as being between 2 years and 5 years with the minimum being reserved for minor spontaneous cases with little deception.**

**From two years to five years then is the new tariff band for these two offences (financial advantage and property) and any well planned and sophisticated deception will attract the higher point of the band or even more if that court gives good reason. It will of course be a serious aggravating feature if the person being defrauded is unsophisticated, naive or in any other way socially disadvantaged”**

5. Having considered all the relevant facts and circumstances of this case, I determine that a starting point of two (2) years' imprisonment is appropriate for the offence committed.
6. An aggravating factor in this matter is the substantial value of the goods dishonestly obtained through deception, which would have been considerable even in 2016. Accordingly, I enhance your sentence by one (1) year, resulting in a provisional sentence of three (3) years' imprisonment.
7. In mitigation, your counsel submitted that you are 51 years of age, married, and have three children as well as grandchildren. It was further submitted that you have shown remorse and are a first-time offender.
8. Your counsel also claimed that all stolen items had been recovered; however, the court record indicates that only three laptops were recovered. This discrepancy diminishes the weight of that particular mitigation.
9. Taking into account the mitigating factors – your lack of prior convictions, your family responsibilities, and partial recovery – I reduce the sentence by one (1) year, resulting in a final term of two (2) years' imprisonment.
10. Your counsel has submitted a request for a non-custodial sentence.
11. While I acknowledge your lack of prior criminal history, I must also consider that you were not a young offender at the time of the offence; you were approximately 41 years old. Furthermore, the claim of your cooperation with law enforcement is inaccurate, as you denied involvement during the police investigation. In addition, only a few of the

fraudulently obtained items were recovered. These factors weigh against the imposition of a suspended sentence.

12. Even though, your counsel has failed to address this in your written mitigation, I give significant weight to the fact that you were charged in 2016, and it has taken nearly nine (9) years to bring this matter to conclusion. You have consistently appeared in court, and the delays in hearing were largely due to circumstances beyond your control.
13. The Fiji Constitution enshrines the right of an accused to have their trial commenced and concluded without unreasonable delay.<sup>3</sup> This prolonged delay of nearly nine years has undoubtedly had financial and emotional consequences for you. I find that this inordinate delay must be considered in your favor and justifies a non-custodial sentence in this instance.
14. Accordingly, for the offence of Obtaining Property by Deception, you are sentenced to two (2) years' imprisonment, which is hereby suspended for a period of three (3) years.
15. If you commit any offences during next 03 years, you can be charge under Section 28 of the Sentencing and Penalties Act.<sup>4</sup>
16. Given the partial recovery of the stolen items, you are ordered to pay compensation in the amount of \$3,000 to the victim, to be paid on or before 13 August 2025. In the event of non-payment, the complainant is entitled to pursue recovery through civil proceedings.
17. 28 days to appeal



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<sup>3</sup> S14(2)(g), Fiji Constitution, 2013.

<sup>4</sup> No 42 of 2009.