

IN THE RESIDENT MAGISTRATES' COURT OF FIJI

AT SUVA

MACD No: 48/2021

FICAC

V

AFRANA RAHIMAN NISHA

For the Prosecution :Ms.L.Ravuikadavu

For the accused: IQBAL KHAN & ASSOCIATES

Date of Judgment: 20 January 2026

Date of sentence: 13 February 2026

SENTENCE

Introduction

1. AFRANA RAHIMAN NISHA, you were charged with seven counts of *Falsification of Documents*, contrary to section 160(3) of the Crimes Act ,¹ and three counts of *Obtaining Financial Advantage*, contrary to section 326(1) of the Crimes Act.
2. You pleaded not guilty; hence, this matter proceeded to hearing.
3. During the hearing , the Prosecution called 08 witnesses and for the defence you and 02 other witnesses gave evidence.
4. On 20 January 2026, The Court found you guilty and convicted you on seven counts of *Falsification of Documents* and two counts of *Obtaining Financial Advantage*. You were acquitted on one count of *Obtaining Financial Advantage*.
5. During the hearing, it was established that you were employed as the Secretary of the Independent Legal Service Commission (ILSC) from 2009 to 2014. Your responsibilities included preparing cheques for payments to the Commissioner of the ILSC, as well as payments for facilitators of the workshops conducted by the ILSC for legal practitioners.
6. It was also proved that between 2012 and 2014, you falsified seven cheques by forging the signature of Mr. Shravda Sharma, the Solicitor General of Fiji at that time.

¹ No 44 of 2009.

7. By using these forged cheques, you obtained the sum of \$10,149.10, the property of the ILSC, for your personal use, knowing that you were not entitled to receive these funds.

8. These funds have not been recovered, and to date, you have made no restitution also.

Discharge without a conviction

9. In mitigation submission, your counsel is seeking discharge without a conviction based on your good character and as you are a first offender.

10. It has been held that non-conviction would be given only for morally blameless people or technical breaches.²

11. In **State v Batiratu**³ his Lordship Chief Justice Gates (as he then was) introduced the following guidelines when considering discharge without a conviction

- (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.**

12.. Further section 16(1) of the Sentencing and Penalties Act⁴ states

“1) In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including —

- (a) the nature of the offence;**
- (b) the character and past history of the offender; and**
- (c) the impact of a conviction on the offender’s economic or social well-being, and on his or her employment prospects.”**

² **State v Nayacalagilagi** (2009) FJHC 73; HAC165.2007 (17th March 2009).

³ [2012] FJHC 864; HAR001.2012 (13 February 2012).

⁴ No 42 of 2009.

- 13.. The offences you have committed are serious and involve a gross breach of trust. You are not a morally blameless person, and these are not mere technical breaches. The monies obtained are public funds and there is no restitution. Your prior good character also carries little weight as a mitigating factor, as will be demonstrated later in this sentence.
14. Therefore, I find no compelling grounds to grant the application by your counsel . Accordingly, I hereby convict you of all these offences.

The Law and the Tariffs

15. The maximum Penalty for Falsification of Documents under the Crimes Act is 07 years imprisonment.
16. In [Sharma v State](#)⁵ the court held :
“ The applicable tariff for Falsification of Documents set in State v Sakiusa Bole^[14] under the Penal Code, which was 18 months to 3½ years’ imprisonment, remained unchanged when the Crimes Act 2009 came into being”
17. The prescribed penalty for Obtaining Financial Advantage under the Crimes Act is 10 years’ imprisonment.
18. In [FICAC v Feroz Jan Mohammed](#)⁶ Sentence 24 June 2015 his Lordship Justice Madigan said:

“There is much authority to dictate the tariff for “Obtaining Financial Advantage by Deception” (s. 318) lies between 2 to 5 years but a tariff have never been set for the present offence. It is a summary offence and for that reason the tariff cannot be set too high. Absent the element of deception, the tariff should be 2 – 4 years but in cases where the obtaining is linked to a far more perfidious crimes then the sentence for that crime should flow on the sentence for the obtaining offence. This will apply particularly where a financial advantage has been obtained through corruption. Therefore if this offence is charged alone the tariff of 2 – 4 years should apply but if charged in conjunction with another “enabling” offence, it will adopt the sentencing tariff for that particular offence.”

The Starting point

19. In [Laisiasa Koroivuki v the State](#)⁷ the Fiji Court of Appeal discussed the guiding principles for determining the starting point in sentencing and observed :

⁵ [\[2024\] FJHC 522; HAA80.2023 \(16 August 2024\).](#)

⁶ [2015] HAC 349/13S.

⁷ [2013] FJCA 15; AAU0018.2010 (5 March 2013).

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."

20. The offenses for which you are convicted are of a similar nature and were committed as part of the same transaction. Therefore, I will impose an aggregate term of imprisonment.⁸
21. Considering the objective seriousness of the offending, I select 02 years as the starting point for your aggregate sentence.

Aggravating factors

22. The Prosecution submitted the following matters to be considered as aggravating factors in this case:

- A. The breach of the trust of Highest Degree**
- B. Planning and Premeditation /The repetitive and systematic breaches of Procedure**
- C. The money stolen and the amount involved.**

23. I will now consider these grounds one by one.

The Breach of Trust

24. The Accused, in her capacity as Secretary of the ILSC, was entrusted with the overall administration of the institution. This position carried significant responsibility and demanded the highest standards of integrity and professionalism. Accused failed to discharge these obligations.
25. In addition to her role as Secretary, the Accused was authorized as a signatory to the institution's bank accounts, thereby occupying a position of considerable trust. By engaging in corrupt practices, she betrayed the confidence reposed in her by the ILSC and disregarded the rules and regulations as well as good practices she was duty-bound to uphold.
26. Her conduct not only violated the trust of the institution but also eroded public confidence in the ILSC. Her actions undermined the integrity of a vital public body, thereby diminishing the credibility of institutions essential to the administration of justice.

Planning and Premeditation /The repetitive and systematic breaches of Procedure

⁸ S17, Sentencing and Penalties Act, No 42 of 2009.

27. The offences committed by the Accused were not isolated incidents but formed a sustained pattern of corruption over a period spanning from 2012-2014. Her conduct was continuous, deliberate, and systematic. It was shown during the hearing that the Accused raised and falsified seven cheques by inserting details, designating payees as Justice Madigan and Ms. Ana Tuiketeki, and forging the signatures of the then Solicitor-General without their knowledge. Each transaction was premeditated, with the Accused employing PW4 to facilitate her personal gain.
28. Undoubtedly, the Accused's long-standing role as Secretary of the ILSC enabled her to exploit her authority and intimate knowledge of the institution's operations. Her position allowed her to maneuver within the system undetected, as her authority went largely unquestioned by staff, save for PW1, whose presence was limited to hearings. Such deception, carried out over several years, demonstrates calculated experience and a deliberate effort to conceal unlawful transactions, which only came to light upon close scrutiny.

The money stolen and the amount involved.

29. The Accused unlawfully obtained a total sum of FJ\$10,149.10 for her personal use and benefit. This amount is a substantial amount in 2012-2014 period. None of the misappropriated funds were recovered, as the Accused had already utilized the money. In her capacity as Secretary of the ILSC, she bore the responsibility to ensure that cheques were properly raised and that the designated payees received their funds or that the monies were deposited into the appropriate accounts. The Accused failed in this duty, instead diverting the funds for her own advantage.
30. For the aggravating factors detailed above, I add .05 years to reach 07 years' imprisonment.

Mitigating Factors

31. Counsel for the Defence has filed a comprehensive mitigating submission, which I will now consider in detail.

Personal mitigating Factors

32. Counsel for the Defence submitted that you are presently 43 years old, married, and the parent of a 14-year-old child who remains financially and emotionally dependent on you.
33. It was further submitted that you have been employed for the past 11 years as a Financial Controller with Skyline Estate Investment Company (Fiji) Pte Ltd. This long-term employment is said to reflect the trust and confidence placed in you by your employer.
34. Counsel also submitted that you suffer from multiple chronic and serious medical conditions, including diabetes, chronic kidney disease, rheumatoid arthritis, and fatty liver disease.
35. In addition, your husband is a heart patient who requires your support and attention.

36. You also provide financial and emotional support to your parents and brother, as well as to your mother who resides with you.
37. Taking these personal mitigating factors into account, I deduct one year from the sentence, thereby imposing a term of six years' imprisonment.

Person of good character / First time offender

38. Counsel for the Defence also submitted that you are a person of good character and tendered a number of character references in support of this submission.
39. It was further submitted that you have no previous convictions.
40. Section 4(2)(i) of the *Sentencing and Penalties Act* requires the Court, in sentencing, to have regard to the previous character of the offender.
41. Ordinarily, in criminal cases, substantial weight is given to the good character of an accused, and a significant deduction in sentence may follow. However, in cases involving offenses of breach of trust, the unblemished character of an accused carries less weight, and in some circumstances, may be afforded no weight at all.
42. In **R v Gentz** [1999] NSWCCA 285 (9 September 1999), a case in which the Accused defrauded the Government by raising false invoices in order to make gains of about \$196,000 for herself, the NSW Court of Criminal Appeal held at 12, that:

“ It is, I should add, not an unusual situation in the experience of the Courts that when a person does find themselves both charged and ultimately convicted of an offence of this nature, they are persons of impeccable prior good character. For that very reason, namely their impeccable past good character, people are in fact appointed to positions of trust. It is when they Abuse those positions of trust that the question of general deterrence comes most powerfully into play...”

43. Moreover, in [Fiji Independent Commission Against Corruption v Mau](#)⁹ Justice Goundar stated at paragraph 38 held that:

“I have had regard to the previous good character of Mr. Mau and Mr. Patel and the services that they have provided to the public using their office, to consider whether these factors justify suspending the sentences. However, it is not possible for me to give undiminished weight to their previous good character and record of service to the public. They were given power and responsibility of a public office because of their corporate expertise and good character. Instead, they breached the public's trust by misusing their office.”

⁹ [\[2011\]FJHC 222; HAC089.2010 \(14 April 2011\)](#)

44. In State v Bole her Ladyship Justice Shameem said :

“ In breach of trust cases, comparably less weight is put on good character, because only people of good character are given positions of trust and responsibility. It is the breach of trust which is the harm done in these offences. “

45. Accordingly, I disregard your prior good behavior as a mitigating factor in your sentence.

Delay and prejudiced caused to the accused

46. Your counsel also requested this court to consider delay as a mitigating factor in this case.

47. Article 14 (2) j of 2013 Fiji Constitution states the accused has right to have the trial begin and conclude without unreasonable delay.

48. ARCHBOLD 2017 at 5-174 states :

“In case involving substantial delay, it is the duty of a sentencing court, whether or not the matter has been raised on behalf of the defendant, to examine the possibility of a breach of the right to a fair trial within a reasonable time, in order to decide whether any such breach should have an effect on the disposal of the case, in deciding whether any delay constitutes a breach of the “reasonable time” guarantee, the three matters that fall to be considered are (i) the complexity of the case, (ii) the conduct of the appellant and iii) the conduct of the administrative and judicial authorities; and these factors are also relevant the question whether, when a breach has been established, there should be any adjustment of the sentence that would have been passed if there had been no delay Rummun v. State of Mauritius [2013] I W.L.R. 598, PC”

49. His Lordship Justice Goundar addressing about delays in the criminal cases in Faiyum v State ¹⁰said :

“Section 14 (2) (g) of the Constitution gave the appellant a right to have the trial begin and conclude without unreasonable delay. The Magistrates’ Court took more than four years to conclude the case against the appellant. The charge was not complex. Neither the prosecution nor the appellant is at fault. The appellant

¹⁰ [2018] FJHC 204; HAA001.2018 (20 March 2018) .

continuously appeared whenever the case was called in court. But there was a lack of commitment by the court to hold a trial. The delay is systematic and unreasonable. Unreasonable post-charge delay is a relevant consideration in sentencing. As the Court of Appeal in *Sahim v. The State* MISC Action No. 17 of 2007 (25 March 2008) said:

The second question is if there has been a breach what is the remedy? In determining the appropriate remedy, absence of prejudice becomes relevant. Where an accused person is able to be tried fairly without any impairment in the conduct of the defence, the prosecution should not be stayed. Where the issue is raised on appeal, and the appellant was fairly tried despite the delay, his or her remedy lies in the proportionate reduction of sentence or in the imposition of a non-custodial sentence. (underlining mine)

[9] Similarly, in *AG's Reference (No. 2 of 2001)* [2004] 2 AC 72 Lord Bingham said at [24]:

If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant.”

50. As per the Court record, you were charged in this Court in 2015, and this case has remained pending for nearly eleven years. However, the delay can be attributed to both parties, as reflected in the record.
51. The court record shows that the hearing fixed for 4 October 2021 was vacated at the request of the Prosecution, while the hearing scheduled for 24 October 2022 was vacated at the request of the Defence.
52. Furthermore, just prior to the hearing in September 2023, your counsel filed a stay application in this Court. After the application was denied, you appealed against that interlocutory order up to the Court of Appeal. Accordingly, I find that the Defence substantially contributed to the delay as well.
53. Nevertheless, this does not absolve the Court of its responsibility to resolve matters within a reasonable time. Taking this prolonged delay into account, I deduct one year from your sentence, thereby imposing a term of five years' imprisonment.

Case authorities

54. Both parties have submitted case precedents to justify their their request.
55. Your counsel has submitted [State v Kulavere](#)¹¹ and [State v Qaranivalu](#)¹² seeking a discharge without a conviction.

¹¹ [\[1993\] FJHC 34; Haa0027j.92s \(6April 1993\)](#)

56. Upon perusal of both authorities, it is evident that in those cases the accused entered pleas of guilty, whereas in the present matter you denied the offences and were convicted only after a full hearing. Furthermore, those authorities are of less relevance in relation to discharge without conviction, as the applicable principles are now guided by the decision in *State v Batiratu*.
57. However, there are numerous precedents in Fiji in which the courts have held that employees who breach the trust reposed in them must be marked with an immediate custodial sentence.

58. In *State v Prasad*¹³, wherein Gates CJ(as he then was) at paragraph 31 stated:

“The public interest lies in the deterrence of dishonest practices by employees. Usually in such cases the gravity of the breach of trust needs to be marked by an immediate term of imprisonment no matter how sad the Accused’s story, or how compelling the mitigation in his favor”. (Emphasis added)

59. In *State v Raymond Roberts*¹⁴S, Shameem J when considering an appeal against a sentence of 18 months suspended for three years for a total of four counts of larceny by public servant and in canvassing previous case law on the matter, held that:

"The principles that emerge from these cases are that a custodial sentence is inevitable where the accused pleads not guilty and makes no attempt at genuine restitution. Where there is a plea of guilty, a custodial sentence may still be inevitable where there is a bad breach of trust, the money stolen is high in value and the accused shows no remorse or attempt at reparation." (Emphasis added)

60. In the case of *Fiji Independent Commission Against Corruption -v- Nemani - Sentence*¹⁵, the court noted at paragraph 16 that:

If a person, who is holding an office with public trust and funds, obtains that money under the pretense of performing an official duty in a fraudulent manner, such a conduct can never be tolerated under any circumstances. The holders of such high offices handling public money must always bear in mind that they are only temporary occupants of those offices and not the owners of the painfully invested public funds. Hence, when it is proved before a court of law that somebody has demeaned such a public trust, an immediate custodial sentence is warranted”.

¹² [\[1998\] FJHC197; Haa0054.98 \(28 August 1998\)](#)

¹³ [\[2003\] FJHC 320; HAC0009T;2002S.](#)

¹⁴ [\[2004\] FJHC 51; HAA00531J.2003.](#)

¹⁵ [\[2013\] FJHC 468; HAC37A.2010](#)

Conclusion

61. AFRANA RAHIMAN NISHA, your final sentence in this case is five (05) years' imprisonment, which is above the usual tariff for these offences which is normally 18 months to 3 ½ years' imprisonment. However, you have been convicted of seven counts of *Falsification of Documents* and two counts of *Obtaining Financial Advantage*, and you are sentenced here to an aggregate term of imprisonment.

62. You grossly breached the trust reposed in you and dishonestly obtained more than \$10,000.00, the property of the ILSC, over the period 2012–2014. In an attempt to conceal your misconduct, you sought to shift blame onto your receptionist, who was tasked with collecting funds from the bank.

63. In mitigation, you also submitted that a custodial sentence would deprive your child of maternal care. However, it is evident that when you commenced these criminal activities, your child had already been born, and you alone are responsible for the predicament in which you now find yourself.

64. As a concluding remark, this court also wants to emphasize that public officers entrusted with the management of public funds must remain aware of the long-term consequences of their decisions and actions. They are appointed to such positions on the basis of their knowledge, skill, and experience, with the expectation that they will nurture the aspirations of the nation. It is their duty to safeguard and uphold the interests of ordinary citizens through good governance and robust systems of internal control. Any conduct that reflects dishonesty undermines the integrity of the entire social fabric.

65. Public officers must recognize that their authority is vested in the people, and that they will ultimately be held accountable for their actions. They cannot simultaneously pursue conflicting interests or compromise their responsibilities.

66. Therefore, when a public officer is found criminally liable for misconduct in office an immediate custodial sentence is both necessary and justified, regardless of any mitigating circumstances, as it serves to denounce the offending conduct and deter others in public service.

67. AFRANA RAHIMAN NISHA, accordingly you are sentenced to 05 years imprisonment for this charge with a non-parole period of 04 years.

68. 28 days to appeal

