

**IN THE MAGISTRATES' COURT OF FIJI**

**AT SUVA**

**MACD No : 48/2021**

**FICAC**

**V**

**AFRANA RAHIMAN NISHA**

**For the Prosecution : Ms.Lavenia Ravuikadavu**

**For the accused:Mr.Heritage(IQBAL KHAN & ASSOCIATES ) &  
Mr.Nambiar**

**Dates of Hearing : 14<sup>th</sup>,15<sup>th</sup> ,18<sup>th</sup> and 19<sup>th</sup> September 2025, 05<sup>th</sup>  
December 2025**

**Closing Submissions : 29<sup>th</sup> December 2025(Defence)**

**12<sup>th</sup> January 2026 ( FICAC)**

**Date of Judgment: 20<sup>th</sup> January 2026**

## **JUDGMENT**

### **Introduction**

1. The accused is charged with seven counts of Falsification of Documents, contrary to section 160(3) of the Crimes Act,<sup>1</sup> and three counts of Obtaining Financial Advantage, contrary to section 326(1) of the same Act.
2. The particulars of the offences are:

#### **FIRST COUNT**

##### **Statement of Offence**

**FALSIFICATION OF DOCUMENTS: Contrary to Section 160(3) of the Crimes Act of 2009.**

##### **Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 1st day of July 2012 and the 2nd day of August 2012 at Suva in the Central Division, dishonestly falsified Bank of Baroda Cheque No. 606088. Account Number 200000539 dated 30th day of July 2012, amounting to FJ\$3450.00 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, with intent to obtain a gain, namely FJ\$3450.00 from the Independent Legal Service Commission.**

#### **SECOND COUNT**

##### **Statement of Offence**

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

##### **Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 1st day of July 2012 and the 2nd day of August 2012 at Suva in the Central Division, whilst being employed as a secretary of the Independent Legal Service Commission, prepared a Bank of Baroda Cheque No. 606088, Account Number 200000539 dated 30th day of July 2012 amounting to FJ\$3450.00 with Ana Tuiketeti as Payee, forging Ana Tuiketeti's signature on the back of the cheque and thereafter directing one Vandana Raj to cash the said cheque and as the result of that conduct obtained financial advantage namely FJ\$3450.00 from the Independent Legal Service Commission knowing that she was not eligible to receive the said financial advantage.**

#### **THIRD COUNT**

##### **Statement of Offence**

**FALSIFICATION OF DOCUMENTS: Contrary to Section 160(3) of the Crimes Act of 2009.**

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

**Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 1st day of June 2014 and the 30th day of September 2014 at Suva in the Central Division, while being employed as a secretary of the Independent Legal Service Commission, dishonestly falsified Bank of Baroda Cheque No. 847236. Account Number 200000539 dated 16 July 2014, amounting to FJS\$2,072.00 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, and falsely particularizing the cheque for Paul Madigan as Payee with the intention obtain a gain of FJS\$2,072.00 from the Independent Legal Service Commission.**

**FOURTH COUNT****Statement of Offence**

**FALSIFICATION OF DOCUMENTS: Contrary to Section 160(3) of the Crimes Act of 2009.**

**Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 1st day of June 2014 and the 30th day of September 2014 at Suva in the Central Division, while being employed as a secretary of the Independent Legal Service Commission, dishonestly falsified Bank of Baroda Cheque No. 847273. Account Number 200000539 dated 05 August 2014, amounting to FJS\$2,282.22 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, and falsely particularizing the cheque for Paul Madigan as Payee with the intention obtain a gain of FJS\$2,282.22 from the Independent Legal Service Commission.**

**FIFTH COUNT****Statement of Offence**

**FALSIFICATION OF DOCUMENTS: Contrary to Section 160(3) of the Crimes Act of 2009.**

**Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 1st day of June 2014 and the 30th day of September 2014 at Suva in the Central Division, while being employed as a secretary of the Independent Legal Service Commission, dishonestly falsified Bank of Baroda Cheque No. 847293. Account Number 200000539 dated 28 August 2014, amounting to FJS\$1,632.50 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, and falsely particularizing the cheque for Paul Madigan as Payee with the intention obtain a gain of FJS\$1,632.50 from the Independent Legal Service Commission.**

**SIXTH COUNT****Statement of Offence**

**FALSIFICATION OF DOCUMENTS: Contrary to Section 160(3) of the Crimes Act of 2009.**

**Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 1st day of June 2014 and the 30th day of September 2014 at Suva in the Central Division, while being employed as a secretary of**

the Independent Legal Service Commission, dishonestly falsified Bank of Baroda Cheque No. 847295. Account Number 200000539 dated 1 September 2014, amounting to FJ\$2,012.40 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, and falsely particularizing the cheque for Paul Madigan as Payee with the intention obtain a gain of FJ\$2,012.40 from the Independent Legal Service Commission.

#### **SEVENTH COUNT**

##### **Statement of Offence**

**FALSIFICATION OF DOCUMENTS:** Contrary to Section 160(3) of the Crimes Act of 2009.

##### **Particulars of Offence**

**AFRANA RAHIMAN NISHA**, between the 1st day of June 2014 and the 30th day of September 2014 at Suva in the Central Division, while being employed as a secretary of the Independent Legal Service Commission, dishonestly falsified Bank of Baroda Cheque No. 847309. Account Number 200000539 dated 24 September 2014, amounting to FJ\$2,150.00 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, and falsely particularizing the cheque for Paul Madigan as Payee with the intention obtain a gain of FJ\$2,150.00 from the Independent Legal Service Commission.

#### **EIGHTH COUNT**

##### **Statement of Offence**

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

##### **Particulars of Offence**

**AFRANA RAHIMAN NISHA**, between the 1st day of July 2012 and the 2nd day of August 2012 at Suva in the Central Division, whilst being employed as a secretary of the Independent Legal Service Commission, prepared and falsified Bank of Baroda Cheques No. 847236, 847273, 847293, 847295, and 847309 on Account Number 200000539 amounting to a total of FJ\$10,149.10 with Paul Madigan on all five cheques and forged the Solicitor General's signature on all five cheques, thereafter directing one Vandana Raj to cash the said cheques and as the result of that conduct obtained financial advantage namely FJ\$10,149.10 from the Independent Legal Service Commission knowing that she was not eligible to receive the said financial advantage.

#### **NINTH COUNT**

##### **Statement of Offence**

**FALSIFICATION OF DOCUMENTS:** Contrary to Section 160(3) of the Crimes Act of 2009.

##### **Particulars of Offence**

**AFRANA RAHIMAN NISHA**, between the 30th day of October, 2014 and the 5th of November 2014 at Suva in the Central Division, while being employed as a secretary of

the Independent Legal Service Commission, dishonestly falsified Bank of Baroda Cheque No. 847338. Account Number 200000539 dated 3 November 2014, amounting to FJ\$2,537.44 by forging the signature of the Solicitor General of Fiji, Sharvada Sharma, and falsely particularizing herself as Payee with the intention obtain a gain of FJ\$2,537.44 from the Independent Legal Service Commission.

### **TENTH COUNT**

#### **Statement of Offence**

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

#### **Particulars of Offence**

**AFRANA RAHIMAN NISHA, between the 30th day of October 2012 and the 5th day of November 2012 at Suva in the Central Division, whilst being employed as a secretary of the Independent Legal Service Commission, prepared and falsified Bank of Baroda Cheques No. 847338. Account Number 200000539 amounting to FJ\$2,537.44, thereafter directing one Vandana Raj to cash the said cheques and as the result of that conduct obtained financial advantage namely FJ\$2,537.44 from the Independent Legal Service Commission knowing that she was not eligible to receive the said financial advantage.**

3. The accused entered pleas of not guilty to all charges; accordingly, the matter proceeded to a full hearing.

4. During the course of the hearing, the prosecution adduced the evidence of the following witnesses and tendered fourteen (14) exhibits in support of its case.

#### **Witnesses**

**PW1 Paul Kennard Madigan**

**PW2 Ana Tuiketeki**

**PW3 Sharvada Sharma**

**PW4 Vandana Raj**

**PW5 Mureen Nur Nisha**

**PW6 Lowata Yalovia**

**PW7 Suresh Chand**

**PW8 Shivanji Narayan**

#### **Documents**

**1. 2009 Employment Contract PX-1**

2. Bank of Baroda Cheque 847236 PX-2
3. Bank of Baroda Cheque 847273 PX-3
4. Bank of Baroda Cheque 847293 PX-4
5. Bank of Baroda Cheque 847295 PX-5
6. Bank of Baroda Cheque 847309 PX-6
7. Bank of Baroda Cheque 606088 PX-7
8. ILSC Registration Workshop List 2012 PX-8
9. Change of Signatories for ILSC Account PX-9
10. 2014 Bank of Baroda Bank Statement PX-10
11. Draft Audit Memorandum PX-11
12. Audit Report 2014 PX-12
13. Bank of Baroda 2012 Bank Statement PX-13
14. Bank of Baroda Cheque 847338 PX-14

5. At the close of the prosecution's case, this Court ruled that a prima facie case had been established against the accused and accordingly informed her of her rights pursuant to the Criminal Procedure Act.<sup>2</sup>

6. The accused elected to give evidence in her defence and called two other witnesses. Both parties were thereafter granted leave to file written closing submissions.

7. The Court expresses its appreciation to both parties for their comprehensive closing submissions, which have been duly considered in arriving at this judgment.

### **Agreed facts and documents**

8. Prior to the commencement of the hearing, the parties filed agreed facts which has been annexed to this judgment and marked as Annexure A .

### **Summary of Evidence**

#### **Prosecution Evidence**

#### **PW1 – Mr.Paul Madigan**

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<sup>2</sup> S 179

9. PW1 served as a Judge and Commissioner of the Independent Legal Services Commission (ILSC) in 2012. The ILSC is responsible for conducting disciplinary inquiries into legal practitioners in Fiji. PW1 was assisted in his official duties by the accused, who acted as his secretary and was responsible for handling judgments and related paperwork.
10. PW1 had a service contract with the accused, which was tendered and marked as Exhibit PE1. PW1 received his allowances directly into his BSP bank account; these payments were not made in cash.
11. The ILSC maintained a bank account with bank of Baroda , for which PW1 and the Solicitor General (SG) were the authorized signatories. **The accused was responsible for preparing and filling out cheques for this account.** PW1 was shown the following cheques during the proceedings:

**Cheque No 847236- \$2072-PE2**

**Cheque No 847273-\$2282-PE3**

**Cheque No 847293-\$ 1632.50-PE4**

**Cheque No 847295-\$2012.40-PE5**

**Cheque No 8473909-\$2150-PE6**

12. PW1 stated that although payments of cash were authorized to be made to Ms. Vandana Raj, PW1 did not issue these authorizations and did not receive any payments reflected in the cheques presented.

13. During cross-examination, PW1 agreed that he was receiving an allowance of \$2,000, which was later increased to \$3,000 from the ILSC. The witness was shown his bank statement for the period 01/01/2014 to 31/12/2014 and acknowledged that regular cash deposits were made into his account. PW1 denied receiving any travel or meal allowances. He confirmed that he accessed the office using a fingerprint system and agreed that the accused's office could have access to other individuals.

14. PW1 admitted that he had not seen any paperwork relating to the cheques and was unaware of who wrote them. He further agreed that Ms. Vandana could have taken the cheques to the bank. PW1 suspended the accused after she failed to attend work and subsequently referred the matter to other authorities.

15. In re-examination, PW1 recalled that later the Solicitor General made payments into his account and reiterated that he did not receive any payments from the cheques in question. PW1 confirmed that he interviewed the accused before her suspension and, after identifying anomalies in her files, referred the matter to FICAC for investigation.

**PW2- Ms. Anna Tuiketete**

16. PW2 is a lawyer with 18 years of experience and was working as a legal consultant in 2012. She also co-facilitated workshops for lawyers organized by the Independent Legal

Services Commission (ILSC). The accused was responsible for making arrangements for these workshops. PW2 stated that PW1 was paid directly through cheques. PW2 was shown cheque number 606088 dated July 2012 (marked as Exhibit PE7) and denied receiving any payment from that cheque.

17. PW2 confirmed, after reviewing the list of workshops conducted in 2012, that no workshops were held in July 2012. This list was marked as Exhibit PE8.

18. In cross-examination, PW2 admitted that she was not aware of who prepared Exhibit PE7 or who took it to the bank. She also confirmed that Exhibit PE8 contained the complete list of workshops conducted in 2012.

19. In re-examination, PW2 stated that Exhibit PE7 was cashed.

**PW3- Mr. Shrvada Sharma**

20. PW3 was admitted to the Fiji and New Zealand Bar in 1997. After joining the Attorney-General's Chambers, PW3 served as Solicitor General (SG) for 10 years, from 2011 to 2021. When the Independent Legal Services Commission (ILSC) was established, PW3 was requested to be a signatory for its cheques. PW3 was shown a document dated 2009 containing the original authorized signatories of ILSC and a letter dated 20/02/2012 reflecting changes to signatories. These documents were marked as Exhibit PE9.

21. PW3 confirmed that two signatories were required for ILSC cheques. PW3 was shown cheques marked as Exhibits PE2 to PE7 and Cheque No. 8473338059 (marked for identification as MFI-1).

22. After reviewing the cheques, PW3 confirmed that he did not sign them and that the signatures appearing on the cheques were not his.

23. PW3 identified the accused in court.

24. In cross-examination, PW3 admitted that he could not confirm whether the accused prepared the cheques. However, based on his experience, PW3 stated that the signatures on the cheques appeared similar to those of the accused. PW3 explained that the accused used to bring cheques to his office for signature, along with Vandana and Tevita, although no records of this were available. PW3 further confirmed that the signature authorizing the cheque to be cashed by Vandana looked similar to the accused's signature. PW3 concluded that, based on his experience and review of the documents, the signatures on the cheques belonged to the accused.

25. In re-examination, PW3 stated that he was never presented with the cheques for signing.

**PW4- Ms.Vandana Raj**

26. PW4 was employed as a receptionist and typist at the Independent Legal Services Commission (ILSC) in 2012 and was supervised by the accused. She worked with the accused for six years. PW4's office was located at the front of the unit, while the accused and the Commissioner had offices at the end of the unit. PW4 and the driver did not have access to the secretary's or the Commissioner's offices. PW4 stated that the accused was responsible for preparing cheques for ILSC, and only the Commissioner had the authority apart from that . PW4 confirmed that she was cashing cheques for the Commissioner's allowances and handing the money to the accused.

27. PW4 was shown cheques marked as Exhibits PE2 to PE7 and confirmed receiving them from the accused. She stated that the cheques were already filled in when she received them, including the authority at the back. PW4 further stated that the handwriting on the cheques appeared similar to that of the accused. PW4 confirmed that she cashed the cheques and handed the money to the accused.

28.. PW4 was shown MFI-1 and said she could not confirm cashing it. She further stated that the accused was responsible for raising the cheques.

29. In cross-examination, PW4 stated that there was no register maintained for these transactions. When questioned about her police statement mentioning going to the accused's office, PW4 explained that this was based on the accused's instructions. She admitted taking cheque from the accused's drawer on her instruction and confirmed that the accused gave her the cheques in this case. PW4 also admitted that she did not record her banking runs.

30. In re-examination, PW4 stated that when the accused was on leave, she gave PW4 the access card to make payments. Apart from that occasion, PW4 did not have access at any other time. PW4 confirmed that she did not keep records of handing over cash to the accused, as this was considered part of her normal duties.

**PW5- Ms.Maureen Noor Nisha**

31. PW5 works as a supervisor at the Bank of Baroda and has 18 years of experience. In 2012, she was employed as a teller at the same bank. PW5 was shown Exhibit PE2 and confirmed that it was cashed after checking the bank statement for the relevant period. This bank statement was marked as Exhibit PE10.

32. 12. In cross-examination, PW5 confirmed that Vandana (PW4) received the cash. In re-examination, PW5 stated that before making payments, the bank verifies signatures through its system..

**PW6- Ms.Loata Elovia**

33. PW6 is employed as a Senior Manager at the Office of the Auditor General and began her career in 2009 as an Assistant Auditor. In 2014, while working as a Senior Auditor, PW6 conducted an audit of the Independent Legal Services Commission (ILSC). During the audit, several issues were identified, and a report was submitted to ILSC, which was marked as Exhibit PE11. PW6 was part of the team that prepared the final audit report (Exhibit PE12), which revealed an unexplained shortfall of revenue amounting to \$76,650.00.

34. In cross-examination, PW6 admitted that the audit team recommended the installation of proper guidelines and procedures within ILSC. PW6 further stated that she was not aware whether the report reached the Secretary of ILSC, as it was sent to the Commissioner.

**PW7- Mr.Suresh Chand**

35. PW7 began working at the Bank of Baroda in 1994. He admitted that he cashed Exhibit PE7 after verifying the signatures through the bank's system. The cheque was brought in by Vandana (PW4). After checking the relevant bank statement, marked as Exhibit PE13, PW7 confirmed that the cheque was cashed. PW7 was also shown Exhibits PE3, PE6, and PE7, and confirmed that these cheques were also cashed after reviewing the bank statement (Exhibit PE10).

36. 34. In cross-examination, PW7 confirmed that Vandana (PW4) received the cash for these cheques.

37. 35. In response to questions raised by the court, PW7 stated that he recognized the signature of the accused on the cheques he cashed..

**PW8-Ms.Shivanjani Narayan**

38. PW8 is a supervisor at the Bank of Baroda with 16 years of work experience. In 2014, she was employed as a teller. PW8 was shown MFI-1 and confirmed that she cashed it. She further confirmed that Vandana (PW4) cashed the cheque after reviewing the bank statement (Exhibit PE13). This cheque was subsequently marked as Exhibit PE14.

39. In cross-examination, PW8 stated that Exhibit PE14 does not reflect Vandana's signature. She explained that she handed over the money to Vandana after verifying her identification details. PW8 also confirmed that the signatures on the cheque were verified through the bank's system before payment was made.

## **Defence Case**

### **The Accused -Ms.Afrana Nisha**

40. The accused was employed as the Secretary of the ILSC in 2014, performing administrative duties including the processing of payments. In the course of her work, she raised payment vouchers and prepared cheques. The cheques required two signatories, one from the ILSC and another from the SG's office, before being taken to the bank by Vandana (PW4) or the driver.

41. When shown the cheques (PE2–PE7 and PE14), the accused denied signing them or forging the SG's signature. She further denied authorizing Vandana to cash the cheques. The accused was also shown a payment voucher dated 30 October 2014, marked as DE1, and denied signing it. She denied having received or benefited from payments arising from these cheques.

42. The accused stated that the cheques were kept in her office, specifically in the side drawer, and that she, the Commissioner, and Vandana had access to the office. She denied ever going to the SG's office.

43. In cross-examination, the accused admitted that she was employed at the ILSC from 2012 to 2014. She denied that Vandana did not have access to her office. The accused acknowledged that she was on leave in November 2014 and confirmed that, during her absence from work, Vandana was responsible for raising cheques.

44. In response to questions from the Court, the accused denied having noticed any missing cheques. Upon re-examination, she again confirmed that Vandana raised cheques when she was not present in the office.

### **DW2- Mr.Mosese Matanisiga**

45. DW2, the Manager of Investigations at FICAC, was a member of the team that conducted the investigation in 2015. He testified that FICAC did not have handwriting experts and denied any involvement in handwriting analysis. He further stated that he was not aware of any bank statements of the accused being uplifted during the course of the investigation.

### **DW3-Ms. Rohini Chand**

46. She was employed as a Financial Investigator and acted as the witnessing officer during the caution interview of the accused.

### **Closing Submissions**

47. In their closing submissions, the defence contended that the prosecution had failed to adduce any expert evidence establishing that the disputed handwriting and signatures belonged to the accused, and argued that the Court ought not to rely on lay witnesses for that purpose. The defence further submitted that no records of the ILSC were produced to demonstrate the holding of workshops, nor was any evidence led to show that the accused had received the funds. It was also argued that there was no direct evidence proving that the accused had signed the cheques in

question. The defence maintained that the overwhelming evidence pointed to PW4 as the person responsible for preparing and cashing the cheques, and accordingly urged that the accused be acquitted of all counts.

48. The Prosecution in their detailed submission submitted that through the witnesses and the documents they have proved beyond reasonable doubt the accused committed all the counts.

### **The Law**

49. In **Woolmington v DPP**<sup>3</sup> it was held that :

**“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” (per Viscount Sankey L.C. at pp. 481-482).**

50. The accused is charged with seven counts of Falsification of Documents, contrary to section 160(3) of the Crimes Act, and three counts of Obtaining Financial Advantage, contrary to section 326(1) of the same Act.

51. The relevant provisions are as follows :

### **Section 160(3)**

**“A person commits a summary offence if —**

**(a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and**

**(b) the person does so with the intention of:**

**(i) obtaining a gain from another person; or**

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<sup>3</sup> [1935] AC 462 .

- (ii) causing a loss to another person; and
- (c) the other person is a government entity.”

**section 326(1)**

“A person commits a summary offence if he or she—

- (a) engages in conduct; and
- (b) as a result of that conduct, obtains a financial advantage for himself or herself from another person; and
- (c) knows or believes that he or she is not eligible to receive that financial advantage.”

52. According to the particulars in the charge sheet, the elements for which the prosecution must prove beyond reasonable doubt are:

**1st, 3rd , 4th ,5th, 6th ,7th and 9th counts (Falsification of Documents)**

- a. The accused person ;
- b. Dishonestly falsifies documents ( Bank of Baroda cheques)
- c. With the intention of ;
- d. Obtaining gain from the Independent Legal Service Commission( ILSC)

**2nd, 8th and 10th count (Obtaining financial advantage)**

- a) The accused person ;
- b) Engage in a conduct( prepared and falsified bank of baroda cheques)
- c) As a result of that conduct obtain financial advantage for herself ;
- d) From another person(ILSC) ;
- e) Knowing that she was not eligible to receive said financial advantage. ;

## Analysis

53. There is no dispute as to the identity of the accused in this matter. The prosecution witnesses confirmed that, at the time of the alleged offending (2012–2014), the accused was employed as Secretary of the ILSC. This fact is further corroborated by her employment contract, which has been tendered in evidence as Exhibit PE1.

54. During the hearing, the Prosecution tendered the following cheques and they were duly marked as exhibits.

**Cheque No 847236- -PE2**

**Cheque No 847273--PE3**

**Cheque No 847293--PE4**

**Cheque No 847295--PE5**

**Cheque No 8473909--PE6**

**Cheque No 606088-PE7**

**Cheque No 847338-PE14**

55. The prosecution's case is that, while employed as Secretary of the ILSC, the accused dishonestly falsified the cheques referred to above by forging the signature of SG (PW3), with the intention of obtaining financial gain from the ILSC. These allegations form the basis of the 1st, 3rd, 4th, 5th, 6th, 7th, and 9th counts.

56. **As for the 2nd, 8th, and 10th counts**, the Prosecution alleged that, while employed as Secretary of the ILSC, the accused falsified the relevant cheques and, on the basis of those falsifications, obtained financial advantage for herself from the ILSC, knowing that she was not entitled to receive such advantage.

57. I will first consider the 1st, 3rd, 4th, 5th, 6th, 7th, and 9th counts, which concern the offence of falsification of documents.

58. To establish that the cheques were falsified, the Prosecution called PW3, who was the SG at the relevant time, as a witness. He examined the cheques (PE2–PE7 and PE14) and confirmed that he had not signed them. The Defence did not challenge this assertion. Accordingly, I find that the Prosecution has proved beyond reasonable doubt that these cheques were falsified by the forging of PW3's signature.

59. The principal issue for determination is whether the accused was the person who falsified these cheques with the intention of obtaining a gain from the ILSC.

60. There is no direct evidence linking the accused to the falsification of the cheques. This was one of the main arguments by the Defence both during the hearing and in their closing submissions.

61. The Prosecution, however, appears to rely on circumstantial evidence to establish that it was the accused who forged the SG's signature with the intention of obtaining financial gain from the ILSC.

62. Pollock CB, likening circumstantial evidence to a rope comprised of several cords, said:

**One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength.**

**Thus it may be circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion; but the whole, taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of. (*Exall* (1866) 4F & F 922, at p. 929).**

63. In *Teper v The Queen*<sup>4</sup>, per Lord Normand at p. 489) said :

**‘It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference’**

64. I now turn to consider the circumstantial evidence upon which the Prosecution relies to establish the guilt of the accused for the falsification of the document.

65. In doing so, I will refer to and, where appropriate, quote the relevant portions of the proceedings that support these evidentiary points.

### **Identification of the signature of the Accused**

66. Some of the Prosecution witnesses, in their testimony, identified the second signature appearing on the disputed cheques as belonging to the accused.

PW3: **None of those two signatures are my signatures. Having seen numerous documents, I can say that the second signature is that of the secretary, Ms. Nisha.**

**The first signature is not my signature. The second signature is a signature that, having seen numerous documents involving the Independent Legal Services Commission, correspondence that used to come through my table as the Solicitor General, I do recognize that signature as that of Ms. Afrana Nisha.**

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<sup>4</sup> [1952] AC 480

**Mr. Heritage:** Yes or no, it is similar, somehow similar to the signatures that you saw, but you cannot confirm for sure that it is her real signature, don't you agree?

**PW3:** I was asking that, answering your question. So, from all the documents that I have seen go past my table, I can confirm that the signature, the other signature on that cheque has a striking resemblance to the signature of Ms. Nisha, but can I also perhaps, thank you for allowing me to clarify, it was just not that cheque, but all the other cheques which had a very similar signature, which I know from my experience to be that of Ms. Nisha.

**Mr. Heritage:** Yes, but you're not an expert to say that these signatures actually belong to Afra and Nisha, yes?

**PW3:** Sir, if I see your signatures over a decade in documents that come to me, I would be able to say, hey, this is my friend's signature.

**PW4**

**Ms. Ravuikadavu:** Do you recognize the signatures on the front of the check, the two signatures?

**PW 4:** Yes.

**Ms. Ravuikadavu:** Can you tell us whose signatures does this belong to?

**PW 4:** The first one is Miss Nisha's.

**Ms. Ravuikadavu:** And the second one?

**PW 4:** And the second one is the SG.

**Ms. Ravuikadavu:** Okay. And how can you tell that this is, the first one is Miss Nisha's?

**PW 4:** Because we had, I mean, I think three signatories, so it was the secretary and SG, and then the commissioner. If the secretary is not there, then the commissioner signs.

67. In closing submissions, the Prosecution argued that the Defence ought to have produced evidence to refute the allegation that the accused had signed the disputed cheques. However, it must be noted that the accused bears no burden to prove any matter in this case, including the authenticity of the alleged signatures.

68. The Defence objected to the identifications made by the Prosecution witnesses on the basis that those witnesses were not handwriting experts and therefore not competent to provide reliable evidence on signature identification.

69. To counter this argument, The Prosecution has cited [Khera v State](#)<sup>5</sup> where the court held :

**“16] The general rule is that a witness is not permitted to express an opinion on a relevant matter unless the witness by his qualification or experience is an expert in the field or subject matter calling for an expert opinion.**

**[17] Comparison of handwritings requires expertise. Assessors or judges for that matter do not possess that expertise. Hence, they are assisted by experts when they have to decide on a disputed handwriting. In other words, a court may rely on an expert's opinion to determine a relevant fact in issue.**

**[18] However, it is not necessary to prove handwriting by an expert witness. A witness who is familiar with a person's handwriting through a regular correspondence or through having frequently seen the person's handwriting is competent to testify as to the handwriting ([Pitre v The King \[1933\] Can. S.C.R. 69](#) at 72).**

**[19] The exception to the general rule is part of the English common law. The exception was explained by Lord Coleridge in [Rex. O'Brien \(1911\) 7 Cr. App. R. 29](#) at 31:**

*"To prove handwriting, it is necessary that a witness should have either seen the person write, or corresponded regularly with him, or acted upon such a correspondence. Then the witness may swear to his belief as to the handwriting, but without one of these foundations for his belief the question is inadmissible."*

70. Having considered the evidence of all the Prosecution witnesses, I accept the testimony of PW3, who stated that one of the signatures appearing on the disputed cheques bore similarity to that of the accused, based on his prior experience in dealing with her.

### **Access to the cheques in the ILSC**

71. The accused admitted that the cheques were kept in the side drawer of her office. The Prosecution, through its witnesses, established that access to this office was restricted by an access card and that only the accused and the Commissioner possessed such access.

**PW 4: We all had our access card. But mine and the driver's was limited to only through the main door, the middle one. And then we didn't have access to commissioner's room or the secretary's room.**

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<sup>5</sup> [\[2016\] FJCA 1;AAU0117.2014 \(18 January 2016\)](#)

72. The Defence sought to demonstrate through her police statement (DE1) that PW4 was not truthful and that she had also access to the office. However, PW4 confirmed in her testimony that she only entered the office when the accused was on leave, and then only with the accused's permission, for the purpose of cashing a cheque that is the subject of these proceedings.

**Mr. Heritage:**           **No, no. My question is, you told the police that you had access to Afrana Nisha's office. Don't you agree, ma'am?**

**PW 4:**                   **I didn't tell them I had access. I just said I went to her office as instructed by her.**

**Mr. Heritage:**           **Right, fine. Now, you said that no one had access to Miss Afrana Nisha's office except her. Don't you agree?**

**PW 4:**                   **Yes.**

**Ms. Ravuikadavu: Ms. Raj, just a few questions to clarify. So, my learned friends had given you your statement that you gave to the police. Could you please explain why did you give that statement in terms of having access to Ms. Afrana's room and drawer?**

**PW 4: According to this statement, when she went on leave, I think she gave me her card and then asked me to do some payments for her.**

73. Although the Defence also sought to demonstrate that PW4's testimony was inconsistent with the evidence of other witnesses specifically PW1, I find that PW1 did not conclusively state that PW4 had access to the secretary's office.

**Mr. Heritage:**           **And in her office, it is accessible, is that correct?**

**PW1:**                   **Accessible to whom?**

**Mr. Heritage:**           **Like to other staff of ILSC.**

**PW1:**                   **Yes, I think so, yes. Yes. And it was certainly accessible by me.**

74. Accordingly, I find that only the accused, apart from the Commissioner, had access to her office where the cheque books were kept in custody. PW4's access was limited to occasion when the accused was on leave and had expressly granted permission, specifically in relation to uplifting a cheque that is the subject of Count 9.

**PW4 receiving these cheques from the accused**

75. PW4 confirmed in her testimony that, apart from cheque PE14, all the other cheques were handed to her by the accused for the purpose of being cashed at the bank. She further stated that, at the time she received them, the cheques had already been filled including the authority at the back. .

**PW 4: I don't recall because I haven't seen who filled it. I just got the check.**

**Ms. Ravuikadavu: Okay, so who did you get it from?**

**PW 4: The secretary.**

**Ms. Ravuikadavu: And who is that?**

**PW 4: Ms Afrana Nisha.**

**Ms. Ravuikadavu: All right. And when you got it from her, was everything on the check filled in?**

**PW 4: Yes, everything is filled in. Whenever I get the cheque, all the things are filled in.**

**Raising the cheques in ILSC**

76. Both PW1 and PW4 gave evidence that the responsibility for raising the cheques rested with the accused at that time.

**.Ms. Ravuikadavu: And, okay, sorry, in terms of raising checks at ILSC, Madam, do you recall what was the procedure at that time? Who was responsible for raising checks at ILSC?**

**PW 4: All the payment works, everything was done by the secretary.**

**Ms. Ravuikadavu: Okay. And were you, were you involved in, in this payment as well?**

**PW 4: No.**

**Ms. Ravuikadavu: Thank you, sir. Sir, from the year 2012 to 2024, can you recall if there was any payments for allowance, who would be responsible to fill in the cheques?**

**PW1: The secretary, Ms Nisha.**

**Ms. Ravuikadavu: Thank you, sir. Was there anyone else apart from Ms Nisha? Was there any circumstance where anyone else would fill it apart from her, sir?**

**PW1: Not that I can recall.**

77. Even though the accused in her evidence said PW4 also has the power to raise the cheques,, this version of events was not put to PW4 during cross-examination and, as correctly submitted by the Prosecution, constitutes a violation of the rule in *Browne v Dunn*.

78. Accordingly, I do not attach weight to this contention and accept that, apart from the Commissioner, only the accused had the authority to raise the cheques.

**The accused receiving the funds from these cheques.**

79. There is no dispute that the cheques were duly encashed from the Bank by PW4. This fact was corroborated not only by PW4 herself, but also by the bank officers (PW5, PW7, and PW8), as well as the bank statements (PE10 and PE13). Save for the funds pertaining to PE14, PW4 testified before the Court that she had handed over all the monies to the accused.

**Ms. Ravuikadavu: For this particular cheque that you're holding?**

**PW 4: Yeah.**

**Ms. Ravuikadavu: After you received the cash from the teller, what did you do with the cash?**

**PW 4: I'll bring it back to the office, to the secretary.**

**Ms. Ravuikadavu: Okay. Thank you. And after that, was there any other instructions from Miss Nisha?**

**PW 4: No.**

80. The defence sought to establish that there were no documentary records to corroborate PW4's assertion of having handed over the proceeds of the cheques to the accused, and therefore contended that her testimony ought not to be accepted.

81. However, PW4 clarified to the Court that it was the normal practice in the course of their work that no such records were maintained, and accordingly, the absence of documentation cannot, by itself, discredit her evidence.

**Ms. Ravuikadavu: Ms. Raj, just one question. At ILSC, when you were employed there, because my learned friends had asked you whether you had any records to reconcile on**

**your going out, coming in, cashing the cheque, giving it to Ms. Afrana. Why were there no records at that time of all this?**

**PW 4: Because that's our normal work. We don't keep records for all the things we do in the office.**

**81.** I now turn to the 2nd, 8th, and 10th counts. In these counts, the Prosecution alleges that, while employed as Secretary of the ILSC, the accused falsified the relevant cheques and, on the basis of those falsifications, obtained financial advantage for herself from the ILSC, knowing that she was not entitled to receive such advantage.

**82.** To prove these counts, the Prosecution primarily relies on the direct testimony of PW4. In her evidence, PW4 was shown the cheques and confirmed that, apart from PE14 which is the subject of the 10th count, she handed over the monies to the accused.

**83.** PW1 and PW2, in their testimonies, confirmed that they did not receive any monies from these cheques. The defence submitted that PW2 could not verify the workshops conducted during 2012, as the list (PE8) did not originate from the ILSC. However, I find that these records appear to have originated from the ILSC and may have been uplifted by FICAC during the course of this investigation.

**84.** I have already discussed earlier about the evidence showing the accused falsified these cheques by forging the signature of SG, and I do not propose to repeat that discussion here.

**85.** There is no doubt that the accused was not entitled to cheques payable to PW1 and PW2 (PW2–PE7). Accordingly, I find that there is evidence establishing that the accused obtained these monies from the ILSC, knowing that she was not entitled to them.

**86.** However, whilst giving evidence, PW4 confirmed handing over the monies for PE2–PE7 but made no mention of PE14, which relates to the payment allegedly received by the accused. The accused has expressly denied receiving the proceeds of this cheque.

**87.** In its closing submissions, the Prosecution sought to rely on PW4's police statement to establish this count, and this reliance was confirmed by the Prosecution when the matter was raised in Court.

**88.** The defence, for its part, relied on this statement to highlight contradictions, particularly regarding PW4's access to the funds. The statement also appears to contain reference to what transpired in relation to the monies from PE14. However, this statement was not marked by any of the parties and not before this court.

**89.** Having considered the evidence, I find that there is no conclusive proof that the accused obtained funds from PE14. Accordingly, I hold that a reasonable doubt exists in respect of Count 10.

90. Before drawing any inference about the accused based on the circumstantial evidence mentioned earlier, I would now turn to their version as presented during the hearing as well as in the closing submission.

91. The defence submitted that the prosecution witnesses, especially PW1, PW2, PW3 and PW4 can not be trusted based on contradictions during their cross-examinations. However, I do not find there are major inconsistency as submitted by the defence.

92. The defence further submitted that the Prosecution did not verify the signature of the accused in the cheques through an expert witness and also the identification of her signature by lay persons can not be accepted.

93. DW2 who was called by the defence has confirmed that the FICAC has no expert to identify handwriting and when inquired by this court the apart from vaguely about the availability of the expert witnesses in Fiji police force, defence also could not assist this court. Therefore, I do not find it is fatal for the Prosecution case to call an expert witness to identify handwritings in this case.

94. As for identification by lay persons of the accused signature, I have already considered earlier in this judgment.

94. The defence also submitted that there were no witnesses to confirm the accused forged these cheques and also receiving funds. However, the Prosecution case is based mainly of circumstantial evidence about this offence.

95. The defence submitted one cheque (PE14) was signed and cashed on whilst the accused was in overseas which raise doubt about the prosecution case. It appears that this cheque which was written on 03/11/2014 was cashed on 05/11/2014.

96. However, PW4 said whilst the accused was in overseas, she instructed PW4 to uplift the cheque from her office. Hence, I find the accused could have written this cheque before traveling oversea. There is no evidence to show the accused was out of the country in 2014 before November.

97. During the defence hearing, the defence marked invoice voucher marked as DE1 to show the payments receiving for PE14 on 30 October 2014. However, this payment voucher was not put to the any of the prosecution witnesses to confirm the discrepancies of the dates.

98. The main argument taken by the defence is that since the cheques confirmed that PW4 receiving the payments as confirmed by bank officers, it was she who prepared these forged documents and obtained funds from that. However, the evidence overwhelm point that it was the accused who prepared the cheques and obtain funds using PW4 who was an innocent party.

99. The defence, through its witnesses from FICAC (DW1 and DW2), sought to demonstrate that no proper investigation had been conducted, including the failure to uplift the bank statement of the accused. However, these officers were themselves part of the investigation and were assigned specific roles, one as the charging officer and the other as the witnessing officer.

100. Finally, I would like to talk about the demeanour and credibility of the witnesses. I find the all the Prosecution witness were credible and reliable and gave evidence in confidence manner. There were no major contradictions during the cross-examination.

101. I do not accept the version of the accused in this case. I do not find she is telling the truth in the court. The Court also questioned how, when the cheques were in the custody of the accused, she failed to notice that someone had removed them in order to falsify them, and found that the explanation provided was unacceptable.

### **Summary**

102. From the evidence presented during the hearing, I find the Prosecution has provide evidence to prove:

- a. Only the accused had the access to the cheque books in ILSC which were kept in her office.**
- b. Apart from PW1, only the accused had the authority to raise the cheques.**
- c. The accused handed over these cheques ( PE2-PE7 and PE14) to PW4.**
- d. When these cheques were received by PW4 , they were complete and filled.**
- e. PW4 cashed these cheques and handed over the monies back to the accused apart from PE14.**
- f. PW1 and PW2 did not receive funds from these cheques.**

103. Therefore as for the 1st, 3rd, 4th, 5th, 6th, 7th, and 9th counts only reasonable inference I can draw is that the accused prepared these cheques(PE2-PE7 and PE14) forging the signature of SG with the intention of obtaining monies from ILSC.

104. As for the 2nd, 8th, , I find the prosecution has proved beyond reasonable doubt while employed as Secretary of the ILSC, the accused falsified the relevant cheques and, on the basis of those falsifications, obtained financial advantage for herself from the ILSC, knowing that she was not entitled to receive such advantage.

105. I find the Prosecution has failed to satisfy beyond reasonable doubt the accused obtained funds using PE14 which is the 10<sup>th</sup> count .

### **Conclusion**

106. I find that the prosecution has proved beyond reasonable doubt the accused committed 1<sup>st</sup>,2<sup>nd</sup>, 3<sup>rd</sup>,4<sup>th</sup> ,5<sup>th</sup> 6<sup>th</sup>,7<sup>th</sup> 8<sup>th</sup> and 9<sup>th</sup> count and find her guilty and convict her.

107. I find the accused is not guilty for the 10<sup>th</sup> count and acquit her from that.

**108.** 28 days to appeal.



(A)



IN THE MAGISTRATES COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 356 of 2015

BETWEEN: FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION  
 ("FICAC")

PROSECUTION

AND: AFRANA RAHIMAN NISHA

ACCUSED

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AGREED FACTS

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THE FOLLOWING FACTS ARE ADMITTED BETWEEN THE PROSECUTION AND THE DEFENCE UNDER THE PROVISIONS OF SECTION 135 OF THE CRIMINAL PROCEDURE ACT.

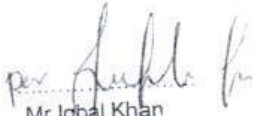
The parties hereby agree:


1. THAT the Accused in this matter is Afrana Rahiman Nisha (hereinafter referred to as the "Accused") 36 years old of Lot 9 Poorva Road, Makoi.
2. THAT the Accused was employed as the Secretary to the Independent Legal Services Commission (ILSC) at all times material to this case.
3. THAT as Secretary to the ILSC, the Accused was laden with numerous responsibilities pertaining to the day to day running of the ILSC, including:
  - a. Processing documents and undertaking accounts works pertaining to the preparation and signing of ILSC cheques,
  - b. Preparation of cash Disbursements Journal;
  - c. Liaising with Consultants holding workshops on behalf of the ILSC and handling administrative aspects of the running of these workshops;

- d. Facilitating the payments to the coordinators or consultants for the abovementioned workshops;
- e. Delegating tasks or instructions to subordinates to dispatch mail, undertake banking in the form of cashing cheques, depositing and withdrawing cash from the ILSC's bank account.
4. THAT as Secretary to the ILSC, the Accused was one of the signatories to the ILSC trust fund account no. 91010200000539 held at the Bank of Baroda
5. THAT at all times material to this case the other three listed signatories for the above mentioned bank account was :
- a. Mr Paul Kennard Madigan the current Commissioner of the ILSC at that time;
- b. Mr Sharvada Sharma the Solicitor General and
- c. Ms Eliana Mayah the Principal Accounts Officer for the Attorney General's Office.

Dated at this day of October, 2018.

  
Ms Sera Fatafehi  
FICAC Prosecutor

  
Mr Iqbal Khan  
Counsel for the Accused

  
Mr Liyanage Wickramsekara  
HON RESIDENT MAGISTRATE

