**IN THE COURT OF APPEAL, FIJI**
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. CAV0005 OF 2023**
[Court of Appeal No: AAU0032 of 2021]
[Suva High Court: HAA 22/20]

**BETWEEN**: **ROHIT RAM LATCHAN**

***Appellant***

**AND:** **THE STATE**

***Respondent***

**Coram:** The Hon. Mr Justice Anthony Gates, Judge of the Supreme Court
The Hon. Madam Justice Lowell Goddard, Judge of the Supreme Court
The Hon. Mr Justice Alipate Qetaki, Judge of the Supreme Court

**Counsel** : Mr. V. Singh for the Petitioner
Mr. R. Kumar, R, for the Respondent

**Date of Hearing:** 9 August 2024

**Date of Judgment:** 29 August 2024

# JUDGMENT

**Gates, J**

[1] I have read in draft the judgment of Qetaki, J which follows. I am in full agreement with it, and with its reasons and orders.

**Goddard, J**

[2] I agree entirely with the reasoning and conclusions of the learned Judge.

**Qetaki, J**

**Background**

[3] The Petitioner was charged with 3 counts of the offence of *undischarged bankrupt acting as a director* contrary to section 189(1) of the Companies Act (Cap 247). He was found guilty by the learned Resident Magistrate (Magistrate) and convicted of Counts 1 and 2, He is appealing against his conviction and sentence. Petitioner was found not guilty and acquitted of Count 3.

[4] According to the Information (Amended) filed for Counts 1 and 2, the offences committed are both under section 189(1) of the Companies Act (Cap.247), however, the particulars of the offences slightly differ in that, for Count 1:

> *"on the 28th "day of October 2014, at Suva in the Central Division being declared a bankrupt by the Magistrates Court in Suva and not having received his discharge acted as a director of, or directly or indirectly took part in the management of* ***Latchan Holdings Limited*** *without the leave of the Court by signing as the Director of* ***Latchan Holdings Limited*** *on application for Caveat No. 804805".*
> (Underlining added for emphasis).

[5] For Count 2 the particulars of the offence committed is the same as in Count 1, except that, it is with respect to an application for *Caveat No. 804806*. Count 3, which was dismissed, relate to the alleged commission of the same offence but, from, 4th January to 30 December 2015 and the alleged signing by the petitioner, was as a director in another company, namely **Estol Holdings Limited.** The prosecution was unable to prove that the accused directly or indirectly took part in the management of the said company, hence his acquittal on the count.

[6] Upon being found guilty of Counts 1 and 2, the learned Magistrate, on 3 March 2020, convicted the Petitioner, and ordered that "***a conviction shall be recorded "***and imposed an "***Aggregate fine of $500- with a default term of imprisonment of 50 days"-*** at paragraphs 18, 24 and 25 of Sentence, page 60 of Appeal Record of Magistrates Court).

**Judgment of Resident Magistrate**

[7] Relevant passages from the judgment of Asanga Bodaragama, Resident Magistrate delivered on 23rd day of December 2019 are reproduced below:

> *"17. The allegations against the accused in all three counts is that he acted as director of Latchan Holdings Limited and Estol Holdings Limited or directly or indirectly took part in the management of the said companies while being declared bankrupt.*
>
> *18. During the hearing the prosecution tendered a document marked PE4 the order declaring the accused bankrupt in case number 395/2001.Further to that, accused in his caution interview admitted that he was declared bankrupt in case number 395/2001.*
>
> *19. Further, Prosecution tendered two caveats marked as PE1 and PE2 signed and lodged by the accused as a director of Latchan Holdings Limited. There was no dispute that such caveats were signed by the accused. Learned counsel for the accused questioned the witness Ms Torika Geneva to suggest that the accused sign those documents not as a director but on authority from the directors to sign such documents.*
>
> *……*
>
> *23 ……..Mr Nand admitted his knowledge on a letter issued by Credit Corporation in 2012 informing ORO that as creditors they are not objecting to any application being made to court to rescind the bankruptcy order against the accused. When questioned on the time period relevant to these charges Mr Nand clearly answered that accused was still bankrupt during December 2013 to December 2015……..*
>
> *24. As per the provisions of the Bankruptcy Act, paying the debt in question and discharging a receiving order or bankruptcy order is not the same. In terms of section 28 of the Bankruptcy Act, a bankrupt may, at any time* ***after being adjudged bankrupt,*** *apply to the court for an order of*

*discharge. Thus, mere settling the debt to the creditors does not automatically discharge a bankruptcy order. Debtor shall make an application to court to discharge the bankruptcy order against him.*

*……..*

28. *…., by way of Mr Janardhan's evidence prosecution proved that court had not issued any orders granting leave to accused to act as a director during the time material to these charges. '..*

*"29. Ms Torika during her evidence identified and marked 02 caveats lodged at her office on behalf of Latchan Holdings Limited. She further testified accused signed PE1 and PE2 as a director of Latchan Holdings Limited. However, her evidence is not enough to prove the signature of the accused as she is not an expert in identifying signature nor is she familiar with the signature of the accused. In his caution interview accused admitted that he signed both PE1 and PE2.Thus, the fact that accused had signed PE1 and PE2 are not facts in dispute……."*

36. *Therefore, I hold that prosecution proved that accused signed and lodged PE1 and PE2 as a director of Latchan Holdings Limited.*

37. *As for the document marked PE8 accused was appointed as a director of Estol Holding with effect from 07.06.2012 and as per PE9 he ceased to be a director of the said company on 01.06.2016, which is within the time material to the 3rd count.*

*……*

38 *……..I have no question of accepting PE8 and PE9 as reliable evidence.*

39. *However, the 3rd charge alleged inter alia that accused acted as a director of, or directly or indirectly took part in the management of* ***Estol Holdings Limited*** *without he leave of the Court by signing as the Director of* ***Estol Holdings Limited.***

40. *However, the 4th element of the charge require the prosecution to prove accuse directly or indirectly took part in the management of* ***Estol Holdings Limited*** *and signed as the director of the said company. In PE8 or PE9 accused name appears as director of Estol Holdings but that does not prove he directly or indirectly took part in the management of the company. Therefore, I am unable to accept that prosecution proved the fourth element of the 3rd charge against the accused.*

*41. Therefore, I hold that prosecution proved all elements of the 1st and 2nd charges against the accused and accused failed to create reasonable doubt in the prosecution evidence. However, as I held earlier, prosecution failed to prove the fourth element of the 3rd charge against the accused."*

**Judgment of the High Court**

[8] The Petitioner appealed to the High Court against his conviction and sentence and filing 5 Ground of appeal - Ground 1, against sentence and Grounds 2 - 5 against the conviction. Grounds 2, 3 and 5 against conviction are interrelated as they are in relation to the evidence led during the trial. The Grounds of appeal are that the learned Magistrate erred in law and in fact in finding that the Appellant was an undischarged bankrupt when Summit Nand from the Office of the Official receiver had given evidence that the appellant had been discharged and found that the prosecution had no burden to prove whether the bankruptcy order was discharged or not. Further, that the learned Magistrate erred in law and in fact in finding that the appellant took part in the management of Latchan Holdings Limited by signing as a director of that company in Caveat Number 804805 and 804806. And that the learned Magistrate erred in law and in fact when he did not accept the evidence of Sumit Nand that it was the duty of the Official Receiver to make an application for discharge of the bankruptcy order against the appellant. The Office of the Official Receiver had given evidence that the Appellant had been discharged. Having considered all the evidence available to the learned Magistrate, the High Court found that grounds 2, 3, and 5 against conviction are without merit.

[9] Ground 4 of appeal against conviction is that the learned Magistrate erred in law and in fact in failing to consider that there was no evidence adduced by the State on the *mens rea* element of intention in the part of the appellant in relation to the offences. The learned High Court judge, considered section 189(1) of the Companies Act (Cap.247), reviewed the elements of the offence for which the charges were laid, considered the General Principles of Criminal Responsibility set out in Chapter 11 of the Crimes Act, including section 23 of the Crimes Act which makes provision for situations where an offence does not specify a fault element. He stated (paragraphs 35,36 and 37) as follows:

*"[35] I concede that in his judgment, the learned magistrate has made no reference to this element. However, when analyzing the entire body of evidence led on behalf of the prosecution it can be established that the appellants conduct clearly depicted intention on his part.*

*[36] Furthermore, in passing the sentence, the learned Magistrate has stated thus:" In fact as transpired in evidence you signed both these caveats in the presence of your lawyers. Hence, I am unable to accept that this is not a deliberate act.*

*[37] Therefore, it is my opinion that this ground of Appeal against conviction has no merit."*

[10] Ground 1 against the sentence was dealt with last by the learned High Court Judge. The appellant takes up the position that the learned Magistrate erred in law and in fact by entering a conviction against the appellant and by failing to exercise his discretion under section 15((1) (f) and section 16 of the Sentencing and Penalties Act by failing to correctly consider, a variety of interconnected factors set out in paragraph [42] (a) to (e) of the judgment. The learned High Court judge discussed this ground extensively, from paragraphs [38] to [61] covering the following aspects of sentencing: Principles and provisions applicable to appeals against sentence, Part 12 of the Companies Act (sections 132 -134), the repeal of section 189(1) of the Companies Act (Cap.247), alleged decriminalisation of offence established by the repealed section 189(1), Sections 15 and 16 of the Sentencing and Penalties Act, and consideration of **State v Batiratu**. He stated at paragraph [62] of judgment: High Court (per Hamza) on 12 February 2021:

*"[62] In this regard, the learned Magistrate has taken into account all the relevant considerations and has come to a finding that entering a non-conviction against the Appellant was not warranted (At page 56-60 of the Magistrate's Court Record). He has considered the case of State v Batiratu (supra), and other relevant cases authorities, in arriving at his finding."*

The learned judge further held that, there is no justifiable basis for him to interfere with the conclusions of the learned Magistrate, concluding that in his opinion, the Ground of appeal against sentence is without merit He ordered that (1) Appeal is dismissed, (2) The conviction and sentence imposed by the learned Magistrate Magistrates Court of Suva is affirmed.

[11] The Petitioner lodged a timely appeal to the Court of Appeal against the High Court decision.

**Grounds of Appeal at Court of Appeal**

[12] This is a second-tier appeal to the court which is governed by section 22 of the Court of Appeal Act, which are on questions of law only. The grounds are set out below;

> ***Ground 1:*** *That the Learned Judge erred in law by failing to correctly consider and apply section 14(2)(n) of the Constitution of Fiji and sections 626, 627 and 628 of the companies Act 2015.*
>
> ***Ground 2:*** *The Learned Judge erred in law in finding that the Learned Trial Magistrate had correctly considered the mens rea element of intention in the part of the Appellant in relation to the offences.*
>
> ***Ground 3:*** *The Learned Judge erred in law by failing to consider and correctly apply Chief Registrar v Kapadia [2016] FJLSC 8 and Fiji Independent Commission against Corruption v Rabuka, Criminal Appeal No. HAA57 of 2018.*
>
> ***Ground 4:*** *That the Learned Judge erred in law by failing to correctly consider and apply section 15(1)(f) and section 16 of the Sentencing and Penalties Act and the principles laid down in State v Batiratu [2012] FJHC 864 (date of judgment 13 February 2012).*
>
> ***Ground 5:*** *The Learned Judge erred in law by failing to find that the Magistrates Court should have dismissed the charges against the Appellant pursuant to section 187 of the Criminal Procedure Act since the charges against the Appellant were dated 10 January 2019 but related to matters that arose in October 2014, after finding in paragraphs 51-53 of his Rulings as follows…. (Paragraphs [53-54] were cited with section 626 of Companies Act 2015).*

**The Ruling of the Court of Appeal on 18 January 2023**

[13] The learned single judge concluded as follows:

> **Ground 1** - That the ultimate sentence was not unlawful, nor was it entered in consequence of an error of law. He states:

*"[20] The High Court Judge had felt that section 133(3) of the Companies Act 2015 corresponds to section 189(1) of the Companies Act (cap.247) and decided that in terms of section 14(2)(n) of the Constitution the appellant was entitled to the least severe punishment set down in section 626(c)(ii) of the companies Act 2015 which is a penalty not exceeding $500. The Magistrate had imposed a fine of $500 on the appellant as permitted under section 189(1) of the Companies Act (Cap.247).Though the decision of the High Court judge was flawed with regard to the applicability of 14(2)(n) of the Constitution, the ultimate sentence imposed by the Magistrate was well within the prescribed punishment under section 189(1) of the Companies Act (Cap.247).Had the appellant been sentenced with full vigour of section 189(1) of the Companies Act (Cap.247) he would have been liable to a term of imprisonment not exceeding 2 years or a fine not exceeding $1000, or both. Therefore, the ultimate sentence was not unlawful; nor was it entered in consequence of an error of law."*

**Ground 2** - The learned single judge stated that the High Court judge was entitled to draw the conclusion that the acts of signing the two caveats were deliberate meaning that they were not unintentional. The ground raise questions that is not a question of law alone. He stated:

*"[21] The High Court judge while conceding that the learned Magistrate has made no reference to the fault element under section 189(1) of the Companies Act (Cap.247), had stated when analysing the entire body of evidence led on behalf of the prosecution it could be established that the appellants conduct clearly depicted intention on his part. The appellant concedes that intention was the fault element for an offence under 189(1) of the Companies Act (Cap.247) in terms of section 23(1) of the Crimes Act.*

*[22] Therefore, the High Court judge made no error in deciding that intention was the fault element and determining that intention had been made out as a finding of fact based on facts of the case. The Magistrate had also decided that the appellant's acts of signing the two caveats were deliberate meaning that they were not unintentional."*

**Ground 3 -** The learned single judge concluded that this ground of appeal essentially deals with an issue of mixed fact and law and not law alone. He stated:

*"[29] At the sentencing hearing the appellants counsel had submitted that the appellants signing the caveats as a director of the company was not*

*deliberate as he was of the view that he was no longer bankrupt. On the other hand, the evidence reveals that even if (for the sake of argument) the appellant was not a director, he was directly or indirectly taking part in the management of the company as alleged in the charges. In any event, this ground of appeal essentially deals with an issue of mixed fact and law and not law alone."*

**Ground 4 -** The learned single judge concluded that the sentence imposed itself is neither unlawful nor entered in consequence of an error of law. He stated:

*"[32] The learned High Court judge discussed this aspect in paragraphs 58-64 with regard to the said provisions and **Batiratu** and held as follows:*

*"[62] In this regard, the Learned Trial Magistrate has duly taken into account all the relevant considerations and has come to a finding that entering a non-conviction against the Appellant was not warranted (at pages 56-60 of the Magistrates Court Record). He has considered the case of **State v Batiratu** (Supra), and other relevant case authorities, in arriving at his finding.*

*[63] There is no justifiable basis for this Court to interfere with the learned Trial Magistrate's conclusions.*

*[64] Considering the aforesaid, I am of the opinion that the Ground of Appeal against sentence is without merit."*

*[33] I agree with both the Magistrate and the High Court judge. The discretion exercised by the Magistrate had not resulted in any miscarriage. In any event, this ground of appeal involves not only the law but also the facts of the case. This is not a question of law alone. Following the conviction recorded, the sentence imposed itself is neither unlawful nor entered in consequence of an error of law."*

**Ground 5** - The ground does not appear to have been taken up in the High Court; nor in the Magistrates Court However, the learned single judge concluded that there is no question of law arising from this ground of appeal:

*"[36] There is no error in the learned judge's findings that he would not agree that there is no sentence provided for the acts stipulated under section 133(3) of the Companies Act 2015 because the relevant sentencing provisions have been clearly enumerated in section 626 of the said Act.*

*[37] However, the appellant was not charged under section 133(3) of the Companies Act 2015 but under section 189(1) of the Companies Act (Cap.247). The repealing of the Companies Act (Cap.247) does not alter that position. The sentence under 189(1) of the Companies Act (Cap.247) is a term of imprisonment not exceeding 2 years or a fine not exceeding $1000, or both. Section 187 of the Criminal Procedure Act applies to offences the maximum punishment for which does not exceed imprisonment of 12 months or a fine of $1000.In such instances proceedings should be brought within 12 months of the alleged offence. Therefore, the prescriptive period in section 187 does not apply to an offence under section 189(1) of the Companies Act (Cap.247).*

*[38] Thus, there is no question of law arising from this ground."*

[14] The learned single judge (Prematilaka, RJA) dismissed the appeal on 18 February 2023, in terms of section 35(2) of the Court of Appeal Act. Aggrieved by the decision, the Petitioner filed a Petition for Special Leave to Appeal to this Court under section 98 (3) (b) of the Constitution.

**Grounds of Petition for Special Leave**

[15] Paragraph 4 of the Petition for Special Leave to Appeal under section 98(3) (b) of the Constitution of Fiji (pages 1-5 of Record of the Supreme Court), indicates that the principal ground upon which the petition is based is:

*"(a)That the court of appeal erred in law in finding there were no questions of law in the grounds of appeal raised by the Petitioner for determination by the full Court of Appeal in the following grounds of appeal by the Petitioner:"*

This is an overarching ground which is supported by the 5 grounds that were raised in the Court of Appeal (see paragraph [12] above), which are addressed in the Petitioner's written Submissions filed on 18 July 2024.

**Supreme Court Jurisdiction**

[16] Section 98(3) of the Constitution affirms that the Supreme Court:

*(a) Is the final appellate court;*

*(b) Has exclusive jurisdiction, subject to such requirements as prescribed by written law, to hear and determine appeals from all final judgments of the Court of Appeal; and*

*(c) Has original jurisdiction to hear and determine constitutional questions referred under section 91(5) of the Constitution.*

[17] Section 98(4) and (5) state:

*"(4) An appeal may not be brought to the Supreme Court from a final judgment of the Court of Appeal unless the Supreme Court grants leave to appeal.*

*(5) In the exercise of its appellate jurisdiction, the Supreme Court may-*

*(a) review, vary, set aside or affirm decisions or orders of the Court of Appeal, or*

*(b) make any other order necessary for the administration of justice including an order for new trial or an order awarding costs."*

**Special Leave Requirements**

[18] Section 7(1) of the Supreme Court Act empowers this Court to refuse or grant leave to appeal in any civil or criminal matter brought to it in the exercise of its jurisdiction under section 98 of the Constitution.

[19] Section 7(2) of the Act, with respect to criminal matters, requires that the Court *"must not grant leave to appeal unless the following conditions are satisfied:*

*"(a) a question of general importance is involved;*

*(b) a substantial question of principle affecting the administration of criminal justice is involved; or*

*(c) substantial and grave injustice may otherwise occur."*

[20] The threshold for granting special leave by this Court is very high as set out in: **Likunitoga v State** [2018] FJSC 26; CAV0005.2018 (1 November 2018) and in **Livai Mala Matalulu and Another v Director of Public Prosecutions** [2003] FJSC 2; (17 April 2003), it is stated:

> *"The Supreme Court of Fiji is not a court in which decisions of the Court of Appeal will be routinely reviewed. The requirement for special leave is to be taken seriously. It will not be granted lightly. Too low a standard for its grant undermines the authority of the Court of Appeal and distract this court from its role as the final appellate body by burdening it with appeals that do not raise matters of general importance or principles or in the criminal jurisdiction, substantial and grave injustice."*

[21] The above passage was cited with approval in **Sharma v State** [2017] FJSC 5; CAV0031.2016 (20 April 2017), where at paragraph [15] of judgment, this Court observed;

> *"Thus, it is clear that the Supreme Court, in exercising its powers vested under section 7(2) of the Supreme Court Act, is not required to act as a second court of criminal appeal, but will only consider as to whether the question of law raised is one of general legal importance or a substantial question of principle affecting the administration of criminal justice is involved or whether substantial and grave injustice may occur in the event leave is not granted."*

[22] In the recent case of **Korodrau v State** [2023] FJSC 6; CAV0022/29 (27 April 2023), this Court emphasized/ clarified the categories of the requirements under section 7(2) (b) and (c) of the Supreme Court Act:

> *"[23] Section 7(2) (b) and (c) of the Supreme Court Act 2016 ordinarily applies to two categories of cases, one substantive, the other procedural. Both can be said to fall within the class of miscarriages of justice. Special leave may be granted in the categories to which subsection (b) and (c) applies because the judgment under challenge is inconsistent with the proper administration of justice.*
>
> *[24] It is worth mentioning here that in dealing with applications for special leave to appeal in criminal cases, the High Court of Australia first*

*adopted the principle laid down by the Privy Council in Re Dillet (1887) 12 App Case 459 at 467, that special leave to appeal will not be granted unless it is shown that by disregard of forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave, injustice has been done,"*

[23] The grounds of appeal and the issues raised in the grounds require reference to specific provisions of other statutes, for ease of reference, are set out below.

**The Constitution**

Section 14 (2) (n): *"Every person charged with an offence has the right – to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing."*

**Companies Act (Cap.247)**

Section 189 (Provisions as to undischarged bankrupts acting as directors):

"*(1) If any person who has been declared bankrupt or insolvent by a competent court in Fiji or elsewhere and has not received his discharge acts as a director of, or directly or indirectly takes part in or is concerned in the management of, any company, except with the leave of the court, he shall be liable to imprisonment for a term not exceeding 2 years or to aa fine not exceeding $1,000, or to both.*

*(2) The leave of the court, for the purposes of this section, shall not be given, unless notice of intention to apply therefor has been served on the official receiver, and it shall be the duty of the official receiver, if he is of opinion that it is contrary to the public interest that such an application should be granted, to attend on the hearing of and oppose the granting of the application."*

**Companies Act 2015**

Section 132 (Disqualified person not to manage companies):

*"Any person who is disqualified from acting as an officer of a company under this Part commits an offence if they-*

*(a) consent to act as an officer of a company;*

*(b) make, or participate in making decisions that affect the whole, or a substantial part, of the business of the company;*

*(c) exercise the capacity to affect significantly the company's financial standing; or*

*(d) communicate instructions or wishes, other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the company to the directors of the company –*

*(i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or*

*(ii) Intending that the directors will act in accordance with those instructions or wishes.*

Section 133(3) (Automatic disqualification):

*"(3) A person is disqualified from acting as an officer of a company if the person is an undischarged bankrupt under the laws of Fiji or another country for so on as the person is an undischarged bankrupt under the laws of Fiji or another country."*

Section 626 (General penalty provisions): *"A person who –*

*(a) does an act or thing that the person is forbidden to do by or under a provision of this Act;*

*(b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or*

*(c) otherwise contravenes a provision of this Act*

*is guilty of an offence and -*

*(i) is liable to pay a penalty not exceeding the maximum penalty prescribed for a contravention of that provision in accordance with this Act, unless a provision of this Act provides that the person is or is not guilty of an offence; or*

*(ii) if no maximum penalty is prescribed for a contravention of the provision in accordance with this Act, is liable to pay a penalty not exceeding $500, unless a provision of this Act provides that the person is not guilty of an offence.*

Section 627 (Penalties for companies).

Section 628 (Penalty notices).

**Crimes Act**

Section 23 (1) (Offences that do not specify fault elements):

*"(1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element."*

**Criminal Procedure Act**

Section 187 (Limitation of time for summary trials in certain cases):

*"(1) This section applies to all offences the maximum punishment for which does not exceed imprisonment of 12 months or a fine of 10 penalty units unless a longer time is allowed by any law for the laying of any charge for an offence under that law.*

*(2) No offence shall be triable by a Magistrate Court, unless the charge or complaint relating to it is laid with 12 months from the time when the matter of the charge or complaint arose.*

*(3) The court shall order the dismissal of any proceedings which are in breach of this section."*

**Sentencing and Penalties Act 2009**

Section 15 (1) (f) and (2) (The range of sentencing orders):

> "*(1) if a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence, and subject to the provisions of this Act –*
>
> *(f) with or without recording a conviction , order the offender to pay a fine;*
>
> *(g), (h) (i) ……*
>
> *(j) without recording a conviction, order the dismissal of the charge;"*
>
> *(2) All courts may impose the sentences stated in sub-section (1) notwithstanding that a law may state that a penalty is to be imposed upon the conviction of the offender."*

**Analysis**

To be successful, the Petitioner's grounds of appeal must satisfy the requirements for grant of special leave pursuant to section 7(2) of the Court of Appeal

[24] **Ground 1:** *The learned judge erred in law by failing to correctly consider and apply section 14(2) (n) of the Constitution of Fiji and Sections 626, 627 and 628 of the Companies Act 2015.*

[25] The gist of the Petitioner's submissions may be stated, as follows:

(a) He has the right to receive a less severe sentence, in line with section 14(2) (n) of the Constitution, which provides that a person who is charged with a crime, and the punishment for that crime is reduced by law between the time they committed the crime and when they are sentenced, they have the right to receive a less severe punishment.

(b) That with the repeal of the Companies Act (Cap.247) including section 189, the new Companies Act 2015 no longer incorporates the same provision; the closest provision in the new Act which aligns to section 189 of the Companies Act (Cap.247) is section 133(3) of the new Act.

(c) The repealed provision (section 189) and the new section 133(3) are not the same. The two provisions differ in material respects, for example, the new section 133(3) does require that the disqualified person to seek the leave of the court for the purpose of acting as a director or in the management of a company. Section 189 refers to the director of the company and is concerned with the management of the company whereas in section 133(3) it refers to any officer of the company.

(d) Section 133(3) does not contain explicit penalty provisions, leading to ambiguity regarding the consequences of such offences.

(e) Section 626 of the Companies Act, 2015 becomes relevant in this situation as it provides general penalty for offences under section 626 (c) of Companies Act, 2015, which provides that where no penalty is prescribed for a contravention of the provision in accordance with this Act, the offender is liable to pay a penalty not exceeding $500, unless a provision of the Act provides that the person is not guilty of an offence.

(f) That the effect of the repeal of the whole section is, that the offence of "*undischarged bankrupt acting as director* "has been decriminalized, or that, it is no longer an offence. In the circumstances, section 14(2)(n) of the Constitution should have been applied to the benefit of the Petitioner

(g) The ground raises questions of significant legal importance, that is, the issue of the proper application of constitutional rights amidst legislative changes.

(h) The denial of the Petitioner's right given under section 14(2) (n) following the repeal of section 189, raises a broader question, that, the petitioner should have been granted the protection provided by the

Constitution, which means that, in the Petitioner's submission, a fine of $500 and no conviction should have been entered against him.

[26] Read carefully, Section 14(2)(n) of the Constitution is applicable when there has been a change in the prescribed punishment between the time the offence was committed and the time of sentencing, from a less severe punishment to a more severe, and if that occurs, the person charged with the offence is to have the benefit of the less severe punishment. The repeal of section 189(1) of Companies Act (Cap.247) does not obliterate the offence altogether from the statute books. The offence, of a slightly different nature, is enacted under the new Companies Act 2015, which is contained in sections 132 and 133(3) of the new Act, when read together. There are differences between section 189 and the new provisions of the new Act, which both the Petitioner and the respondent have acknowledged. However, the Petitioner's argument that, on repeal of section 189(1), the offence of disqualification of an undischarged bankrupt, has been decriminalized, is not sustainable. Since section 133 of the Companies Act, the closest provision in the new Act to the repealed section 189, does not prescribe a punishment for its breach, the Petitioner argues that the repeal, and decriminalisation of the offence, gave rise to a change in punishment from the 2 years (maximum) term of imprisonment and a sentence of not less than $1000 penalty (under section 189) to a maximum of $500 for general penalties under section 626(c) of the new Act. This is the position of the High Court judge, which I hold to be wrong.

[27] I agree with the learned single judge in his Ruling/Judgment, particularly paragraphs [14] to [20], reproduced below, with underlining added, for emphasis:

> *"[14] However, it is clear that apart from the general tenor of both sections, the elements of the prohibited acts under section 189(1) and 133(3) are different. An offence has to be identified by its elements. Therefore, they do not constitute one and the same offence. The most striking difference is that prior leave of court can exempt a person from criminal liability under section 189(1) whereas under section 133(3) the liability is not exempted on such prior permission of court. Another significant difference is that section 189(1) applies to a director or a person who directly or indirectly*

*takes part and is concerned in the management of any company whereas section 133(3) is applicable to any officer of a company as defined in the Act itself.*

*[15] Section 14(2)(n) of the Constitution is applicable only if the offence remains the same but the prescribed punishment for that offence (and not a similar or corresponding offence) has been changed between the time that offence was committed and the time of sentencing. In other words, section 14(2)(n) of the Constitution comes into operation when the Parliament changes the sentence to an existing offence with no change to the offence itself. Therefore, the Magistrate was right in concluding that section 14(2) (n) of the Constitution has no application to the appellant's case as the legislature did not change the sentence to section 189(1) but repealed it altogether. Accordingly, those found guilty of the offence in section 189(1) had to be necessarily punished according to the prescribed punishment under section 189(1) itself.*

*[16] Whether section 133(3) by itself constitutes an offence or whether it only describes instances where a person becomes a disqualified person from acting as an Officer of a Company, for it is section 132 that makes such a disqualified person doing any of the acts set out liable for an offence, is arguable but that debate is not necessary or relevant in this instance as the appellant was charged under section189 (1) of the Companies Act (Cap.247).*

*[17] In my view, under the Companies Act 2015, a person should be charged under section 132 along with section 133 as the case may be. If anyone is looking for an offence with similarities to section 189(1) of the Companies Act (Cap.247), he has to read section 132 along with section 133(3). On a plain reading of section 132, it becomes clear that it is not the same offence as section 189(1) of the Companies Act (Cap.247) though they have similarities and dissimilarities.*

*[18] This is not a case where the legislature has simply changed the punishment prescribed under section 189(1) of the Companies Act (Cap.247) between the time the offence was committed and the time of sentencing. It is a case of repeal of section189 (1) of the Companies Act (Cap.247) and indeed the whole of the Companies Act and bringing in the new Companies Act.*

*[19] Therefore, the argument that since section 189(1) did not exist anymore on the statute at the time of sentencing, the appellant could not have been convicted is plainly wrong, for the repeal of Companies Act (Cap.247) by section 752(a) of the Companies Act 2015 with effect from 26 May 2015 has no retrospective effect. What is material is whether the impugned act was an offence at the time it was committed under the Companies Act (Cap.247).*

*[20] The High Court judge felt that section 133(3) of the Companies Act 2015 corresponds to section 189(1) of the Companies Act (Cap.247) and decided that in terms of section 14(2)(n) of the Constitution the appellant was entitled to the least severe punishment set down in section 626(c)(ii) of the Companies Act 2015 which is a penalty not exceeding $500.The Magistrate had imposed a fine of $500 on the appellant as permitted under section 189(1) of the Companies Act (Cap.247).Though, the decision of the High Court judge was flawed with regard to the applicability of section 14(2)(n) of the Constitution, the ultimate sentence imposed by the Magistrate was well within the prescribed punishment under section 189(1) of the Companies Act (Cap.247).Had the appellant been sentenced with full vigour of section 189(1) of the Companies Act (Cap.247) he would have been liable to a term of imprisonment not exceeding 2 years or a fine not exceeding $1,000,or both. Therefore, the ultimate sentence was not unlawful; nor was it entered in consequence of an error of law."*

[28] Further, section 750 of the Companies Act 2015 may assist in resolving the legal position on the effect of the repealed section 189(1), with the argument that the offences for which charges were laid, have been decriminalised, and, the punishment given ought to be based on section 626(c) of the Companies Act 2015. Section 750 (Court proceedings) of the Companies Act 2015, provides the scope for the possible continuing effect of the repealed section 189 and Companies Act (Cap.247), as these relate to court proceedings. It states:

*"(1) If a proceeding in relation to a provision of a repealed Act has not concluded or terminated before the commencement date, the proceedings remain on foot until concluded or terminated.*

*(2) If a proceeding in relation to a provision of a repealed Act has concluded or terminated before the commencement date, a decision or order in that proceeding may be appealed against, or otherwise reviewed, as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.*

*(3) ……."*

[29] The above provisions appear to also support the argument that section 14(2) (n) of the Constitution and sections 626 (c) of the Companies Act 2015, does not apply, as there has been no change in punishment. Ground 1 fails. It does not come within the ambit of

section 7(2) of the Supreme Court Act. Has no merit as there are no prospects. There is no issue of general legal importance to be determined.

[30] **Ground 2:** *The learned judge erred in law in finding that the learned trial Magistrate had correctly considered the mens rea element of intention in the part of the Appellant in relation to the offences***.**

The Petitioner contends that the prosecution must prove two key elements beyond a reasonable doubt, which are actus rea (physical element) and mens rea (the fault element) of the offence, as set out in sections 14, 18, 19 and 23 of the Crimes Act 2009.The prosecution failed to prove the fault element: as per dictum of Wright J. in **Sherras v De Rutzen** [1895] 1 QB at page 921:

> *"There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but the presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."*

The above principle was viewed with approval in **Western Electric Co Ltd v Comptroller of Customs** [1964] FJCA 2.

[31] What is the effect of the Magistrate not considering the fault element? The High Court acknowledged the oversight in the prosecution case, it held the view that the *mens rea* could be inferred from the overall evidence presented, that is, from the accused's conduct. The judge stated**:**

> *"I concede that in his judgment, the learned trial Magistrate has made no reference to this element. However, when analysing the entire body of evidence led on behalf of the prosecution, it can be established that the Appellant's conduct clearly depicted intention on his part."*

[32] The Petitioner's submits, it is important to evaluating both *actus reus* and *mens rea* elements of an offence, to ensure fair and just outcomes in criminal cases. The learned

Magistrate had failed to explicitly address the *mens rea* element, and simply inferring it (the fault element /intention) from the evidence without direct reference fails to meet the rigorous standards required to prove the offence beyond reasonable doubt. The respondent submits that, the learned High Court judge had clearly found the petitioner's acts to be "*deliberate*" which could be taken to refer to "*intention*". The learned single judge had stated that the learned High Court judge had acted properly in terms of section 256 of the Criminal Procedure Act. I agree.

[33] The learned single judge stated:

> *"[21] The High Court judge while conceding that the learned Magistrate has made no reference to the fault element under section 189(1) of the Companies Act(cap.247), had stated when analysing the entire body of evidence led on behalf of the prosecution it could be stablished that the appellants conduct clearly depicted intention on his part. The appellant concedes that intention was the fault element for an officer under section 23(1) of the Crimes Act.*
>
> *[22] Therefore, the High Court judge made no error in deciding that intention was the fault element and determining that intention had been made out as a finding of fact based on the facts of the case. The Magistrate had also decided that the appellant's acts of signing the two caveats were deliberate meaning that they were not unintentional."*

[34] The ground fails. It does not satisfy the requirements under section 7(2) of the Supreme Court Act.

[35] **Ground 3:** *The learned judge erred in law by failing to consider and correctly apply Chief Registrar v Kapadia (2016) FJLSC 8 and Fiji Independent Commission against Corruption v Rabuka, Criminal Appeal No. HAA57 of 2018.*

[36] It is an issue that the Petitioner acted as a director of a company while being an undischarged bankrupt by signing two caveats using the description "*director*". It is contended that the use of the term was an error as at that time the Petitioner was not a

director of Latchan Holdings Limited. The Petitioner, cited in support the judgment of Justice Hickie in **Kapadia's** case at paragraph 40(3) stated:

> *"There is no law that says a bankrupt cannot make a statutory declaration. Indeed section 52 of the Bankruptcy Act "allows the bankrupt to be employed, be part of the civil service, to be employed in the army" and in the present case. "He was employed "as the resolution says, as a CEO of the company, not as a director". Mr Whiteside, as the Secretary of the company, advised the Respondent to take further instructions from Mr Latchan who was authorised (as Chief Executive Officer) to sign on behalf of the company as per a" Resolution by Directors of Latchan Holdings Limited" dated 8th November 2010."*

[37] This submission, contained in paragraph 28 of the Written Submission on behalf of the Petitioner, is misleading. The passage quoted is, as the first sentence of paragraph [40] of Hickie J's judgment indicates, it is merely a submission made by "Leading Counsel for the Respondent "in those proceedings before that Commission. It is not an authoritative statement of the law, and the passage, in context is a legal submission made to the Commission, by counsel for the respondent in a proceedings, in which the respondent faces a charge of unsatisfactory professional conduct, arising from the conduct of the Petitioner in this appeal. The primary issue arising was : *Whether there is an onus upon members of the legal profession into making full and proper enquiries into the status of a declaration , and further, does a failure fulfil the basis of a charge of "unsatisfactory professional conduct"?* However, in this appeal, the relevant question is whether the Petitioner had breached section 189 of the Companies Act (Cap.247), based on the charges and particulars of the offences. The case has does not apply.

[38] The Petitioner, relies on **Rabuka's** case, where the Court emphasised the need for formal proof of a person's role or title. That the prosecution must find evidence beyond the individual's own description to prove the matter beyond reasonable doubt. This ground and Rabuka's case were considered by the learned single judge in paragraphs [26], [27], [28] and [29] of the judgment of the Court of Appeal. Paragraphs [27] and [29] are of direct relevance and, reproduced below:

> *"[27] In the appellant's case, his counsel had cited* ***Rabuka*** *(which was considered by the Magistrate) not to support the argument that he was not a director but to show that the documentary evidence did not prove that he was an undischarged bankrupt. His position at the trial had been that he signed the two caveats not as director but on authority from the directors to sign them. However, the Magistrate had dealt with the issue whether the appellant was a director at paragraphs 19, 29, 33, 34, 35 and 36 and concluded that he had signed those caveats as a director of Latchan Holdings Limited."*
>
> *[28] ……*
>
> *[29] At the sentencing hearing the appellant's counsel had submitted that the appellant's signing the caveats as a director of the company was not deliberate as he was of the view that he was no longer bankrupt. On the other hand, the evidence reveals that even if (for the sake of argument) the appellant was not a director, he was directly or indirectly taking part in the management of the company as alleged in the charges. In any event, this ground of appeal essentially deals with an issue of mixed fact and law and not law alone."*

[39] Also, in **Rabuka,** it was held that the duplicity of the charges was fatal to the prosecution's case and essential elements were not proved. Here, the Petitioner was inconsistent in his reasons on why he signed the two caveats. The offences were not confined to an act done as "*director"*, but also extends to acts by an undischarged bankrupt that directly or indirectly amount to participation (taking part) in the management of a company. The case does not assist the Petitioner. I hold that this ground has no merit. It does not raise any issue that is of general legal importance. Ground is unarguable. It has no merit.

[40] **Ground 4:** *The learned judge erred in law by failing to correctly consider and apply section 15(1)(f) and section 16 of the Sentencing and Penalties Act and the principles laid down in State v Batiratu [2012] FJHC 864 (13 February 2012).*

[41] Section 15(1) empowers a court, which may order that, a person who has been found guilty of an offence, subject to any specific provisions relating to the offence and subject to the provisions of the Act, such person to pay a fine, *"with or without recoding a*

*conviction* "Section 16 of the same Act relates to the conditions under which a court can either record a conviction or not record a conviction.

[42] The Petitioner submits that, in **Batiratu**, in sentencing under section 45(2) of the Sentencing and Penalties Act, Honourable Chief Justice Gates (as he then was), summarised the factors a court should consider when deciding whether to dismiss a charge without conviction, or adjourn the proceedings and release the accused on conditions under section 45(2) of the Act. His Lordship stated:

> *"The effect of the cases and the purport of the more detailed provisions of the [Act] with regard to discharges can be summarised. If a discharge without conviction is urged upon the court the sentence must consider whether:*
>
> *a) the offender is morally blameless;*
>
> *b) only a technical breach of the law has occurred;*
>
> *c) the offence is of a trivial or minor nature;*
>
> *d) the public interest in the enforcement and effectiveness of the legislation is such that escape from penalty is not consistent with that interest;*
>
> *e) circumstances exist in which it is appropriate 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?"*

[43] That in applying the principles in paragraph [33] above, the Petitioner submits the following factors, upon which his compliance may be measured:

(a) The bankruptcy debt in 2012.It was the Official Receiver's duty to rescind the bankruptcy order after the debt was repaid. The Petitioner mistakenly referred to himself as "director" in the caveats.

(b) The Petitioner's act of signing the caveats as a director was a technical breach of the law.

(c) The Petitioner argues that no other person has been charged under section 189 of the repealed Companies Act (Cap.247), indicting the trivial nature of the offence. Additionally, the act has been decriminalised under the new Companies Act 2015.

(d) The Petitioner suggests that the public interest no longer necessitates enforcement of the old provisions since the offence has been decriminalised. There has been no adverse effect on third parties, and the public interest does not require a harsh penalty.

(e) The Petitioner's personal and professional circumstances were presented to argue for nominal punishment rather than a conviction. The offence, having been decriminalised, warrants leniency.

(f) The petitioner contends that the unique fact that the offence was no longer a criminal offence at the time of charging constitutes exceptional circumstances. Section 14(2) (n) of the Constitution provides the Petitioner certain rights when there is a change in the prescribed sentence from the date of the alleged offence to the date of sentencing.

[44] The Petitioner also submit that **Batiratu** was considered by the Court of Appeal in **State v Prasad** Criminal Appeal No. AAU122 of 2014 , delivered on 30 August 2018, where the Court said as follows:

> *"[16] The decision of State v Nayacalagilagi [2009] FJHC 73; HAC 165 of 2007, 17 March 2009 is relevant to the issue in this appeal. In that decision Gounder J noted that the authorities support the view that: discharge without conviction is for the morally blameless offender, or for an offender who has committed only a technical breach of the law. The power should be exercised sparingly where direct or indirect consequences of conviction are out of all proportion to the gravity of the offence and after the court has balanced all the public interest considerations."*

[45] The Petitioner submits that this ground raises a significant question of law regarding the application of statutory provisions and established legal principles in sentencing. He argues that the contention that the learned trial judge failed to appropriately consider

section 15(1) (f) and section 16 of the Sentencing and Penalties Act, along with the guiding principles from **State -v- Batiratu**, underscores the broader issue of legal principle. However, the respondent in response has submitted that the Court of Appeal had rightly considered this ground and concluded that it posed no question of law.

[46] There are a number of issues that have been raised by the Petitioner with respect to ground 4 of the appeal, some of which have already been canvassed in discussions related to Ground 1 and 3 above. It is important to note that, whilst **Batiratu** and the legal and sentencing principles pronounced there are important and helpful, the case is distinguishable as the factors directly relate to the application of section 45 (Release without conviction) of the Sentencing and Penalties Act. The facts and circumstances of that case are also different from the present, involving an offender who had assaulted a police constable while on duty. The Magistrate had imposed a bond of $500 for the offender to maintain peace and good behaviour for 2 years, without recording a conviction. The sentence was given under section 45(2) of the Sentencing and Penalties Act 2009. The subsection (2) states:

> *"A court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) adjourn the proceedings for a period of up to 5 years and releaser the offender upon the offender giving an undertaking to comply with the undertaking to comply with the conditions applying under subsection (2), and any further conditions imposed by the court."*

[47] The petitioner's responses on the principles set out in **Batiratu,** to demonstrate compliance by the Petitioner – see paragraph [33] (c), (d), (e) and (f) above, appear to be misconceived borne out of misinterpretation, and misrepresentation of the actual position.

[48] As well, the effect of an order under section 15 (2) (f) of the Sentencing and Penalties Act, needs to be clarified. The provision relates to situations where the accused person/ offender has been: (i) found guilty, and (ii) the court has ordered either that the conviction be recorded or that the conviction be not recorded, and (iii) subject to the order made (conviction recorded or otherwise), the offender is ordered to pay a fine.

[49] Section 16 (1) (Conviction or non- conviction) relates to a court's exercise of its discretion whether or not to record a conviction, and requires that 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.*

The legal effects of a previous finding of guilt without recording a conviction in the exercise of power under section 15 are spelt out in section 16 (2) and (3) of the said Act.

[50] Both the High Court and the Court of Appeal have considered the issues that the Petition has raised in this ground of appeal. The Court of Appeal had clearly expressed its views in support of the decision of the learned trial judge on this ground-see paragraph [13] at **Ground 4.** The Court of appeal had determined that there is no point of law raised under this ground and dismissed the appeal. However, I have carefully considered the submissions of the Petitioner, it appears that consideration can be directed to a closer examination of the requirements under section 16 (1) of the Sentencing and Penalties Act, in the context of the totality of the evidence adduced during trial. I have considered the requirements (a), (b) and (c) of section 16(1), and also the requirements of section 7(2) of the Supreme Court Act. This ground is allowed. It satisfies the requirement under Section 7(2) of the Supreme Court Act.

[51] In allowing this ground, the Court is satisfied that, in terms of section 16 (a), (b) and (c), the petitioner:

(i) is a person of good character;
(ii) had paid his debt in full, and he had not neglected or been disobedient in attending to his obligation to fully pay his debt;

(iii) is a layman who relies on legal advice from his lawyers ,who were present at the time of signing of the caveats;

(iv) the company (Latchan Holdings Limited) was well aware of his status , and had directed through a minute that he sign the caveats on its behalf;

(v) had not flouted the law, but needed help from his lawyers to legally apply for the rescission of the bankruptcy order attached to his name;

(vi) continues to be adversely affected disproportionally, economically as well as in his social wellbeing, and which affects his reputation generally and in the business community.

We draw guidance also from **Batiratu's** case, in taking account of the following factors, the:

(a) petitioner is morally blameless**;**

(b) breach is of a technical nature;

(c) effects of a recorded conviction is disproportionate to the breach ;

(d) adverse social effects;

(e) principle of equality before the law, and

(f) economic and social effects on the petitioner personally and Latchan Holdings Limited.

[52] **Ground 5:** *The learned judge erred in law by failing to find that the Magistrate Court should have dismissed the charges against the Petitioner pursuant to section 187 of the Criminal Procedure Act, since the charges against the petitioner were dated 10 January 2019 but related to matters that arose in October 2014, after finding in paragraphs 51-53 of his Ruling as follows***:**

> *"[51] section 133(3) of the Companies Act of 2015 must be read together with section 132, which provides that any person who is disqualified from acting as an Officer of a Company under the said Part commits and offence if that person does any of the acts as stated in that section.*
>
> *[52] I concede that neither section 132 nor section 133(3) have a penalty provision which is in-built in the sections. However, the relevant penalty provision can be found in section 626 of the Companies Act 2015, which*

*outlines the General Penalty provisions in terms of the Act. Section 626 reads as follows……*

*[53] Therefore, this Court cannot agree with this contention that there is no sentence provided for the acts stipulated under section 133 (3) of the Companies Act 2015.The relevant sentencing provisions have been clearly enumerated in section 626 of the Act."*

[53] The Petitioner contends that the Magistrates Court should have dismissed the charge against the appellant under section 189 of the Criminal Procedure Act due to the delay in laying charges beyond the mandated 12 months period. Since the petitioner was not charged within the required timeframe, the charges should have been dismissed in line with the mandatory provision under section 187. It states:

*"187(1) This section applies to all offences the maximum punishment for which does not exceed imprisonment for 12 months or a fine of $1000.00 unless a longer time is allowed by any law for the laying of any charge for an offence under that law.*

*(2) No offence shall be triable by a Magistrate Court, unless the charge or complaint relating to it is laid within 12 months from the time when the matter of the charge or complaint arose.*

*(3) The court shall order the dismissal of any proceedings which are in breach of this section…."*
(Underlining for emphasis)

[54] The Petitioner is mistaken, the time limitation set by section 189 of the Criminal Procedure Act does not apply in this case. This ground was properly dealt with by the Court of Appeal- see paragraph [13] above, at **Ground 5.** It is misleading and misconceived. Section 187 Criminal Procedure Code does not apply as: Firstly, the offence for which the Petitioner was charged has a penalty of not less than 2 years or a fine of $1,000 or both. Secondly, section 189 does not have a limitation period set within which a charge has to be brought. The ground does not meet the requirements under section 7(2) of the Supreme Court Act.

## Conclusion

[55] Grounds 1, 2, 3 and 5 are dismissed. Ground 4 succeeds and the application for special leave is granted with respect to Ground 4, for the reasons stated in this judgment. The appeal partly succeeds. The order to record the conviction is set-aside, and substituted by an order under section 15 (1) (f) of the Sentencing and Penalties Act, that conviction be not recorded.

### ***Order of the Court***

1. *Order of Magistrate Court is set aside.*
2. *Pursuant to section 15(1) (f) of the Sentencing and Penalties Act;*

   *(i) Conviction not to be recorded, and*

   *(ii) Aggregate fine of $500 affirmed.*

**Hon Justice Anthony Gates**
JUDGE OF THE SUPREME COURT

SUPREME COURT FIJI

**Hon Justice Lowell Goddard**
JUDGE OF THE SUPREME COURT

**Hon Justice Alipate Qetaki**
JUDGE OF THE SUPREME COURT