

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 009 OF 2012S

BETWEEN

**FIJI INDEPENDENT COMMISSION AGAINST
CORRUPTION [FICAC]**

APPELLANT

AND

**1. MATORINO MADOGO
2. KAUTANAGAUNA SEAQAQA**

RESPONDENTS

**Counsels : Ms. H. Matakitoga for FICAC
Mr. S. Waqainabete for both Respondents**
Hearing : 20th February, 2013
Judgment : 24th May, 2013

JUDGMENT

1. On 19th August, 2011, in the presence of your counsels, you both appeared in the Suva Magistrate Court, on the following charges:

COUNT ONE
Statement of Offence

CONSPIRACY TO DEFRAUD – OBTAINING A GAIN:

Contrary to Section 327 of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

MATORINO MADOGO and **KAUTANAGAUNA SEAQAQA RAIQEU** on or about the 8th day of October, 2010 at Suva in the Central Division, conspired with the intention of dishonestly obtaining a gain namely \$6,500.00 cash from Post Fiji Limited.

COUNT TWO

Statement of Offence

THEFT: Contrary to Section 291 of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

MATORINO MADOGO and **KAUTANAGAUNA SEAQAQA RAIQEU** on or around the 8th day of October, 2010, at Suva in the Central Division, dishonestly appropriated property namely \$6,500.00 cash belonging to Post Fiji Limited with the intention of permanently depriving the said Post Fiji Limited of that property.

COUNT THREE

Statement of Offence

CONSPIRACY TO DEFRAUD – OBTAINING A GAIN:

Contrary to Section 327 of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

MATORINO MADOGO and **KAUTANAGAUNA SEAQAQA RAIQEU** on or around the 15th day of October, 2010, at Suva

in the Central Division, conspired with the intention of dishonestly obtaining a gain namely \$6,500.00 cash from Post Fiji Limited.

COUNT FOUR

Statement of Offence

THEFT: Contrary to Section 291 of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

MATORINO MADOGO and **KAUTANAGAUNA SEAQAQA RAIQUEU** on or around the 15th day of October, 2010, at Suva in the Central Division, dishonestly appropriated property namely \$6,500.00 cash belonging to Post Fiji Limited with the intention of permanently depriving the said Post Fiji Limited of that property.

2. Through your counsels, you both indicated that you were ready to take a plea. The charges were read and explained to the two of you. You both appeared to understand the same. Both of you entered guilty pleas to the four counts. The prosecutor then read the summary of facts in court.
3. Basically, they were as follows. On the 8th and 15th October, 2010, both of you were employees of the General Post Office at Suva. Mr. Madogo, you were 22 years old, and worked as a Postal Assistant. You served customers by facilitating payments from the counter for Telegraphic Money Orders (TMO), Social Welfare Payments, Pension and other bill payments. Mr. Seaqaqa, you were 31 years old, and worked as a Permanent Relieving Accounts Clerk. You did general accounting duties, ie. Checking reports, verification of documents and checking daily transactions. Both of you held position of trust in the Post Office.
4. Prior to your offendings, both of you conspired to defraud the Post Office. Mr. Seaqaqa forged the details of two Telegraphic Money Order (TMO), and dated them 8th and 15th October, 2010. Both

TMO were for \$6,500 each. On 8th October, 2010, Mr. Seaqaqa took one of the forged TMO to Mr. Madogo, as previously planned, and encashed it. The \$6,500 was used by Mr. Seaqaqa. On 15th October, 2010, Mr. Seaqaqa took the other forged TMO to Mr. Madogo, who encashed the same. Mr. Madogo used the \$6,500. Both of you had no rights to the money you took.

5. Through your counsels, both of you admitted the above summary of facts. As a result, the court found both of you two guilty as charged on the four counts, and convicted you accordingly. Mr. Madogo, you were a first offender. Mr. Seaqaqa, you had one previous conviction for larceny in 2001. On 9th September, 2011, both of you submitted your plea in mitigation. The court delivered a written sentence on 11th October, 2011.
6. On count no. 1 and 3, the court sentenced each of you to 12 months imprisonment each. On count no. 2 and 4, the court sentenced each of you to 18 months imprisonment each. The court made all the sentences concurrent to each other. So, your individual total sentence was 18 months imprisonment each. The court directed that out of the total 18 months imprisonment, each of you are to spend 1 month in custody, and the balance of 17 months imprisonment to be suspended for 2 years. Both of you and the prosecution were given 28 days to appeal if dissatisfied with the above.
7. On 25th October, 2011, the “Fiji Independent Commission Against Corruption” (FICAC), filed a petition of Appeal against sentence, in the High Court of Fiji. They were dissatisfied with the suspension of the prison sentence imposed on the accuseds. They submitted three grounds of appeal as follows:
 - (a) That the sentence against both Respondents is manifestly inadequate and lenient having regard to the gravity and the circumstances of the offences.
 - (b) That the Learned Magistrate erred in law when he failed to give due consideration to the aggravating factors in determining the sentence against both Respondents.
 - (c) That the Learned Magistrate erred in law in suspending the sentence after serving a period of one month in custody when the circumstances of the case does not warrant suspending of the sentence against both Respondents.

8. I have carefully read and considered all the parties written and verbal submissions. I have also carefully heard the parties on 20th February, 2013.
9. In my view, although the prosecution filed three grounds of appeal, their complaint was well summarised by ground (a) of their sentence appeal. So, for the purpose of this appeal, I will only deal with grounds (a), as this ground covered all three grounds. In finding out whether or not the prosecution's complaint was justified, I have carefully read the court record and the learned Chief Magistrate's sentencing remarks, dated 11th October, 2011.
10. In my view, the Learned Chief Magistrate's sentencing remarks cannot be faulted, until His Worship came to the issue of whether or not to suspend the 18 months imprisonment, on page 4 of his sentence. This was a case of a serious breach of trust by an employee against his employer. The Fiji Post Office, as a financial institution, is very important to Fiji as a nation, as it serves people in the rural and town areas. It is an institution used by many people in our society. People who work in it are expected to be honest and hard working. Not only that, the Post Office had in the past suffered from thieving employees, and immediate custodial sentences were often given to those who steal from it, as a warning to other would-be offenders.
11. In this case, an immediate custodial sentence was called for, as a deterrent sentence. In my view, both accuseds should have been sentenced to an immediate 12 months imprisonment, from the 11th October, 2011. However, in this case, both accuseds stole \$6,500 each from their employer. Mr. Madogo returned \$4,011.80. So, he only used \$2,488.20. As for Mr. Seaqaqa, he returned nothing. On 27th October, 2010, 12 days after the offendings, Mr. Madogo made a written confession to his employer. He was also a first offender. Mr. Seaqaqa had a previous larceny conviction in 2001. Because of the above, in my view, the justice of this case required Mr. Madogo to serve an immediate prison sentence of 6 months imprisonment, and Mr. Seaqaqa an immediate sentence of 12 months imprisonment.
12. Given the above, I make the following orders and directions:
 - (i) The Magistrate Court sentence of 18 months imprisonment for both Mr. Madogo and Mr. Seaqaqa, with one month in custody and 17 months imprisonment suspended for 2 years from 11th October, 2011, is quashed and set aside;

- (ii) In substitution thereof, the following total sentence are issued:
 - (a) Both Mr. Madogo and Mr. Seaqaqa are sentenced to a total of 18 months imprisonment each, with:
 - (I) Mr. Madogo serving an immediate 6 months imprisonment in custody, and the 12 months balance suspended for 12 months, effective forthwith;
 - (II) Mr. Seaqaqa to serve an immediate 12 months imprisonment in custody, and the 6 months balance suspended for 12 months, effective forthwith.
- (iii) Meaning of suspended sentence explained to both respondents.

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Judge

Solicitor for Appellant : Fiji Independent Commission Against Corruption, Suva.
Solicitor for both Respondents: Legal Aid Commission, Suva.