

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 56 OF 2014

BETWEEN:

**FIJI INDEPENDENT COMMISSION AGAINST
CORRUPTION ("FICAC")**

COMPLAINANT

AND:

1. ANA LAQERE
3. AMELIA VUNISEA
4. LAISA HALAFI
5. VACISEVA LAGAI
6. VILISI TUITAVUKI
7. KINIVILIAME TAVIRAKI
8. SHELVEEN NARAYAN

DEFENDANTS

Counsel: Mr. R. Aslam, Ms. A. Lomani, Ms. L. Bokini	—	For FICAC
Mr. A. Vakaloloma	—	For 1 st Accused
Mr. A. Vakaloloma	—	For 3 rd Accused
Mr. A. Vakaloloma	—	For 4 th Accused
Ms. P. Lal	—	For 5 th Accused
Ms. N. Mishra	—	For 6 th Accused
Mr. A. Vakaloloma	—	For 7 th Accused
Mr. P. Niubalavu	—	For 8 th Accused

Hearing: 23rd, 24th, 27th and 28th February 2017
1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 20th, 21st, 22nd, 23rd, 24th, 27th, 28th,
29th, 30th, and 31st March 2017
3rd, 6th, 7th, 10th, 11th, 12th and 13th April 2017

Summing Up: 01st May 2017

Judgment: 04th May 2017

JUDGMENT

Introduction

1. The first accused has been charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act, and thirty five (35) counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act.
2. The third accused is charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act, and thirty four (34) counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act.
3. The fourth accused is charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act, and thirteen (13) counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act. Moreover, she has been charged with one count of Obtaining a Financial Advantage, contrary to Section 326 (1) of the Crimes Act.
4. The fifth accused has been charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act, and nine (9) counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act.
5. The sixth accused is charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act, and five (5) counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act.
6. The seventh accused is charged with one count of Abuse of Office, contrary to Section 139 of the Crimes Act, and two (2) counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act.
7. All of the accused pleaded not guilty for each count that they have been charged with. Hence, the matter proceeded to the hearing. The hearing commenced on the 20th of February 2017 and came to its conclusion on the 13th of April 2017. During the course of

the hearing, the prosecution adduced the evidence of seventeen witnesses and tendered 103 exhibits in order to establish their case. The first, third and seventh accused gave evidence, while the remaining three accused opted not to give evidence. None of them called any other witnesses to give evidence on behalf of their respective defences.

8. The learned counsel for the prosecution and the three counsel for the defence then made their respective closing address on the 18th and 19th of April 2017. Subsequently, I delivered the summing up on the 1st of May 2017.
9. The five assessors in their respective unanimous opinions found each of these six accused guilty for each count that they have been charged with. The assessors' opinions were not perverse. It was open for them to reach such conclusion on the evidence presented during the hearing.
10. Having carefully considered the evidence adduced in the hearing, the respective closing submissions of the counsel, the summing up and the opinions of the five assessors, I now proceed to pronounce my judgment as follows.

The Prosecution

11. In view of the evidence presented during the course of the hearing, the prosecution alleges that the six accused persons, while performing and discharging different duties and responsibilities at different stages in these one hundred and one (101) transactions of purchasing stationery and hardware materials to the DECE, have committed these offences of Abuse of Office, Causing a Loss and Obtaining a Financial Advantage.
12. During these one hundred and one (101) transactions, the Accounts Section of DECE had paid 60 cheques, totaling to the full amount of \$362,944.37 to Shavel Stationery, OnTime Stationery and Phoenix Hardware, all of them owned by Mr. Shelveen Narayan. In the meantime Mr. Narayan, the owner of these three companies had given the fourth accused, Ms. Laisa Halafi a sum of \$65,200 for her role in arranging and organizing

these false payments. The said money had been deposited into the bank account of the late husband of Laisa Halafi by Mr. Shelveen Narayan.

13. The prosecution presented evidence of Mr. Sen Jeet, Ms. Radrodro, Mr. Navitalai, Ms. Katarina Rainima, Ms. Alfreda Waqanisau, Ms. Katherine Serevi and Ms. Timaleti Koroi, in order to establish the correct procedure of procurement of materials. These witnesses presented evidence explaining each and every main steps of purchase and payment process of the procurement procedure. Moreover, they explained about the relevant duties and responsibilities of each and every officer who are involved in this process at different stages.
14. The prosecution then adduced evidence in the forms of direct, circumstantial and documentary, to establish that all of these transactions have been made in violation of finance and accounting instructions and regulations.
15. The prosecution then adduced the evidence of Mr. Shelveen Narayan to establish that none of these three companies, namely, Shavel Stationery, OnTime Stationery and Phoenix Hardware has ever supplied any stationery or hardware materials to PWD pursuant to any of these payments made to them. Furthermore, Mr. Narayan stated that he gave half of the amount that he received from these false payments to Laisa Halafi after deducting the amount of VAT. Laisa Halafi has told him that she has to share the money with other officers at PWD.

The Defence

16. None of the accused challenged or suggested otherwise the evidence presented by the prosecution in relation to the following issues.
 - i) The procedure of procurement process.
 - ii) The irregularities and breaches of regulations found in each and every transactions.
 - iii) The payments made to these three companies pursuant to these transactions.

- iv) The duties and responsibilities of the officers who are involved in the procurement process at different stages.
- v) The respective roles and duties performed by each of these accused at different stages in these irregular transactions.
- vi) No items of stationery and hardware materials have actually been delivered to DECE by these three companies.

17. The first and third accused in their evidence admitted that all of these transactions have been done in violation of the finance and accounting regulations and instructions of the government. They further admitted that none of these payments should not have been made due to these irregularities. Both of them admitted that none of the payments were properly made. They further agreed that any advance accounting or financial knowledge is not required in order to detect these irregularities. All of the irregularities could have been detected within very short span of time. However, both of them in their evidence said that at that time they did not think or identify them as irregularities and violations of any financial regulations.
18. The seventh accused in his evidence admitted that he signed the two requisition forms in relation to count 21 and 28 respectively. He further agreed that he knew the items requested in these two requisition forms were not required to the projects undertaken by the Building Section.
19. Having admitted the above facts, the first, third and seventh accused persons in their evidence however, claimed that their respective roles performed in these transactions were not arbitrary. Neither they performed nor discharged their duties in abusing the authority of their respective positions. They further denied that they performed or discharged their duties and responsibilities in order to facilitate these three companies to obtain a gain thus prejudicing the rights of the PWD.
20. The fifth accused for her defence suggested through the cross-examination that she merely trusted the officers who have checked and verified the documents before she

certified the payment vouchers. Having trusted them, she then certified these payment vouchers. The sixth accused suggested that she merely performed her duties as per the direction given to her by the Senior Accounts Officer.

Main issues in respect of the offence of Abuse of Office

21. Accordingly the main disputes in respect of the offence of Abuse of Office are:
- i) Whether each of the accused have violated the Financial and Accounting instructions and regulations of the government, if so, would it amount to arbitrary acts,
 - ii) Whether they have abused the authority given to them by virtue of their respective positions held in the public service,
 - iii) Whether they did such arbitrary act in order to facilitate these companies to obtain a gain.

Main issues in respect of the offence of Causing a Loss

22. In respect of the offences of Causing a Loss, the main dispute is whether each of the accused persons performed their respective duties dishonestly. If so, whether each of them had the knowledge that their respective dishonest actions could cause a loss or cause a substantial risk to cause a loss.

Analysis

23. Both of the first and third accused admitted in their evidence that it does not need any advance knowledge in accountancy or fraud detection in order to detect the irregularities found in these transactions. They are obvious. Both of them have sufficient experience and knowledge in their respective positions. The first accused knew that the person who approves the purchase order online, is further required to approve the printed copy of the same purchase order. However, knowing that requirement, she failed to do it in a number of transactions.

24. Both of the first and third accused admitted that the authority of signing the cheques for DECE involves great responsibility. They were holding positions of trust. Knowing their duties and responsibilities, they have signed these cheques in violation of standard financial and accounting procedures and regulations thus have facilitated to make these false payments to Mr. Narayan.
25. The seventh accused in his evidence admitted that he approved the two requisition orders knowing that the materials as requested therein were not for the designated projects in the Building Section. He knew computer materials were not required for Adi Cakobau School maintenance project and also for the maintenance of government quarters.
26. I do not accept the evidence of seventh accused that he was not aware about the relevant job number of the Building Section. He had been in the Building Section for many years and held senior positions such as Supervisor and Acting Senior Technical Officer.
27. Therefore, I am satisfied that the prosecution has proven beyond reasonable doubt that the first, third and seventh accused have done arbitrary acts.
28. The prosecution presented evidence to establish the duties and responsibilities of the each and every officer who are involved in the purchase and payment process, including the "buyer" who raises the purchase order in FMIS, the two officers who check and sign the payment vouchers, the Certifying Officer of the payment voucher and the Cashier.
29. Before I move on to consider the evidence given by Mr. Narayan, I draw my attention to the laws relating to evidence of accomplice witness. Mr. Narayan has also been charged in this case for his involvement in these transactions. He is charged with one count of Obtaining a Financial Advantage, contrary to Section 326(1) of the Crimes Act, for which he pleaded guilty at the inception of the hearing. Accordingly he is an accomplice to this crime. Under such circumstances, the court must approach the evidence of accomplice, given on behalf of the prosecution with great care and caution. If the evidence of such witness is challenged or suggested as unreliable and tainted with adverse motives, the

court should not rely on such evidence unless they are collaborated by other evidence adduced in the hearing.

30. The evidence given by Mr. Narayan were not challenged, shown or suggested as unreliable and tainted with adverse motives by the defence.
31. I find the prosecution has adduced evidence to collaborate the account given by Mr. Narayan in his evidence. The two affidavits of the two bank officers established the transactions that the three companies owned by Mr. Narayan had with DECE. Moreover, it established that Mr. Narayan has deposited a sum of \$65,200 into the bank account of the late husband of the fourth accused. Apart from that, the evidence of irregularities and breaches of the finance and accounting instructions and regulations in these transactions further collaborate to the evidence given by Mr. Narayan. Furthermore, the evidence in relations to the conduct of Laisha Halafi, the fourth accused has further collaborated the evidence given by Mr. Narayan. Accordingly, it is my opinion that the evidence given by Mr. Narayan has been adequately collaborated by other evidence adduced by the prosecution. Hence, I find it is safe to accept the evidence given by Mr. Narayan as reliable and credible.
32. I adopt the same approach in relation to the evidence given by Mr. Eparama Racumu, who is also an accomplice witness. He gave evidence in relation to the transaction that constitutes count 28. According to the evidence given by Mr. Eparama, the transaction with regards to count 28 was another false payment made to Mr. Narayan. The irregularities found in this transaction itself support the evidence of Mr. Eparama. The evidence of Mr. Narayan to the effect that he did not supply any stationery materials to DECE, further collaborate the account given by Mr. Eparama. Moreover, the evidence given by the seventh accused in relation to this transaction have further collaborated the evidence of Mr. Eparama.
33. Meanwhile, I am mindful of the fact, that Mr. Narayan in his evidence did not mention that he gave money to Mr. Eparama in respect of this particular transaction. However,

Mr. Eparama in his evidence claimed otherwise. I do not find this contradiction could adversely affect the evidence given by Mr. Eparama. I accordingly find, it is safe to accept the evidence given by Mr. Eparama as credible and reliable.

34. The evidence adduced by the prosecution established that the fourth accused has organized and coordinated these false transactions between Mr. Narayan and the Accounts Section. In doing that, she has raised certain false purchase orders in FMIS. Moreover, she has checked and signed several payment vouchers, irrespective of many irregularities and breaches of regulations. Accordingly, I am satisfied that the fourth accused has acted arbitrary in performing her duties.
35. The evidence adduced by the prosecution established the responsibilities and duties of the Certifying Officer of the Payment Vouchers. The certification of the Payment Voucher is the confirmation that the purchase has properly been completed and the funds for the payment have properly been allocated from the correct fund allocation. Section 2.8.3 of the Finance Manual has specifically stipulated the procedure for the certification of payment vouchers.
36. The learned counsel for the fifth accused suggested to the witnesses of the prosecution that the Certifying Officer could certify the payment voucher just relying on the prior confirmation and verification done by the officers. It was further suggested that the fifth accused merely certified the payment vouchers relying on the prior confirmations made by the Inspection Team and other officers.
37. However, Mr. Jeet, and Ms. Radrodro in their evidence specifically stated that the Certifying Officer must check and verify all the source documents before she proceeds to certify the payment voucher. None of the prosecution witnesses endorsed or concurred with the proposition suggested by the learned counsel for the fifth accused. Hence, I do not find any evidence before the court to establish or to suggest that the Certifying Officer could rely on the prior confirmation and verification done by other officers in performing her duties as the Certifying Officer.

38. The first accused in her evidence stated that to be promoted as Assistance Accounts Officer, a person has to pass "U" exams in the government accounting system. The fifth accused was appointed to this position in 2009. Hence, I could positively infer that she has passed "U" exams and aware about the Finance and Accounting regulations. Under such circumstances, it is my opinion that she has acted arbitrary in certifying certain Payment Vouchers pertaining to some of these transactions.
39. The learned counsel for the sixth accused suggested to the witnesses of the prosecution that the sixth accused had merely acted on the directives and instructions given by the first accused. Hence, her conduct could not be considered as arbitrary.
40. The appointment letter given to the sixth accused specifically stated that she shall performed her duties maintaining a high standard. She is subject to direct control and supervision of her supervising officer. It further states that she shall comply with all official instruction issued by her supervising officer.
41. Ms. Katherine Serevi, during the cross examination by the learned counsel for the sixth accused specifically stated that for one or two occasions she has performed the duties of the Cashier, when the sixth accused was away attending her service exams. In fact, it was suggested by the learned counsel for the sixth accused, which Ms. Serevi answered affirmatively. Furthermore, the first accused in her evidence said that the sixth accused was trained by the previous Cashier. I do not find any evidence adduced to challenge it, or suggest otherwise. Hence, I could safely form an inference that the sixth accused was aware of the official duties and responsibilities of the Cashier. Furthermore, I find that she was able to clearly understand official instructions given by her supervising officer.
42. Mr. Jeet said that if the Cashier was pressurized by the Head of the Accounts Section to perform some duties, he/she has to do it, otherwise it would amount to insubordination. Under such circumstances the Head of the Accounts Section must take the final responsibility of such duties performed by the Cashier. However, there is no evidence before the court to establish or suggest that the first accused, being the Head of the

Accounts Section have pressurized or forced the sixth accused to perform her duties in violation of standard procedures.

43. Section 2.8.8. of the Finance Manual specifically states that the Cashier has to enter the details of all the cheques into a Payment Cash Book before they are issued. The Payment Cash Book must contain details of the payee, payment date, ledger account, cheque detail and the amount paid.
44. Mr. Jeet in his evidence found that the Cashier has wrongly entered the details of the amount paid in two cheques into the Payment Cash Book. She has entered the paid amount of the cheque number 656829 as \$4,733 into the Cash Payment Book. However, the actual payment made in that cheque was \$14,733. It was paid to Phoenix Hardware, the company owned by Mr. Narayan.
45. Apart from that, the Cashier has entered the paid amount of cheque number 656825 into the Cash Payment Book as \$4651.15. Actually, a sum of \$14,651.15 had been paid to Phoenix Hardware through the said cheque number 656825. Both of these cheques were manually raised and paid on the 19th of August 2010. Both of these cheques are related to the sixteen and seventeenth payments pertaining to Count 41. This evidence of Mr. Jeet or the relevant entries in the Cash Payment Book were not challenged or suggested otherwise by the defence. Hence, I accept the evidence given by Mr. Jeet. I accordingly find that the sixth accused have arbitrary acted in entering wrong details of two cheques into the Cash Payment Book.
46. Moreover, she has signed some payment vouchers pertaining to these false and irregular transactions as "pass for payment". In doing that she has not acted in accordance with the correct finance and accounting procedures, which amounts to an arbitrary act.
47. According to the evidence given by Ms. Radrodro, all of these payments were made through direct vouchering. None of the transaction has properly gone through the PO module and AP module of FMIS as required by the regulations. All of the accused were

aware that these false and irregular payments were made to three companies owned by Mr. Narayan. Having considered the circumstantial, direct and documentary evidence presented by the prosecution, I could safely reach to an inference and a conclusion that each of these accused have acted in an arbitrary manner in abusing the authority given to them in order to facilitate Mr. Narayan, the owner of three companies, namely Shavel Stationery, OnTime Stationery and Phoenix Hardware to obtain financial gain.

48. Accordingly, I am satisfied that the prosecution has successfully proven that each of these six accused guilty for each count of Abuse of Office contrary to Section 139 of the Crimes Act.
49. I now turn onto the offence of Causing a Loss.
50. As I discussed above, the main disputes in respect of the offence of Causing a Loss are whether each of these accused have acted dishonestly in discharging their respective duties and responsibilities. If so, whether each of them had knowledge that such acts of dishonesty will occur any loss.
51. Having considered the amount of irregularities, the often sequence and the circumstances of their occurrence, I find that what each of these accused have done in these transactions are dishonest according to the standards of reasonable and honest people.
52. The prosecution presented evidence to establish that the first accused was vindictive towards the officers who found or complained about these irregularities. The fourth accused has removed and hidden some source documents pertaining to the purchase and payments of DECE. The third accused knew that she has to sign the cheque before the signature of the counter signatory. However, she not only ignored it, but also all other visible discrepancies, and went on to sign all of these fifty nine cheques. The first and third accused admitted in their evidence what they have done was wrong and have caused loss to the government.

53. The fourth, fifth and sixth accused had opportunities to check the correctness of the respective transactions for which they have been separately charged with, either through the manual documentations or through FMIS. The prosecution established that three of them had access to FMIS.
54. The seventh accused knew when he was approving the two requisition orders, the items written in it, were not required for the relevant projects undertaken by the Building Section,
55. Hence, I am satisfied that each of them knew what they had done was dishonest by the standards of reasonable and honest people.
56. According to the circumstantial, direct and the documentary evidence presented by the prosecution, I am satisfied that each of these accused knew the circumstances and consequence of their actions or willingly refrained from making inquiry about their actions. Accordingly, I am satisfied that each of these accused had knowledge that such dishonest acts could occur loss to the government.
57. I accordingly find that the prosecution has proven that each of the accused guilty for each of the counts of Causing a Loss as they have been charged.
58. The evidence of Mr. Narayan was neither challenged nor suggested otherwise by the fourth accused. Apart from that, the circumstantial evidence, such as that the fourth accused gave Ms. Lusiana Tomuse money when she went to pick invoice, she then sent three envelopes to the first accused through Ms. Alfreda Waqanisau, established that the fourth accused organized and facilitated to make these false payments to Mr. Narayan. She has then received a sum of \$65,200 from Mr. Narayan, which she knew that she was not eligible to obtain it.


59. In view of these reasons, I am satisfied that the prosecution has successfully proven beyond reasonable doubt that the fourth accused guilty for the offence of Obtaining a Financial Advantage.
60. In view of these reasons, I do not find any cogent reasons to disagree with the unanimous opinion of guilt given by the five assessors in respect of each accused and each counts as charged.

Conclusion

61. I accordingly hold that;
62. Ms. Ana Laqere, the first accused is guilty for the count of Abuse of Office, contrary to Section 139 of the Crimes Act and convict her accordingly.
63. Moreover, I find Ms. Ana Laqere is guilty for each of the thirty five counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act and convict her accordingly.
64. Ms. Amelia Vunisea, the third accused is guilty for the count of Abuse of Office, contrary to Section 139 of the Crimes Act and convict her accordingly.
65. I further find Ms. Amelia Vunisea is guilty for each of the thirty four counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act and convict her accordingly.
66. Ms. Laisa Halafi, the fourth accused is guilty for the count of Abuse of Office, contrary to Section 139 of the Crimes Act and convict her accordingly.
67. Moreover, I find Ms. Laisa Halafi is guilty for each of the thirteen counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act and convict her accordingly.
68. I further hold that you are guilty for the count of Obtaining a Financial Advantage, contrary to Section 326 (1) of the Crimes Act and convict you accordingly.

69. Ms. Vaciseva Lagai, the fifth accused is guilty for the count of Abuse of Office, contrary to Section 139 of the Crimes Act and convict her accordingly.
70. Moreover, I find Ms. Vaciseva Lagai is guilty for each of the nine counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act and convict her accordingly.
71. Ms. Vilisi Tuitavuki, the sixth accused is guilty for the count of Abuse of Office, contrary to Section 139 of the Crimes Act and convict her accordingly.
72. I further find Ms. Vilisi Tuitavuki is guilty for each of the five count of Causing a Loss, contrary to Section 324 (2) of the Crimes Act and convict her accordingly.
73. Mr. Kiniviliame Taviraki, the seventh accused is guilty for the count of Abuse of Office, contrary to Section 139 of the Crimes Act and convict him accordingly.
74. Moreover, I find Mr. Kiniviliame Taviraki is guilty for each of the two counts of Causing a Loss, contrary to Section 324 (2) of the Crimes Act and convict him accordingly.




R.D.R.T. Ragasinghe
Judge

At Suva

04th May 2017

Solicitors

Fiji Independent Commission Against Corruption for the FICAC
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