

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 443 OF 2018S

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

[FICAC]

VS

VILIAME KATIA

Counsels : Mr. R. Aslam and Ms. L. Bokini for FICAC
Mr. R Vananalagi and Mr. J. Daurewa for Accused

Hearing : 14 September, 2018

Sentence : 28 December, 2018.

SENTENCE

1. On 29 March 2017, in the Suva Magistrate Court, the accused, in the presence of his counsel, elected a Magistrate Court trial on all the following charges:

FIRST COUNT

Statement of Offence

ABUSE OF OFFICE FOR GAIN: contrary to Section 111 of the Penal Code Cap 17.

Particulars of Offence

VILIAME KATIA between 1 July 2008 and 31 January 2010, at Suva in the Central Division, whilst being employed in the Public Service as the Acting Deputy Official Receiver, in abuse of the authority of his office, did an arbitrary act for the purpose of gain, namely causing payments amounting to FJD \$339,201.05 to be processed by the Accounts Section of the Office of the Official Receiver, and which sum was drawn from the Official Receiver's Bankruptcy Account, which was an act prejudicial to the rights of the creditors for whom the Official Receiver held the sum in trust and to the Government of Fiji.

SECOND COUNT

Statement of Offence

FORGERY: Contrary to Section 341 (1) of the Penal Code Cap 17

Particulars of offence

VILIAME KATIA between 1 July 2008 and 31 January 2010, at Suva in the Central Division, with intent to defraud, made false documents, namely internal memorandums purported to have been made by one Laise Dawai, employed with the Office of the Official Receiver in Lautoka, and forged the signature of the said Laise Dawai on the said internal memorandums in order to facilitate the unlawful payment of monies from the Official Receiver's Bankruptcy Account to himself.

THIRD COUNT

Statement of Offence

FORGERY: Contrary to Section 341(1) of the Penal Code Cap 17.

Particulars of Offence

VILAIME KATIA between 1 July 2008 and 31 January 2010, at Suva in the Central Division, with intent to defraud, made false documents, namely emails from one Laise Dawai, employed with the Office of the Official Receiver in Lautoka, in order to state that purported creditors were willing to accept reduced payments from their bankrupt debtors in order to facilitate the unlawful payment of monies from the Official Receiver's Bankruptcy Account to himself.

FOURTH COUNT

Statement of Offence

EMBEZZLEMENT BY SERVANT: Contrary to Section 274(b)(ii) of the Penal Code Cap 17

Particulars of Offence

VILIAME KATIA between 1 July 2008 and 31 January 2010, at Suva in the Central Division, being employed in the Public Service as the Acting Deputy

Official Receiver, embezzled monies in the sum of FJD \$339,201.05 from the Official Receiver's Bankruptcy Account which had been entrusted to his office by virtue of his employment.

FIFTH COUNT

Statement of Offence

ABUSE OF OFFICE FOR GAIN: Contrary to Section 139 of the Crime Act No. 44 of 2009.

Particulars of Offence

VILIAME KATIA between 1 February 2010 and 31 July 2014, at Suva in the Central Division, whilst being employed in the Public Service as the Acting Deputy Official Receiver, in abuse of the authority of his office, did an arbitrary act for the purpose of gain, namely causing payments amounting to FJD \$2,472,161.18 to be processed by the Accounts Section of the Office of the Official Receiver, and which sum was drawn from the Official Receiver's Bankruptcy Account, which was an act prejudicial to the rights of the creditors for whom the Official Receiver held the sum in trust and to the Government of Fiji.

SIXTHCOUNT

Statement of Offence

ABUSE OF OFFICE FOR GAIN: Contrary to Section 139 of the Crimes Act No. 44 of 2009.

Particulars of Offence

VILIAME KATIA between 1 July 2014 and 31 December 2015, at Suva in the Central Division, whilst being employed in the Public Service as the Acting deputy Official Receiver, in abuse of the authority of his office, did an arbitrary act for the purpose of gain, namely causing payments amounting to FJD \$1,307,085.20 to be processed by the Accounts Section of the Office of the Official Receiver, and which sum was drawn from the Official Receiver's Liquidation Account, which was an act prejudicial to the rights of the Government of Fiji;.

SEVENTH COUNT

Statement of Offence

FORGERY: Contrary to Section 156 (1) of the Crimes Act No. 44 of 2009

Particulars of Offence

VILIAME KATIA between 1 February 2010 and 31 December 2015, at Suva in the Central Division, made false documents, namely emails that were purported to have been sent to him by one Sanaila Nukutaumaki, employed with the Office of the Official Receiver in Lautoka, in order to dishonestly induce public officials employed within the office of the Official Receiver in Suva, to accept them as genuine in order to dishonestly obtain gains from the Official Receiver's Bankruptcy and Liquidation Accounts for himself.

EIGHTH COUNT

Statement of Offence

FALSE INFORMATION TO PUBLIC SERVANT: Contrary to Section 201 of the Crimes Act No. 44 of 2009

Particulars of Offence

VILIAME KATIA between 1 February 2010 and 31 December 2015, at Suva in the Central Division, gave a person employed in the Public Service, namely one Abhi Ram, the Acting Official Receiver, information which he knew to be false, namely the falsified emails and accompanying minutes written by him onto the printed emails, knowing it to be likely that he would thereby cause the said person, employed in the Public Service to approve payments to be made to purported creditors which the said person employed in the Public Service ought not to have done if the true state of facts were known to the said person employed in the Public Service.

NINETH COUNT

Statement of Offence

UNAUTHORISED MODIFICATION OF DATA: Contrary to Section 341 (1) of the Crimes Act 2009.

Particulars of Offence

VILIAME KATIA between 1 February 2010 and 31 December 2015, at Suva in the Central Division, being the Acting Deputy Official Receiver, knowingly caused the unauthorised modification of data held in a computer at the Office of the Official Receiver in Suva, namely the editing of official bankruptcy and liquidation records and addition of false debtor and creditor records into the FOX PRO SYSTEM used by the Office of the Official Receiver and was reckless as to whether the said modification would impair the reliability and security of such data.

TENTH COUNT

Statement of Offence

OBTAINING FINANCIAL ADVANTAGE: Contrary to Section 326(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

VILIAME KATIA between 1 February 2011 and 31 December 2015, at Suva in the Central Division, engaged in conduct, namely falsified emails purporting to have come from one Sanaila Nukutaumaki of the Office of the Official Receiver in Lautoka and wrote false minutes to accompany the printed falsified emails as well as the unauthorised modifying of official bankruptcy and liquidation data contained in the FOX PRO SYSTEM used by the Office of the Official Receiver, and as a result of such conduct, obtained a financial advantage amounting to FJD \$3,779,246.38 from the Office of the Official Receiver's Bankruptcy and Liquidation Accounts knowing that he was not eligible to receive the said financial advantage.

ELEVENTH COUNT

Statement of Offence

FORGERY: contrary to section 156(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

VILIAME KATIA on or around 14 January 2016, at Suva in the Central Division, made false documents, namely a Court Order on Winding Up dated 28 May 1992 purported to have been made by the High Court of Fiji at Lautoka and Proof of Debt General Forms, with the intention of dishonestly inducing public officials employed within the Office of the Official Receiver in Suva, to accept them as genuine in order to dishonestly influence the exercise of the public duties and functions of the said public officials.

2. The charges were read to him in his preferred language, that is, English. It was explained to him. He said, he understood the charges. He then pleaded guilty to all the counts. He said, he pleaded guilty out of his own free will and he appeared to indicate that he did so voluntarily and no one forced him to do so. His guilty plea came 4 months 11 days after first call in the Suva Magistrate Court.
3. The matter was then adjourned to 18 April 2017 for the prosecution to present their summary of facts. The same was presented to court as follows:

1. The accused in this case is VILIAME KATIA aged 37 years of Lot 28 Bryce Street, Raiwaqa, Suva (hereinafter referred to as "The Accused")
2. The accused was employed in the Office of the Official Receiver as the Acting Deputy Official Receiver from 1 July 2008 to 14 January 2016 and was based at their Suva Office at all times material to this case.
3. The accused, by virtue of his employment as the Acting Deputy Official Receiver, was a person employed in the Public Service within the meaning of section 4(1) of the Crimes Act 2009 at all times material to this case.
4. The Office of the Official Receiver acts as "Receiver" through the instructions of the High Courts of Fiji as a result of creditors' petitions against debtors considered to be bankrupt individuals or liquidated firms and acts as the Trustee for funds received from such petitions. The Office of the Official Receiver has offices located in Suva, Lautoka and Labasa; however, all payments are processed by the Accounts Section based at their Suva Office.
5. The office of the Official Receiver, in order to fulfil its duties as trustee of liquidation and bankruptcy funds, operates two (2) bank accounts, namely the Official Receiver's Bankruptcy Account (hereinafter referred to as the "Bankruptcy Account") and the Official Receiver's Liquidation Account (hereinafter referred to as the "Liquidation Account").
6. The accused, by virtue of his employment as the Acting Deputy Official Receiver, had the fiduciary duty to ensure the proper safekeeping and management of the funds held within the Bankruptcy and Liquidation Accounts, at all times material to this case.
7. The Office of the Official Receiver, in order to keep accurate debtor and creditor records for Bankruptcy and Liquidation matters, held all records within a computer system known as the FOX PRO SYSTEM which was contained within a computer located within the premises of the Office of the Official Receiver, at all times material to this case.
8. The FOX PRO SYSTEM contained individual ledger accounts for all creditors and debtors, the various amounts paid by the debtors who would be the bankrupt individuals and liquidated firms, the amounts paid to creditors and the balances available for each accounts

9. The accused was fully aware of the FOX PRO SYSTEM's functions, the fact that the FOX PRO SYSTEM was open to editing and also knew that the system was used by the Office of the Official Receiver to report bankruptcy information requested by financial institutions and stakeholders at all times, material to this case.

Count 1 -4

10. Between 1 July 2008 and 31 January 2010 the accused arbitrarily caused the accounts section of the Office of the Official Receiver to process 89 falsified payment amounting to \$339,201.05 from the Bankruptcy Account for his own gain (Please see breakdown in Annexure 1). [Annexure 1 summary only included].
11. As per paragraph 10, the accused made false document, namely typed false internal memorandums purported to have been made by one Ms. Laise Dawai, an employee of the Official Receiver's Office in Lautoka, before printing out the same and forging the signature of the said Ms Dawai onto the falsified internal memorandums.
12. Furthermore as per paragraph 10, the accused would then proceed to type false emails from Ms Dawai before printing the same and attaching the above-mentioned false internal memorandums.
13. As per paragraphs 10 – 12, the accused would state in the falsified emails and internal memorandums, that certain creditors had agreed to take part or reduced payments from debtors who owed them money and thus needed their payments processed.
14. The accused would then place his own minute onto the falsified emails and produce them before the Accounts Section of the Official Receiver's Office in order to have them process payments to purported creditors.
15. The accused would thereafter pick up the cheques, made out to the purported creditors, and encash the same for his own personal use.
16. As a result of the Accused's actions, bona fide creditors lost their rights to claim a part or the whole of the \$339,201.05 and the Government of Fiji, through the Office of the Official Receiver, was unable to keep a proper accounting of the funds entrusted to it.

Counts 5 - 8

17. Between 1 February 2010 and 31 July 2014 the accused arbitrarily caused the accounts section of the office of the Official Receiver to process 906 falsified payments amounting to \$2,472,161.18 from the Bankruptcy Account for his own gain. (Please see breakdown in Annexure 2). [Annexure 2 summary only included].
18. Further, between 1 July 2014 and 31 December 2015 the accused arbitrarily caused the Accounts Section of the Office of the Official Receiver to process 420 falsified payments amounting to \$1,307,085.20 from the Liquidation Account for his own gain (Please see break down in Annexure 3). [Annexure 3 summary only included].
19. As per paragraphs 17 and 18 the accused would use a computer that held the FOX PRO SYSTEM within the office of the Official Receiver to edit the official bankruptcy and liquidation records of the Government of Fiji by adding false debtor and creditor information.
20. Subsequently, the accused then made false documents, namely emails that were purported to have been made by and sent from one Mr. Sanaila Nukutamaki, an employee of the Official Receiver's Office in Lautoka stating that certain creditors, which he had created in the FOX PRO SYSTEM has agreed to take part or reduced payments from debtors who owed them money and thus needed their payments processed.
21. The accused would then print out the falsified emails and write his own minutes onto them as purported endorsements of the falsified claims.
22. Thereafter, the accused would then produce the falsified emails and claims with his accompanying minutes before one Mr. Abhi Ram, who was employed in the public service as the Acting Official Receiver, in order to induce the said Mr. Abhi Ram into believing the falsified claims were genuine and approving the same for payment.
23. The accused would then produce the falsified emails and claims along with the approvals from Mr. Abhi Ram before the Accounts Section of the Official Receiver's Office in order to have them process payments to purported creditors.
24. The accused would thereafter pick up the cheques, made out to the purported creditors, and encash the same for his own personal use.

25. As a result of the accused's actions, bona fide creditors lost their rights to claim a part or the whole of the \$2, 472,161.18 from the Bankruptcy Account and \$1,307,085.20 from the Liquidation Account and the Government of Fiji, through the Office of the Official Receiver, was unable to keep a proper accounting of the funds entrusted to it.

COUNT NO. 9

26. Between 1 February 2010 and 31 December 2015, the accused, without authorisation, modified the computer data containing the official liquidation and bankruptcy records contained within the FOX PRO SYSTEM and held by the Office of the Official Receiver for the Government of Fiji.
27. As per paragraph 26, the accused would add falsified debtor and creditor information into the records held by the FOX PRO SYSTEM and, at the time, was reckless as to whether the modifications he made, by way of the false information that he had added, would impair the reliability and security of such important data that was relied upon by the office of the Official Receiver as well as financial institutions and stakeholders who required accurate bankruptcy and liquidation records for their use.

COUNT 10

28. As a result of his actions, as set out in paragraphs 17 – 27, the accused obtained a total financial advantage of \$3,779,246.38 from the Bankruptcy and Liquidation Accounts, between 1 February 2010 and 31 December 2015, all while knowing that he was not eligible to receive the said advantage.

COUNT 11

29. On 14 January 2016, the accused made a false document, namely a Court Order on Winding Up dated 28 May 1992 purported to have been made by the High Court in Lautoka as well as Proof of Debt General Forms.
30. As per paragraph 29, the accused intended to use the false documents to induce public officials within the office of the Official Receiver's Accounts Section to accept them as genuine and process payments that had been falsified by the Accused for his own gain.

CONCLUSION

31. The accused was produced in the Suva Magistrate Court and charged with eleven (11) counts of Abuse of Office for Gain, Forgery, Embezzlement by Servant, Giving False Information to Public Servant, Unauthorized Modification of Data and Obtaining Financial Advantage on 18 November 2016
32. The accused pleaded Guilty to all 11 counts on 29 March 2017.

33. Finally, to date, the accused has not made any attempt at restitution for the total sum of \$4,118,447.38 that he embezzled and falsely obtained from the Official of the Official Receiver's Bankruptcy and Liquidation Accounts from 2008 to 2015..."

ANNEXURE 1

COUNT 1 - 4			
YEAR	NO. OF TRANSACTIONS	AMOUNTS	COMMENT
2008	41	\$129,400.00	1 ST OF JUL 2008 - 31 ST JAN 2010
2009	40	\$187,800.00	
2010	8	\$22,001.05	
TOTAL	89	\$339,201.05	

ANNEXURE 2

COUNT 5 - 8			
YEAR	NO. OF TRANSACTIONS	AMOUNTS	COMMENT
2010	118	\$311,244.02	1 ST OF FEB 2010 - 31 ST JUL 2014
2011	233	\$640,635.16	
2012	220	\$598,412.95	
2013	199	\$537,711.23	
2014	136	\$384,157.82	
TOTAL	906	\$2,472,161.18	

ANNEXURE 3

COUNT 5 - 8			
YEAR	NO. OF TRANSACTIONS	AMOUNTS	COMMENT
2014	122	\$344,466.60	1 ST OF JUL 2014 - 31 ST DEC 2015
2015	298	\$962,618.60	
TOTAL	420	\$1,307,085.20	

4. The accused, in the presence of his counsel, admitted the above summary of facts. The court later found him guilty as charged on all the eleven counts and convicted him accordingly on those counts. The case was then adjourned to 1 June 2017, where the learned Magistrate purportedly sentenced him to 14 years imprisonment. That sentence had been set aside as a result of this court's decision in **Fiji Independent Commission Against Corruption v Viliame Katia**, Criminal Appeal No. HAA 027 of 2017S, High Court, Suva on 28 June 2018.

5. In compliance with the above decision, and pursuant to section 190 of the Criminal Procedure Act 2009, the learned Resident Magistrate Mr. Shageeth Somaratne transferred the case to the High Court for sentencing on 11 July 2018. On 20 July 2018, the Magistrate Court record was given to both parties, and the matter was set up for a sentence hearing. The defence was required to file and serve their written plea in mitigation and sentence submission by 17 August 2018. The prosecution was required to file and serve their sentence submission on 14 September 2018. I heard the parties on 14 September 2018. I had considered all the papers filed by the parties and also considered their verbal submissions.
6. It will be noted that the accused offended when the Penal Code, Chapter 17 was being replaced by the Crimes Act 2009 from 1 February 2010. Prior to the 1st February 2010, all the crimes prosecuted in this case were done under the Penal Code, Chapter 17, that is, count no. 1, 2, 3 and 4. After the 1st February 2010, all the crimes prosecuted in this case were done under the new Crimes Act 2009, that is, counts no. 5, 6, 7, 8, 9, 10 and 11. The penalties under the Crimes Act 2009 were generally more severe than the Penal Code offences. It would appear therefore, that the people of Fiji, through their representatives in Parliament, were of the view that the punishment for the crimes prosecuted in this case should be increased. Consequently, in discussing the offences, we will start with the most serious of the offences.
7. Of the 11 counts in this case, count no. 5 and 6 are the most serious. They are both "Abuse of Office for Gain" offences, contrary to section 139 of the Crimes Act 2009. The maximum penalty for the offence was 10 years imprisonment, but if the act was done for gain, the maximum penalty went up to 17 years imprisonment. His Lordship Mr. Justice Rajasinghe, in Fiji Independent Commission Against Corruption (FICAC) v Ana Lagere & Others, Criminal, Case No. HAC 56 of 2014S, High Court, Suva, on 10 May 2017, reviewed the authorities on "Abuse of Office" cases. His Lordship said the following:

"24. In view of above sentencing precedents, it appears that the courts of Fiji have considered the level of authority and trust reposed in the position held by the accused, and the level of prejudice caused to the victim in sentencing. If the level of authority and trust, and the prejudice caused are high, the court could go to the higher starting point and vice versa.

25. I would like to adopt the same approach in setting an appropriate tariff, allowing the sentencing court to determine the appropriate starting point on the level of culpability and

the prejudice/harm caused. Accordingly, I find a tariff limit of one (1) year to twelve (12) years would adequately serve the above purpose. The sentencing court could consider the following ranges of starting point based on the level of culpability and the harm caused:

	High Level of Culpability	Medium Level of Culpability	Lesser Level of Culpability
High Level of Harm/Prejudice with gain	8-12	6-10	4-8
Medium Level of Harm/Prejudice either with medium level gain or without gain	6-10	4-8	2-6
High Level of Harm/Prejudice either with less gain or without gain	4-8	2-6	1-4

26. In order to determine the level of culpability, the court could consider the following factors; however, this is not an exhaustive list. They are:

- i) The level of contribution or the influence made by the accused in the commission of the offence,
- ii) The level of authority, trust and the responsibility reposed in the position held by the accused,
- iii) Has the accused influenced or pressured others to involve in the offence,
- iv) Nature and the manner in which the offence was committed or planned,
- v) Nature of victims,
- vi) Whether the accused involved in the offence through force, coercion, exploitation or intimidation'
- vii) Not motivated by personal gain,
- viii) Opportunistic "one-off" offence with little or no planning.

27. The level of harm/prejudice can be determined by considering the level of gain and the impact on the victim."

8. I agree with His Lordship and adopt his comments abovementioned.

9. The next serious offence is count no. 4, that is, "Embezzlement by servant", contrary to section 274 (b) (ii) of the Penal Code, Chapter 17. The maximum penalty for this offence is 14 years imprisonment. Stealing from employers was always a serious matter and often called for a deterrent sentence. However, case laws had set the tariff between 18 months to 3 years

imprisonment: see State v Pauliasi Vatunalaba, Criminal Case No. HAC 134 of 2008, High Court, Suva and Fiji Independent Commission Against Corruption (FICAC) v Ashwini Lata, Criminal Case No. HAC 065 of 2011, High Court, Suva.

10. The next serious offences are all under the Crimes Act 2009, and they each carry a maximum penalty of 10 years imprisonment each. First, "forgery", contrary to section 156 (1) of the Crimes Act 2009 (ie. count no. 7 and 11), second, "unauthorized modification of data", contrary to section 341 (1) of the Crimes Act 2009 (count no. 9); and lastly, "obtaining a financial advantage", contrary to section 326 (1) of the Crimes Act 2009 (count no. 10). The tariff for the offence of forgery appear to be a sentence between 3 years to 6 years imprisonment: see State v Prasad & Others, Criminal Case No. HAC 024 of 2010, High Court, Lautoka and Rarawa v The State, Criminal Appeal Case No. HAA 057 of 2016, High Court, Lautoka.
11. As for "Unauthorized modification of data to cause impairment", contrary to section 341 (1) of the Crimes Act 2009, the prosecution submitted that there was no tariff set by the High Court, as of now. The facts of this case demonstrated the need to treat the above offence seriously. Here, on the admitted facts, the accused had gone about sabotaging the computer system of the office of the Official Receiver. He had rendered the computer system useless by feeding it false data to enable him to commit the 11 counts in this case. Most commercial and state entities use computers to conduct their business. The integrity of their computer system is crucial to their success. In my view, in order to protect the public, a tariff between 2 to 7 years imprisonment would be appropriate. The higher the level of the accused's culpability and the harm he caused, the higher the sentence should be. If it was otherwise, the sentence should be low.
12. As for "obtaining a financial advantage", contrary to section 326 (1) of the Crimes Act 2009, the prosecution submitted there was no tariff on this offence. However, in Fiji Independent Commission Against Corruption (FICAC) v Feroz Jan Mohammed & Others, Criminal Case No. HAC 349 of 2013, High Court, Suva, His Lordship Mr. Justice Madigan set the tariff of 2 to 4 years imprisonment for offences under section 326 (2) of the Crimes Act 2009, which is also for "obtaining a financial advantage". I will accept his Lordship's tariff in this case.
13. The next serious offence is "giving false information to a public servant", contrary to section 201 of the Crimes Act 2009. It carried a maximum penalty of 5 years imprisonment. "Abuse of office for gain", contrary to section 111 of the Penal Code carried a maximum penalty of 3 years

imprisonment. "Forgery", contrary to section 341 (1) of the Penal Code carried a maximum penalty of 2 years imprisonment.

14. In this case, the aggravating factors were as follows:

- (i) **Gross Breach of Employer's Trust.** In 2003, you resided at Lot 28 Bryce Street Raiwaqa. You were approximately 23 years old. The Official Receiver's Office at Suva hired you as a clerical officer. As such, it was your job to assist the Official Receiver maintain its Bankruptcy Trust Accounts for bankrupt individuals, and also its Liquidation Trust Account for liquidated companies. It was the Official Receiver's function to receive funds from the above individuals and companies, as a result of creditors' petitions, issued through the High Court of Fiji. At times, you assisted in the payment of funds from the above accounts to creditors, who are entitled to the same. You were a clerical officer for approximately 4 years 7 months 18 days. This position enabled you to study the Official Receiver's Payment System. During this time, you performed your job well as a clerical officer.

So impressed were your employer that, on 7 July 2008, at the age of 28 years old, you were promoted as Acting Deputy Official Receiver in the Official Receiver's Office. Only the Minister of Justice, the Permanent Secretary of Justice and the Official Receiver were your immediate supervisors. You were a trusted officer in the Official Receiver's Office at Suva. On 10 July 2008, 3 days after been promoted to Acting Deputy Official Receiver, you began to steal money from the Bankruptcy Trust Account. Between 2008 and 2010, you engineered 89 fraudulent transactions and stole a total of \$339,201.05. Between 2010 and 2014, you again engineered 906 fraudulent transactions and stole a total of \$2,472,161.18. Between 2014 and 2015, you engineered 420 fraudulent transactions and stole \$1,307,085.20 from the Liquidation Trust Account. At the end of it all, you had engineered 1,415 fraudulent transactions, and stole a total of \$4,118,447.43 from the Official Receiver's Office. You were receiving approximately \$46, 275.00 of stolen money per month on top of your normal salary, for the 7 years 5 months of your offendings.

This was a serious breach of an employer's trust. As an employee, you are supposed to be honest and hardworking to your employer. Your employer trusted you and

promoted you to Acting Deputy Official Receiver on 7 July 2008. However, between then and 31 December 2015, you stole more than \$4 million from them. You must accept that you will have to be punished severely to atone for your misdeeds. What you had done was unthinkable. You literally "stabbed your employer in the back by stealing \$4 million plus from it". In the 24 years I had served on the bench, this is the first time I had witnessed a civil servant steal \$4 million plus from a government entity, for his own personal use. You had grossly abused the trust placed on you.

- (ii) **Repetitive and Systematic Breaches of Procedure.** As a clerical officer from 2003 to 2008, you studied and understood the Official Receiver's functions and duties well. You knew how the office operated in Suva, Lautoka and the whole of Fiji. You knew the processes and procedures on the payment of trust money to creditors. You knew the office's FOX PRO SYSTEM computer system well. You did not offend while employed as a clerical officer. However, 3 days after been promoted as Acting Deputy Official Receiver, you used your position to short circuit the system by stealing more than \$4 millions from the Official Receiver's Office. You corrupted the FOX PRO SYSTEM computer system to perpetuate and hide your offendings. You fed false data into the office's computer system. You fraudulently used other people's identities and forged numerous documents to enable you to steal the money. You deliberately deceived your co-workers and supervisors to commit the offences.

You basically showed your co-workers and supervisors no mercy in engineering the 1,415 fraudulent transactions which enabled you to steal the \$4 million plus from the Official Receiver's Office. In a sense, you were like a "computer virus" to the Official Receiver's "computer system" and office. You had not only undermined the Official Receiver, you had also undermined the Permanent Secretary and Minister of Justice. You had also undermined the creditors whose \$4 million plus you had stole. It is possible that the taxpayers of Fiji will probably have to pay for your misdeeds at the end of the day. You thus must not complain of the punishment that you are about to get for your crimes. Your criminal behaviour called for it.

- (iii) **The Amount of Money Involved.** Annexure 1, 2 and 3 in the prosecution's summary of facts showed the amount of money you stole from 2008 to 2015. In Annexure 1, you stole a total of \$339,201.05. In Annexure 2, you stole a total of \$2,472,161.18. In

Annexure 3, you stole a total of \$1,307,085.20. The total stolen in Annexure 1, 2 and 3 was \$4,118,447.43. You spent 7 years 5 months 24 days stealing the above money. You were getting approximately \$46,275 per month on top of your salary, for approximately 7 ½ years you committed the offences. When examining the details of your offendings on a daily, weekly and monthly basis, it showed an utter disregard for lawful authority within the Office of the Official Receiver. Your actions showed contempt for the Minister of Justice's authority, contempt for the authority of the Permanent Secretary of Justice and contempt for the authority of the Official Receiver. You were a law unto yourself. You even went to assume the authority of the High Court of Fiji by purportedly making court orders therefrom, and making written orders therefrom. This was unthinkable and you must not complain when you are punished because order had to be re-established in the Official Receiver's Office.

- (iv) **No Restitution or Attempts at Restitution.** You had obviously set a personal record by stealing more than \$4 million dollars from a government entity, for personal use. When stealing such an amount, you would obviously used it for your own personal use, put it in your or other's bank accounts, invest it or hide the same, through various means. It would be reasonable to assume that in Fiji, to dispose off \$4 million plus in 7 ½ years especially when you reside at Lot 28 Bryce Street, Raiwaqa, it would leave some signs – for example, house renovations, cars, home appliances, jewelleries etc. In your case, no restitution was made. Even the court said, at the sentence hearing stage, that genuine restitution was a strong mitigating factor. No explanation was made on how the \$4 million plus was used. When looking at the total evidence, and your written and verbal submissions through your counsel, it showed that you had no remorse in your offendings. You had no remorse in stealing \$4 million dollars plus from various creditors in Fiji, whose money, the Official Receiver had in trust. You were all quiet on the whereabouts of the leftover of the stolen \$4 million dollars plus. In a place like Fiji, it would be difficult to dispose off \$4 million dollars plus in 7 ½ years, unless you, through your friends, relatives or agents, are hiding the same, or dealing with the same, through various means. If your friends, relatives or agents are dealing with the stolen money today, they are guilty of the offence of "money laundering", contrary to section 69 (2) and (3) of the Proceeds of Crime Act 1997 and are liable on conviction to a fine not exceeding \$120,000, or a term of imprisonment not exceeding 20 years or both. There is no time limitation in dealing with your friends, relatives or agents, if they

are committing money laundering offences. In a nutshell, through your conduct, you had shown no remorse in your offendings when you made no restitution or attempted to do so. Once again, you must not complain when you are given a long prison sentence, to teach you that crime does not pay.

- (v) **The Motivating Factor of Greed.** When examining the whole evidence in your case, I asked myself the question: What motivated you? I examined the 1,415 fraudulent transactions that you carried out in the 7 ½ years you were occupying the position of Acting Deputy Official Receiver. Powers are given to civil servants to enable them to serve the public, not themselves. However, in your 1,415 fraudulent transactions, even \$1,000,000 was not enough for you. You had to steal \$4,000,000 plus, and readily pleaded guilty to the same. Obviously greed was your motivation. Looking at you during the sentence hearing, I appear to get the impression that you feel you will quickly serve your prison time, and then come out to enjoy the fruits of your crime, which your friends and/or relatives may have kept for you. You will have to learn that greed does not pay. I therefore plead with you not to complain when a lengthy prison sentence is given to you. Why should you benefit from the fruits of your crime, when the majority of the people of Fiji work honestly for their money?

15. The mitigating factors are as follows:

- (i) At the age of 38 years, this is your first offence;
- (ii) Although, you pleaded guilty to the charges 4 months 11 days after first call in the Suva Magistrate Court, you nevertheless saved the court's time;
- (iii) You were in custody for approximately 1 year 6 months 27 days prior to being sentenced today;
- (iv) You cooperated with FICAC investigators during the investigations.

16. Since "Abuse of Office for Gain" (count no. 5 and 6) are the most serious of the 11 counts in the charges, I will start my sentence with the same. For count no. 5, I start with a sentence of 10 years imprisonment. I add 6 years for the aggravating factors, making a total of 16 years imprisonment. For time spent in custody while awaiting sentence in the High Court, I deduct 1 year 7 months, leaving a balance of 14 years 5 months imprisonment. In State v Sakiusa Bole, Criminal Case No. HAC 038 of 2005S, High Court, Suva, Her Ladyship Madam Justice Shameem said, "...In breach of trust cases, comparably less weight is put on good

character, because only people of good character are given positions of trust and responsibility. It is the breach of trust which is the harm done in these offences....".

This is a breach of trust case, thus I deduct another 1 month for the accused being a first offender, leaving a balance of 14 years 4 months imprisonment.

17. In Mataunitoga v The State, Criminal Appeal No. AAU 125 of 2013, Court of Appeal, Suva, His Lordship Justice of Appeal Mr. Goundar said as follows, on 28 May 2015:

"In considering the weight of a guilty plea, sentencing courts are encouraged to give a separate consideration and qualification to the guilty plea (as a matter of practice and not principle) and assess the effect of the plea on the accused by taking into account all the relevant matters such as remorse, witness vulnerability and utilitarian value. The timing of the plea, of course, will play an important role when making that assessment".

His Lordship, the Honourable Chief Justice Mr. Gates, favoured the above approach in Gordon Aitcheson v The State, Criminal Petition CAV 012 of 2018, Supreme Court, Suva, and on 2 November 2018, said as follows:

"The principle in Rainima must be considered with more flexibility as Mataunitoga indicates. The overall gravity of the offence, and the need for the hardening of hearts for prevalence, may shorten the discount to be given. A careful appraisal of all factors such as Goundar J has cautioned is the correct approach. The one third discount approach may apply in less serious cases. In cases of abhorrence, or of many aggravating factors the discount must reduce, and in the worst cases shorten considerably".

18. Applying the above principle to this case, the discount given will be small, given the aggravating factors mentioned above. For pleading guilty, I deduct 2 months, leaving a balance of 14 years 2 months imprisonment. For cooperating with FICAC investigators, I deduct another 2 months, leaving a balance of 14 years imprisonment. On count no. 5, that is, Abuse of Office for Gain, I sentence the accused to 14 years imprisonment.
19. I repeat the above process and sentence for count no. 6, another "Abuse of Office for Gain" offence.

20. On count no. 4, "Embezzlement by Servant", I start with a sentence of 2 years imprisonment. For the aggravating factors, I add another 5 years, making a total of 7 years imprisonment. I deduct 1 year 7 months for time already spent in custody while awaiting sentence, leaving a balance of 5 years 5 months. Following the directions given by the authorities mentioned above, I deduct 1 month for being a first offender, leaving a balance of 5 years 4 months. For pleading guilty, I deduct another 2 months and another 2 months for cooperating with FICAC investigators. The balance is 5 years imprisonment. On count no. 4, "Embezzlement by Servant", I sentence the accused to 5 years imprisonment.
21. Count no. 7 is forgery. I start with a sentence of 4 years imprisonment. I add 4 years for the aggravating factors, making a total of 8 years imprisonment. I follow the directions given by the cases mentioned above. I deduct 1 year 7 months for time already served, while in custody awaiting sentence, leaving a balance of 6 years 5 months. I deduct 1 month for being a first offender, another 2 months for pleading guilty and another 2 months for cooperating with FICAC investigators. The balance is 6 years imprisonment. On count. No. 7, I sentence you to 6 years imprisonment.
22. I repeat the above process and sentence for counts no. 9, 10 and 11.
23. On count no. 8, "False information to a Public Servant", I sentence the accused to 3 years imprisonment.
24. On count no. 1, "Abuse of Office for Gain", I sentence the accused to 2 years imprisonment.
25. On count no. 2, "forgery", I sentence the accused to 1 year imprisonment.
26. I repeat the above sentence for count no. 3.
27. The summary of your sentences are as follows:

(i)	Count no. 1:	Abuse of Office for Gain	-	2 years imprisonment
(ii)	Count no. 2:	Forgery	-	1 year imprisonment
(iii)	Count no. 3:	Forgery	-	1 year imprisonment
(iv)	Count no. 4:	Embezzlement by Servant	-	5 years imprisonment
(v)	Count no. 5:	Abuse of Office for Gain	-	14 years imprisonment

(vi)	Count no. 6:	Abuse of Office for Gain	-	14 years imprisonment
(vii)	Count no. 7:	Forgery	-	6 years imprisonment
(viii)	Count no. 8:	False Information to Public Servant	-	3 years imprisonment
(ix)	Count no. 9:	Unauthorized Modification of Data	-	6 years imprisonment
(x)	Count no. 10:	Obtaining a Financial Advantage	-	6 years imprisonment
(xi)	Count no. 11:	Forgery	-	6 years imprisonment

28. Mr. Katia, you engineered 1,415 fraudulent transactions within the Official Receiver's Office to steal \$4,118,477.43 of trust money. In other words, you were entrusted with this money, and as a trustee, you stole this money. The level of deceit and evil you perpetuated among your co-workers and supervisors to steal the money was the height of all evil. You smiled at them and behind their back, stole the \$4 million dollar plus. You made a mockery of not only the Official Receiver's Office, but also the High Court, by pretending to be a judge issuing court orders. You had made no restitution or attempted to do the same. You have not explained where the money is, nor how it was used. It appears you are willing to serve, from your point of view, a short prison sentence, come out and enjoy the fruits of your crime. Because of the above, and the need to punish you in a manner that is just in all the circumstances, and in the interest of justice, I direct that the sentence in count no. 5 be made consecutive to the sentences in count no. 7 and 8, making a total sentence of 23 years imprisonment.

29. Because of the totality principle of sentencing, I direct that all the sentences in the other counts, be made concurrent to the 23 years sentence mentioned above. The final total sentence is 23 years imprisonment.

30. Mr. Viliame Katia, for the eleven offences you committed against the Office of the Official Receiver at Suva in the Central Division, between 1 July 2008 and 31 December 2015, I sentence you to 23 years imprisonment, with a non-parole period of 22 years, effective forthwith.

31. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence was designed to punish you in a manner that was just in all the circumstances, to protect the community from people like you, to deter other would-be offenders like you, and to signify that the court and community denounce what you did to the Official Receiver's Office between 1 July 2008 and 31 December 2015.

32. You have 30 days to appeal to the Court of Appeal.




Salesi Temo
JUDGE

Solicitor for FICAC : Office of Fiji Independent Commission Against Corruption, Suva
Solicitor for Accused : R. Vananalagi, Barrister & Solicitor, Suva.