

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 0036 OF 2016
(High Court Action No: HAC 251 of 2013)

BETWEEN : **TUIMOALA RAOGO**
Appellant

AND : **THE STATE**
Respondent

Coram : **Chandra, RJA**

Counsel : **Mr M Fesaitu for Appellant**
Ms J Prasad for Respondent

Date of Hearing : **14 June, 2019**

Date of Ruling : **2 August, 2019**

RULING

- [1] The Appellant was charged with another (Josefa Saqanavere) on two counts of Money Laundering contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997.

- [2] After trial where the Assessors opined unanimously that the Appellant was guilty, the learned Trial Judge concurred with the opinion of the Assessors and convicted the Appellant.
- [3] The Appellant was sentenced to 13 years imprisonment with a non-parole period of 12 years.
- [4] The Appellant filed a timely appeal setting out 10 grounds of appeal. The Legal Aid Commission assisted the Appellant and filed the following grounds of appeal as amended:

Against Conviction

The Learned Trial Judge failed to adequately direct the Assessors on the law of money laundering.

Against Sentence

1. *The Learned Trial Judge erroneously took into account the following as aggravating factors:*
 - (i) *Lack of remorse throughout the trial and after the trial.*
 - (ii) *Having to pay for the loss of liberty for the amount of money stolen, which is a repetition of aggravating factors no (ii)*
2. *The Learned Trial Judge failed to give discount for the Appellant's good character.*
3. *The Learned Trial Judge failed to separately deduct the Appellant's time spent in remand.*

- [5] In the written submissions filed on behalf of the Appellant, the decision in **Stephen v State** [2016] FJCA 70; AAU53.2012 (27 May 2016) has been relied upon to show the inadequacy of the summing up of the Learned Trial Judge regarding the ground of appeal against conviction. In the said decision it has been stated that it is necessary to present to the Assessors the correct interpretation of the offence and to bridge the gap between the facts involved in the case and the ingredients of the offence.
- [6] It would be necessary to consider the evidence led at the trial to see whether the summing up meets with the required standard set out in that decision.
- [7] The Full Court would be in a position to consider same when the evidence led at the trial is made available, and therefore leave to appeal is granted.

- [8] As regards the grounds of appeal against sentence, it is necessary to show that there are errors in the sentencing judgment.
- [9] Lack of remorse is not considered as an aggravating factor and the learned Trial Judge fell into error by considering it as an aggravating factor.
- [10] Regarding the second ground it would appear that the learned Trial Judge had repeated the factor of the stolen money not being recovered in aggravating factors (ii) and (iv).
- [11] Leave to appeal against sentence is granted on the 1st ground.
- [12] As regards grounds 2 and 3, the learned Trial Judge had deducted 1 year for mitigation which would appear to have been subsumed in the discount for his good character and the period of one month spent in remand. These grounds are not arguable.

Orders of Court:

- (1) *Leave to appeal against conviction is granted.*
- (2) *Leave to appeal against sentence is granted on ground 1 of the grounds of appeal against sentence.*




Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL