**IN THE COURT OF APPEAL, FIJI**
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO.AAU 0096 of 2018**
**[High Court of Suva Criminal Case No. HAC 185 of 2017]**

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| **BETWEEN** | : | **ROSHEEN PRAVEENA RAJ** |
| | | ***Appellant*** |
| **AND** | : | **STATE** |
| | | ***Respondent*** |
| **Coram** | : | **Prematilaka, JA** |
| **Counsel** | : | **Mr. A. K. Singh for the appellant** |
| | : | **Mr. S. Kiran for the Respondent** |
| **Date of Hearing** | : | **16 July 2020** |
| **Date of Ruling** | : | **05 August 2020** |

# RULING

[1] The appellant had been charged with another (appellant in AAU 102/2018) in the High Court of Suva on two counts of money laundering (first and third counts) contrary to section 69(2) (a) and (3)(a) of the Proceeds of Crime Act, 1997. The charges were as follows.

***FIRST COUNT***

***Statement of Offence***

***MONEY LAUNDERING***: *Contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997.*

***Particulars of Offence***

***ROSHEEN PRAVEENA RAJ*** *between the 1st day of June 2006 and the 16th day of February 2011 at Suva in the Central Division, engaged directly or indirectly in transactions involving Pacific Theological Westpac Bank Account*

*71127300, as a finance officer of Pacific Theological College responsible for preparing documents in relation to payment of wages of Pacific Theological College staff, paid herself in excess of her normal salary or wage from the said Westpac Bank Account 71127300 by falsifying documents and obtained a total sum of $96, 576.86, that were proceeds of crime knowing or ought to have reasonably known that the said sum money is derived from some form of unlawful activity.*

## *SECOND COUNT*

### *Statement of Offence*

***MONEY LAUNDERING:*** *Contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997.*

### *Particulars of Offence*

***RINE MUNIVAI SORBY*** *also known as Lily Sorby between the 1st day of June 2006 and 16th day of February 2011 at Suva in the Central Division engaged directly or indirectly in transactions involving Westpac Bank Account 71127300, as a finance officer of Pacific Theological College responsible for preparing documents in relation to payment of wages of Pacific Theological College staff, paid herself in excess of her normal salary or wage from the said Westpac Bank Account 71127300 by falsifying documents and obtained a total sum of $73,099.93, that were proceeds of crime knowing or ought to have reasonably known that the said sum of money is derived from some form of unlawful activity.*

## *THIRD COUNT*

### *Statement of Offence*

***MONEY LAUNDERING:*** *Contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997.*

### *Particulars of Offence*

***ROSHEEN PRAVEENA RAJ and RINE MUNIVAI SORBY*** *also known as Lily Sorby between the 1st day of March 2010 and 30th day of November, 2012 at Suva in the Central Division, engaged directly or indirectly in transactions involving Westpac Bank Account 71127300 in relation to cheques of Pacific Theological College payable to various body corporates (Fiji National Provident Fund, Fiji Electricity Authority, Inland Revenue Department, HP Kasabia, Fiji Gas, Water Authority of Fiji, Telecom, Rups Investment and Mechanical Supplies) which had the payees altered to fictitious names and by cashing the falsified cheques obtained a total sum of $412, 567.61 that were proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of unlawful activity.*

[2] After full trial, on 17 September 2018 the assessors had expressed a unanimous opinion of guilty against the appellant on the first and third counts. The learned High Court judge in the judgment delivered on 18 September 2018 had agreed with the assessors and convicted the appellant of the same counts. She was sentenced on 19 September 2018 to 11 years of imprisonment each on the first and third counts to run concurrently with a non-parole period of 10 years.

[3] The appellant's solicitors had filed a timely notice of appeal on 11 October 2018 against conviction and sentence. They had later filed an application for bail pending appeal on 21 December 2018. Her solicitors had tendered amended grounds of appeal and written submissions on leave to appeal and bail pending appeal on 11 May 2020 and 18 June 2020 respectively. The State had tendered its written submissions on leave to appeal and bail pending appeal on 27 May 2020.

[4] The grounds of appeal are as follows.

***Against conviction***

1. *That the charges against the Appellant is defective in that the offence of Money Laundering should not have been laid against the Appellant when the evidence or the facts of the matter clearly confirmed that any offence that the Appellant if committed or should have been charged with Fraudulent Conduct or theft or other property related offences under Crime Decree 2009 and as result there had been a miscarriage of justice.*

2. *That the charges against the Appellant is defective in that the offence of Money Laundering should not have been laid against the Appellant when the evidence or the facts of the matter clearly confirmed that any offence that the Appellant if committed or should have been charged with Fraudulent Conduct or theft or other property related offences under Crimes Decree 2009 and as a result there had been a miscarriage of justice.*

3. *The learned trial judge in the summing up misdirected the Assessors or himself as to what amounted to proceed of crime under section 69(3)(a) of the Proceeds of Crime Act 1997 and the required state of mind.*

4. *The Learned Trial Judge erred in law and facts when he directed the Assessors at paragraph 19 of his Summing up that "When a prima facie case was found against each of them, at the end of the*

*prosecution's case wherein they were called upon to make a defence, accused no. 1 choose to give sworn evidence and choose not to call any witness (para 19) thereby , causing prejudice to the appellant resulting to miscarriage of justice.*

5. *That the Learned Trial Judge erred in law when he failed to direct the Assessors that it was dangerous to accept dock identification without proper identification parade (para 35).*

6. *That the Learned Trial Judge erred in law when he failed to disallow the alleged verbal admission of stealing money to PW2 who was a person in authority and further failed to direct the Assessors regarding the law of confession to the person in authority.*

7. *That the Learned Trial Judge erred in law when he failed to hold that the prosecution should proceed by laying a separate count in respect of each transaction in respect of offence of money laundering under section 69 of the Proceeds of Crime Act 1997 as the offence of money laundering does not fall within the description of an "offence involving theft, fraud, corruption or abuse of offence (per Calanchini J in Arora v State [2017] CAV0033.2016 (6 October 2017).*

8. *That the Learned Trial Judge erred in law regarding circumstantial evidence and or that he failed to apply the proper test for guilt of the Appellant in a circumstantial case.*

9. *That the Learned Trial Judge erred in law and facts when he misdirected or failed to direct the Assessors that they should take into consideration the entire or totality of the evidence to decide where the truth lies especially:*

   *(i) as there was no evidence as to who had forged the signatures.*
   *(ii) The memorandum that authorized the Appellant to be paid the extra funds.*
   *(iii) That there was no evidence that the funds did not go towards the payments of the outstanding bill.*

10. *That the Learned Trial Judge failed to direct the assessors that it was mandatory on the assessors to carefully examine evidence presented by the defence to decide, not necessarily whether they believe that evidence or not, but whether such evidence is capable of creating a reasonable doubt in Assessors' minds.*

***Against sentence***

11. *That the Learned Trial Judge erred in law when he acted upon a wrong principle; Allowed extraneous or irrelevant matters to guide or affect him his decision and took wrong stating points when sentencing the Appellant.*

[5] The learned High Court judge has summarized the facts of the case as follows in his judgment:

> *'6. The sum total of the evidence leads me to the following findings. During the material time, both accused were employed by Pacific Theological College (PTC) as finance officers in their Finance Section. Accused No. 1 was responsible for Accounts Payable, while Accused No. 2 was responsible for Accounts Receivable. As such both accused had information on how much Pacific Theological College owed to its employees and other providers of goods and services. They co-ordinated the receiving of Pacific Theological College bills and the payments of the same. Pacific Theological College was a donor funded non-profit educational entity, and always had thousands of dollars in its account. Both accused were supervised and answerable to Pacific Theological College's Director of Finance and Administration.*
>
> *7. For their services to Pacific Theological College, Accused No. 1 was paid $8,000 per year, while Accused No. 2 was paid $10,000 per year. Both accused appeared to have worked for Pacific Theological College since 1998. Life for both accused was proceeding as "normal" until Mr. Nilesh Avinesh Sharma (PW2) came in to work for Pacific Theological College as a project finance officer in 2010. PW2 was working with both accused in Pacific Theological College's Finance Section. In 2012, PW2 became Pacific Theological College's Director of Finance and Administration. He became aware that Pacific Theological College's financial records were in a mess. He started an internal investigation and audit. He found a massive financial rot in the system. He found that Accused No. 1 and 2 were tampering with the financial records and cheques and overpaying themselves as alleged in counts no. 1, 2 and 3. The financial documents examined in this case proved beyond reasonable doubt the charges against both accused. I found, on the evidence, that the two accused became greedy and hood-winked their supervisors and the cheque signatories, into stealing a total of $582,244.42 from Pacific Theological College from 2006 to 2012.'*

[6] In terms of section 21(1)(b) and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. The test for leave to appeal is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144; AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA

106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds. This threshold is the same with leave to appeal applications against sentence as well.

***Law on bail pending appeal***

[7] In **Tiritiri v State** [2015] FJCA 95; AAU09.2011 (17 July 2015) the Court of Appeal reiterated the applicable legal provisions and principles in bail pending appeal applications as earlier set out in **Balaggan v The State** AAU 48 of 2012 (3 December 2012) [2012] FJCA 100 and repeated in **Zhong v The State** AAU 44 of 2013 (15 July 2014) as follows.

*'[5] There is also before the Court an application for **bail pending appeal** pursuant to section 33(2) of the Act. The power of the Court of Appeal to grant **bail pending appeal** may be exercised by a justice of appeal pursuant to section 35(1) of the Act.*

*[6] In **Zhong –v- The State** (AAU 44 of 2013; 15 July 2014) I made some observations in relation to the granting of **bail pending appeal**. It is appropriate to repeat those observations in this ruling:*

> *"[25] Whether **bail pending appeal** should be granted is a matter for the exercise of the Court's discretion. The words used in section 33 (2) are clear. The Court may, if it sees fit, admit an appellant to **bail pending appeal.** The discretion is to be exercised in accordance with established guidelines. Those guidelines are to be found in the earlier decisions of this court and other cases determining such applications. In addition, the discretion is subject to the provisions of the Bail Act 2002. The discretion must be exercised in a manner that is not inconsistent with the Bail Act.*
>
> *[26] The starting point in considering an application for **bail pending appeal** is to recall the distinction between a person who has not been convicted and enjoys the presumption of innocence and a person who has been convicted and sentenced to a term of imprisonment. In the former case, under section 3(3) of the Bail Act there is a rebuttable presumption in favour of granting bail. In the latter case, under section 3(4) of the Bail Act, the presumption in favour of granting bail is displaced.*
>
> *[27] Once it has been accepted that under the Bail Act there is no presumption in favour of bail for a convicted person appealing against conviction and/or sentence, it is necessary to consider the factors that are relevant to the exercise of the discretion. In the first instance these are set out in section 17 (3) of the Bail Act which states:*

*"When a court is considering the granting of bail to a person who has appealed against conviction or sentence the court must take into account:*

*(a) the likelihood of success in the appeal;*

*(b) the likely time before the appeal hearing;*

*(c) the proportion of the original sentence which will have been served by the appellant when the appeal is heard."*

*[28] Although section 17 (3) imposes an obligation on the Court to take into account the three matters listed, the section does not preclude a court from taking into account any other matter which it considers to be relevant to the application. It has been well established by cases decided in Fiji that* ***bail pending appeal*** *should only be granted where there are exceptional circumstances. In* ***Apisai Vuniyavawa Tora and Others –v- R*** *(1978) 24 FLR 28, the Court of Appeal emphasised the overriding importance of the exceptional circumstances requirement:*

*"It has been a rule of practice for many years that where an accused person has been tried and convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pending of an appeal."*

*[29] The requirement that an applicant establish exceptional circumstances is significant in two ways. First, exceptional circumstances may be viewed as a matter to be considered in addition to the three factors listed in section 17 (3) of the Bail Act. Thus, even if an applicant does not bring his application within section 17 (3), there may be exceptional circumstances which may be sufficient to justify a grant of* ***bail pending appeal****. Secondly, exceptional circumstances should be viewed as a factor for the court to consider when determining the chances of success.*

*[30] This second aspect of exceptional circumstances was discussed by Ward P in* ***Ratu Jope Seniloli and Others –v- The State*** *(unreported criminal appeal No. 41 of 2004 delivered on 23 August 2004) at page 4:*

*"The likelihood of success has always been a factor the court has considered in applications for* ***bail pending appeal*** *and section 17 (3) now enacts that requirement. However it gives no indication that there has been any change in the manner in which the court determines the question and the courts in Fiji have long required a very high likelihood of success. It is not sufficient that the appeal raises arguable points and it is not for the single judge on an application for* ***bail pending appeal*** *to delve into the actual merits of the appeal. That as was pointed out in Koya's case (****Koya v The State*** *unreported AAU 11 of 1996 by Tikaram P) is the function of the Full Court after hearing full argument and with the advantage of having the trial record before it."*

*[31] It follows that the long standing requirement that* ***bail pending appeal*** *will only be granted in exceptional circumstances is the reason why "the chances of the appeal succeeding" factor in section 17 (3) has been interpreted by this Court to mean a very high likelihood of success."*

[8] In **Ratu Jope Seniloli & Ors. v The State** AAU 41 of 2004 ( 23 August 2004) the Court of Appeal said that the likelihood of success must be addressed first, and the two remaining matters in S.17(3) of the Bail Act namely *"the likely time before the appeal hearing"* and *"the proportion of the original sentence which will have been served by the applicant when the appeal is heard"* are directly relevant *' only if the Court accepts there is a real likelihood of success'* otherwise, those latter matters *'are otiose'* (See also **Ranigal v State** [2019] FJCA 81; AAU0093.2018 (31 May 2019)

[9] In **Kumar v State** [2013] FJCA 59; AAU16.2013 (17 June 2013) the Court of Appeal said *'This Court has applied section 17 (3) on the basis that the three matters listed in the section are mandatory but not the only matters that the Court may take into account.'*

[10] In **Qurai v State** [2012] FJCA 61; AAU36.2007 (1 October 2012) the Court of Appeal stated

> *'It would appear that exceptional circumstances is a matter that is considered after the matters listed in section 17 (3) have been considered. On the one hand exceptional circumstances may be relied upon even when the applicant falls short of establishing a reason to grant bail under section 17 (3).*
>
> *On the other hand exceptional circumstances is also relevant when considering each of the matters listed in section 17 (3).'*

[11] In ***Balaggan*** the Court of Appeal further said that *'The burden of satisfying the Court that the appeal has a very high likelihood of success rests with the Appellant"*

[12] In ***Qurai*** it was stated that:

> *"... The fact that the material raised arguable points that warranted the Court of Appeal hearing full argument with the benefit of the trial record does not by itself lead to the conclusion that there is a very high likelihood that the appeal will succeed...."*

[13] Justice Byrne in **Simon John Macartney v. The State** Cr. App. No. AAU0103 of 2008 in his Ruling regarding an application for bail pending appeal said with reference to arguments based on inadequacy of the summing up of the trial [also see **Talala v State** [2017] FJCA 88; ABU155.2016 (4 July 2017)].

> *"[30].....All these matters referred to by the Appellant and his criticism of the trial Judge for allegedly not giving adequate directions to the assessors are not matters which I as a single Judge hearing an application for* ***bail pending appeal*** *should attempt even to comment on. They are matters for the Full Court ... ... ."*

[14] ***Ourai*** quoted **Seniloli and Others v The State** AAU 41 of 2004 (23 August 2004) where Ward P had said

> *"'The general restriction on granting* ***bail pending appeal*** *as established by cases by Fiji _ _ _ is that it may only be granted where there are exceptional circumstances. That is still the position and I do not accept that, in considering whether such circumstances exist, the Court cannot consider the applicant's character, personal circumstances and any other matters relevant to the determination. I also note that, in many of the cases where exceptional circumstances have been found to exist, they arose solely or principally from the applicant's personal circumstances such as extreme age and frailty or serious medical condition."*

[15] Therefore, the legal position is that the appellant has the burden of satisfying the appellate court firstly of the existence of matters set out under section 17(3) of the Bail Act and thereafter, in addition the existence of exceptional circumstances. A very high likelihood of success of the appeal would be deemed to satisfy the requirement of exceptional circumstances. However, an appellant can rely only on 'exceptional circumstances' including extremely adverse personal circumstances even when he cannot satisfy court of the presence of matters under section 17(3) of the Bail Act.

[16] Out of the three factors listed under section 17(3) of the Bail Act 'likelihood of success' would be considered first and if the appeal has a 'very high likelihood of success', then the other two matters in section 17(3) need to be considered, for otherwise they have no practical purpose or result.

[17] Therefore, when this court considers leave to appeal or leave to appeal out of time (*i.e.* enlargement of time) and bail pending appeal together it is only logical to consider leave to appeal or enlargement of time first, for if the appellant cannot reach the threshold for either of them, then he cannot obviously reach the much higher standard of 'very high likelihood of success' for bail pending appeal. If an appellant fails in that respect the court need not go onto consider the other two factors under section 17(3). However, the court would still see whether the appellant has shown other exceptional circumstances to warrant bail pending appeal independent of the requirement of 'very high likelihood of success'.

**Consideration of grounds of appeal**

***Against conviction***

***01st ground of appeal***

[18] The appellant had been charged under section 69 (2)(a) and (3)(a) of the Proceeds of Crimes Act. Section 69 is as follows

> *Money laundering*
>
> *(1) In this section:*
>
> *"transaction" includes the receiving, or making, of a gift.*
>
> *(2) A person who after the commencement of this Act, engages in money laundering commits an offence and is liable on conviction, to:*
>
> *(a) if the offender is a natural person - a fine not exceeding $120,000 or imprisonment for a term not exceeding 20 years, or both; or*
>
> *(b) if the offender is a body corporate - a fine not exceeding $600,000.*
>
> ***(3) A person shall be taken to engage in money laundering if, and only if:***
>
> ***(a) the person engages, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime, or***
>
> *(b) the person receives, possesses, conceals, disposes of or brings into Fiji any money, or other property, that is proceeds of crime,*

***and*** *the person* ***knows, or ought reasonably to know****, that the money or other property is derived or realised, directly or indirectly, from some form of* ***unlawful activity****.*

[19] Section 3 of the Proceeds of Crimes Act interprets the following terms as follows:

***"proceeds"****, in relation to an offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence;*

***"proceeds of crime"*** *means:*

*(a) proceeds of a serious offence; or*

*(b) any property that is derived or realised, directly or indirectly, by any person from acts or omissions that occurred outside Fiji and would, if the acts or omissions had occurred in Fiji, have constituted a serious offence;*

*"property" includes money or any other property, real or personal, things in action or other intangible or incorporeal property;*

***"serious offence"*** *means an offence of which the maximum penalty prescribed by law is death, or imprisonment for not less than 12 months;*

***"unlawful activity"*** *means an act or omission that constitutes an offence against a law in force in Fiji or a foreign country.*

[20] The appellant's caution interview had revealed that she with the other appellant had forged the cheques and stolen the funds of Pacific Theological College by overpaying themselves as wages and forging the cheques payable to various entities and paying either into their account or encashing them. She argues that the prosecution should have preferred charges in terms of sections 291, 381, 322, 323, 324 and 328 under the Crimes Act instead of charging her under the Proceeds of Crimes Act for money laundering.

[21] The substratum of her argument is that money laundering involves the transfer money obtained from criminal activity into 'legitimate' channels to disguise its illegal origins or series of financial transactions intended to transfer ill-gotten gains into legitimate money or other assets. She goes onto contend that the money she stole was 'clean money' and any subsequent dealings with it would have been money laundering as it became proceeds of crime after it was stolen and not before that.

[22] The appellant's written submissions have cited passages from well-known writers and decision on UK Proceeds of Crimes Act in support of the above contention. However, the first and foremost binding authority on the offence of money laundering in Fiji is the Fiji Proceeds of Crimes Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012. Judgments of other jurisdictions and authoritative writings may be of persuasive value but not binding on courts in Fiji and those have to be accorded due consideration keeping in mind the fact that they may deal with provisions not similar or similar only in some respects to those found in Fiji Proceeds of Crimes Act, 1997.

[23] According to the appellant's own argument, she may have been guilty of one or many of the other offences under the Crimes Act, 2009 pointed out by her (all of them are in the category of serious offences carrying sentences over 12 months of imprisonment) and in that event the money or other property so obtained by the commission of those offences, become 'proceeds' and as well 'proceeds of crime' as they are proceeds of serious offences. The appellant seems to argue that if she is to be held to have been engaged in money laundering then she must be shown to have engaged directly or indirectly in some other transaction involving such proceeds of crime consisting of money or other property other than the commission of the said offence/s from which money or any other property was initially derived or realised.

[24] However, it is clear that for an accused to commit money laundering it is sufficient if another person other than the accused has derived or realised money or any other property by the commission of a serious offence ('generating crimes') and then for the accused to directly or indirectly engage in some other transaction involving such proceeds of crime; the accused need not be the person who derives or realises proceeds of crime. On the other hand, in a given situation it is also possible that the accused could initially derive or realise proceeds of crime and he could thereafter engage in money laundering by engaging directly or indirectly in some other transaction involving such proceeds of crime.

[25] If the evidence had established that the appellant with the other appellant had forged the cheques and stolen the funds of Pacific Theological College by falsifying the documents (by overpaying them as wages, forging the cheques payable to various entities and paid either into their account or encashed it), obviously such money became proceeds of crime. They were no more 'clean money' but tainted money. Any engagement with such money, directly or indirectly, in any transaction involving that money thereafter amounted to money laundering.

[26] According to the summing-up the prosecution had led circumstantial evidence that the appellant had appropriated the money in the Westpac Bank account 71127300 by overpaying as wages to her and forging the cheques payable to various entities and encashing them thus engaging in transactions involving such proceeds of crime. The state submits that the falsified financial record/cheques attributed to the appellant had led to the payment of money which then became proceeds of crime of several predicate offences such as the ones mentioned by the appellant herself. According to the state, the appellant had thereafter taken that money out of the bank as shown by her statements of accounts and all the monies alleged in count 03 had been withdrawn by the appellant and her co-accused. Thus, the state argues the appellant was engaged in a transaction involving proceeds of crime thus committing money laundering. The state cites **Khera v State** [2016] FJSC 25; CAV0003 of 2016 (22 June 2016), **State v Kapoor** [2016] FJCA 113: AAU 29 of 2012 (30 September 2016) and **Shyam v State** [2015] FJCA 8 AAU 98 of 2013 (15 January 2015) and [2019] FJCA 119:AAU 103 of 2018 (03 October 2019) and **State v Hussein** [2019] FJHC 1172: HAC 317 of 2015 (25 November 2019) as cases where facts similar to the appellant's case were thought to have satisfied the elements of money laundering.

[27] Thus, had the prosecution succeeded in proving beyond reasonable doubt that the money was 'proceeds of crime' *i.e.* proceeds of a serious offence or offences, then also proved beyond reasonable doubt that the appellant had engaged in a subsequent transaction/s, directly or indirectly involving such proceeds of crime with the required fault element namely alleged appropriation of such money by the appellant from Westpac Bank account 71127300 by withdrawals or otherwise, in my view the prosecution had proved a case of money laundering beyond reasonable doubt.

[28] However, the prosecution had not alleged the commission of any other serious offence in the information by the appellant such as the ones pointed out by her leading to the money involved becoming 'proceeds of crime'. The appellant had, however, not argued that it is a precondition to prefer a charge on a generating crime or a predicate offence to have a charge under the Proceeds of Crimes Act for money laundering. I think an accused could be charged under the Proceeds of Crimes Act for money laundering with or without charging him or her with having committed generating crime/s. This is part of the prosecutorial discretion. However, the prosecution at all times should prove that the money or other property was proceeds of crime and the accused engaged, directly or indirectly in another transaction involving that money or property accompanied by the fault element *i.e.* actual or imputed knowledge, in order to successfully establish a charge of money laundering.

[29] The appellant had stated in evidence that any overpayments to her as alleged in count 1 were for overtime and in lieu of maternity leave and that she had not altered the cheques and encashed them as alleged in count 3.

[30] Therefore, the appellant's first ground of appeal involves more questions of facts and less of law and only the full court could examine them with the benefit of the complete appeal record.

***02nd ground of appeal***

[31] The appellant complains that the charges against her were bad for duplicity and were inconsistent with evidence in that particular emphasis is placed on the words *'engaged directly or indirectly'* and *'knowing or ought to have reasonably known'* in charges 01 and 03. She amplifies her argument by submitting that a prosecutor may not ordinarily charge in one count of an indictment, information or complaint two or more separate offences provided by law and has submitted several foreign decisions in support of her position. However, the appellant had not stated whether she got misled in her defence and if so how he was misled as a result of this alleged defects in the charges.

[32] The state has submitted that no objection whatsoever was taken to the charges at any stage of the proceedings in the High Court and in any event the appellant was charged with one offence in each of the two charges and the manner of committing the two offences of money laundering in respect of two transactions covering two different time periods were clearly mentioned in the body of the charges. The state cites the Privy Council consolidated appeals of **Cheung Chee-Kwong v The Queen** (Appeal No.34 of 1978) AND **Attorney General v Cheung Chee-Kwong (Hong-Kong)** [1979] UKPC 26 (25 June 1979); [1979] 1 WLR 1454; [1979] Crim LR 788; [1979] WLR 1454 in support of its position.

[33] Any complaint of this sort should be considered in the legal frame work provided in **Saukelea v State** [2019] FJSC 24; CAV0030.2018 (30 August 2019) in Fiji where the Supreme Court held

> *'[36] The main consideration in situations similar to this where there is some infelicity or inaccuracy of drafting is whether the accused knew what charge or allegation he or she had to meet: **Koroivuki v The State** CAV 7 of 2017: [2017] FJSC 28. Secondly it was important that the accused and his counsel were not embarrassed or prejudiced in the way the defence case was to be conducted: **Skipper v Reginam** Cr. App. No. 70 of 1978 29th March 1979 [1979] FJCA 6. ..'*

[34] In **Shekar v State** [2005] FJCA 18; AAU0056.2004 (15 July 2005) the Court of Appeal had usefully remarked

> *'[14]..... The purpose of the charge is to ensure that the accused person knows the offence with which he is being charged. Whilst the particulars should be as informative as is reasonably practicable, it is not necessary slavishly to follow the section in the Act.*
>
> *'[18] It is and has long been counsel's responsibility to ensure the charge is correct. In this case the prosecution could and should undoubtedly have worded the charges better. Equally it is defence counsel's duty to ensure that his client understands the nature of the charge before he enters a plea. If the charge does not give sufficient or clear information, an application should be made to the court for correction. The court's duty, if amendment is permitted, is to allow the defence time to deal with the changes. Section 242 makes that clear.*

[35] In any event, as the respondent has submitted the form and content of a charge or information is dictated by section 58 and 61 of the Criminal Procedure Act, 2009 and any objection to the information should be taken up at the first instance as required by section 241 of the Criminal Procedure Act, 2009.

[36] Accordingly, I see no reasonable prospect of success in appeal on this ground of appeal.

***03rd ground of appeal***

[37] The appellant complains that the trial judge had misdirected the assessors and himself as to what amounted to proceeds of crime, when the money stolen by her became proceeds of crime and the required state of mind. Reference is particularly made to paragraphs 12, 13, 17 and 33 of the summing-up and paragraph 6 of the judgment. It is further alleged that the directions of the summing-up in the above paragraphs are really on the offence of theft or deception.

[38] The state has responded by stating that in paragraph 12 and 13 the trial judge had directed the assessors as to what could be considered as proceeds of crime particularly stating that *'If they falsify the financial documents and Pacific Theological College cheque to overpay themselves, the money received are proceeds of crime.'* Then in paragraph 34 the judge had dealt with how the appellant had deposited large sums of money into her account at the material time indicating that she had engaged in a transaction involving proceeds of crime. In any event the state submits that the prosecution had sought redirections on the definition of 'serious offence' and 'proceeds of crime' and the trial judge had accordingly addressed the assessors. However, the redirections are not available to me at this stage and would be reflected only on the judge's notes.

[39] Therefore, whether the appellant's complaint is still valid in the light of redirections could be examined only by the full court with the aid of complete appeal record. Thus, I refrain from making any ruling on this ground of appeal at this stage.

***04th ground of appeal***

[40] The appellant's argument is based on the trial judge's statement in paragraph 19 of the summing-up to the effect

> *'On 28 August 2018, the information was put to both accused, in the presence of their counsels. Both accused pleaded not guilty to all the counts. In other words, both accused denied the allegations against them. When a prima facie case was found against each of them, at the end of the prosecution's case, wherein they were called upon to make a defence, accused no. 1 choose to give sworn evidence and choose not to call any witness. Accused no., 2 choose to remain silent, and choose not to call any witness. The above stance was well within the accused's' rights.*

[41] The appellant relies on **Raqio v State** [2020] FJCA 6; AAU61.2015 (27 February 2020) in support of her argument that the trial judge's impugned comments misled the assessors that the judge had already found her guilty. However, having examined a similar complaint Nawana J. with the other two judges agreeing said

> *'[32] I, accordingly, hold that there is merit in the complaint made on behalf of the appellant in the first ground of appeal. Nevertheless, I subscribe to the view that, although the learned judge had made a general reference as to the existence of a prima facie case, he had not referred to any specific contested issue in a conclusive manner as found in Smith's case (supra). Hence, I am of opinion that no perceivable prejudice could have caused to the appellant affecting the legitimacy of the trial.'*

[42] There is no reasonable prospect of success in this ground of appeal.

***05th ground of appeal***

[43] The appellant contests the dock identification of the appellant by the witnesses of Westpac Bank as the person encashing the cheques at the material time and argues that the trial judge had failed to direct the assessors that it was dangerous to accept dock identification without an identification parade. The trial judge had directed the assessors on this evidence at paragraph 35 of the summing-up.

[44] It is not clear whether the appellant had raised a serious issue on identification at the trial and also whether any redirections had been sought specifically on the dock identification if that was a first time identification after the appellant had allegedly withdrawn a large sum of money from the bank on several occasions. The state submits that she was well known to those witnesses who had served her for several years suggesting that her identification was not in issue at the trial.

[45] The appellant has cited several foreign decisions with regard to her ground of appeal. The law relating to first time dock identification in Fiji had been extensively dealt with in **Naicker v State** CAV0019 of 2018: 1 November 2018 [2018] FJSC 24, **Korodrau v State** AAU090 of 2014:3 October 2019 [2019] FJCA 193 and the appellant's complaint has to be looked at in the light of the tests formulated in these decisions. But at this stage, without more it is difficult to go into the question whether the appellant's identification was a real issue at the trial and if so, the judge had dealt with it correctly without the complete appeal record. Thus, for the time being, I make no pronouncement on this ground of appeal.

***06th ground of appeal***

[46] This ground of appeal concerns the verbal admission allegedly made to PW2 by the appellant who now argues that PW2 was a person in authority and therefore the trial judge failed to direct the assessors on the law relating to the admission of a confession to a person in authority. The alleged confession is dealt with in paragraph 13 of the summing-up where PW2's evidence had been summarised including the part *'PW2 said, both verbally admitted stealing money from Pacific Thelogical College at the material time'*. The appellant relies on the authority of several foreign cases and the Fiji High Court decision in **State v Panapasa** [2011] FJHC 694; HAC034.2009 (5 April 2011) where Gounder J had said

> *'[29] In this case, I do not feel sure that the threat or inducement alleged by the Accused was not made by the financial controller in the absence of any evidence from him. His evidence was crucial for the prosecution to discharge the burden to prove the voluntariness of the confession made by the Accused to her employer. I find the Accused has discharged the evidential burden of proof that her employer was a person in authority, but the prosecution has*

*failed to discharge the legal burden of proof that her oral and written confessions to her employer were made voluntarily. The confessions made to her employer are held to be inadmissible.*

[47] However, unlike in ***Panapasa***, PW2 to whom the appellant had made the alleged verbal confession had given evidence and it is essential to find out whether the defence had challenged making the confession and then the voluntariness in cross-examination of PW2 and then whether she took up her current stand in her own evidence. I cannot find any material in the summing-up or in the judgment to suggest anything in that regard. If not, the trial judge cannot be faulted for not having directed the assessors as submitted by the appellant. Only the complete appeal record would reveal what the actual position is.

[48] Therefore, at this stage there is no reasonable prospect of success in appeal on this ground of appeal.

***07th ground of appeal***

[49] The appellant's argument here is that the trial judge erred in law by failing to hold that the prosecution should proceed by laying a separate count in respect of each transaction of alleged money laundering under section 69 of the Proceeds of Crimes Act. She relies on the remarks of Calanchini J in **Arora v State** [2017] CAV0033 of 2016 (06 October 2017) where he had held that in money laundering offences separate incidents cannot be combined into a single charge. However, in **Shyam v State** [2019] FJCA 198; AAU103.2017 (3 October 2019) the Court of Appeal upheld the 'rolled-up' charge as the information had contained a schedule of all transactions whereas in ***Arora*** there was none.

[50] The state argues that the remarks of Calanchini J in ***Arora*** should be regarded as *obiter* because the point on the charge was not taken up by counsel at the hearing and the comments of Calanchini J had come after the court had already decided to allow the appeal on other grounds and relies on **The Queen v The Parole Board** [2019] EWCA Civ 220 to buttress its position. It further argues (contrary to the view of Calanchini J on section 70 (2) of the Criminal Procedure Act, 2009 that the offence of

money laundering under section 69 does not fall within the description of an *'offence involving theft, fraud, corruption or abuse of office.'*), the word *'involving'* as opposed to *'of'* in 70(2) of the Criminal Procedure Act means any involvement of elements of theft, fraud etc. could be charged as gross amounts. Further fraud (or even corruption) is not a stand-alone offence in Fiji and many offences such as conversion, obtaining property by deception involve fraud. The state's position is that fraud was an essential element of the charges preferred against the appellant and therefore section 70 of the Criminal Procedure Act allows the charges to contain the gross amounts and if not there would have been counts in excess of 100 in respect of individual separate transactions. One might come up with a similar argument based on section 70(1) of the Criminal Procedure Act as well because of the presence of the words *'other misappropriation of property'*.

[51] However, the state has not explained as to why it could not annex a schedule as in ***Shyam*** containing all those separate transactions while having 'rolled-up' charges for the gross amount. Leave aside the question whether Calanchini J in ***Arora*** should be regarded as *obiter* and whether section 70 of the Criminal Procedure Act permits a rolled-up charge in respect the gross amount, this issue should be resolved in the frame work prescribed by the Supreme Court in ***Saukelea*** and the Court of Appeal said in ***Shekar*** . To me, it is nothing but fair that any accused facing a charge of money laundering is provided with adequate information of the individual transactions forming the gross amount as given in a rolled-up charge by way of a schedule or disclosures relating to the impugned individual transactions in order to allow a meaningful defence.

[52] There is no material to conclude that the appellant had taken up an objection to the charges on this basis at the trial in the High Court or how she had been misled in her defence by lack of details of individual transactions. Yet, it does appear that the exhibits produced at the trial may have disclosed the details of those transactions.

[53] This involves an important question of law which should be clarified and an authoritative pronouncement should be made and then a question of facts. Both could be examined by the full court when the complete appeal record is available and I refrain from expressing any view on the legal position argued by respective parties for good reasons but as it raises an important pure question law too no leave to appeal is required. However, as a matter of formality on the question of law on the validity of the charges *vis-à-vis* the legal arguments discussed above, I allow leave to appeal. I make no comment on the prospect of success of the appeal on this ground of appeal.

***08th ground of appeal***

[54] The appellant argues that the trial judge in his directions to the assessors in paragraph 29 of the summing-up had failed to apply the proper test regarding circumstantial evidence. She has cited some foreign judgments including the well-known case of **R v Exall** (1866) 4F & F, 992 at 929 and the Fiji decision in **Nute v The State** [2014] FJSC 10; CAV0004 of 2014 (19 August 2014) in support of her contention.

[55] On the other hand the state has submitted that the entire case of the prosecution was based on circumstantial evidence which was adequately summarised in the summing-up and pointed out that the relevant circumstantial evidence linking the appellant to the crime had been dealt with in paragraphs 30 and 35 of the summing-up. It relies on **Beeby v State** [2018] FJCA 93; AAU63.2014 (14 June 2018) to justify the adequacy of the directions on the assessors by the trial judge. **Nadim v State** [2015] FJCA 130; AAU0080.2011 (2 October 2015) also discusses a similar complaint in detail where the case of ***R v Exall*** (supra) was considered.

[56] In the light of the decisions in ***Beeby*** and ***Nadim*** I do not think that the appellant has a reasonable prospect of success upon this ground of appeal.

***09th ground of appeal***

[57] This ground of appeal involves lots of facts not borne out by the available material at this stage. The appellant seems to complain that there was no evidence as to who had

forged or impeded with the documents and the bills, and the trial judge had not addressed the assessors on that aspect. Specific reference is made to paragraph 7 of the judgment. According to the appellant, the trial judge had not mentioned anything that goes anywhere near money laundering but only fraud and stealing money in his judgment. She also alleges that her evidence on a memorandum authorising over-payment had not been even put to the assessors and in general her defence had not been adequately addressed.

[58] The state argues that the prosecution case was not run on the basis that the appellant had forged documents or signatures. According to the respondent the appellant had not produced any authorisation for the overtime payments. With regard to the bills the summing-up in paragraphs 32-35 had clearly shown that the cheques had payees altered to fictitious names and they had been encashed by the appellant but the real billers had not been paid.

[59] Therefore, these contrasting accounts in evidence could only be verified with the aid of the complete appeal record by the full court and I am unable to make any determination on the prospect of success of this ground at this stage.

***10th ground of appeal***

[60] The appellant submits relying on the decision in **Prasad v State** [2017] FJCA 112; AAU105.2013 (14 September 2017) that the trial judge had not directed the assessors that they should carefully examine evidence presented by the defence to decide, not necessarily whether they believe that evidence or not, but whether such evidence is capable of creating a reasonable doubt in their minds.

[61] The appellant had been defended her counsel who apparently had not raised any redirections on this aspect with the trial judge. Therefore, technically the appellant is not even entitled even to raise such points in appeal at this stage [vide **Tuwai v State** CAV0013.2015: 26 August 2016 [2016] FJSC 35 and **Alfaaz v State** [2018] FJSC 17; CAV0009.2018 (30 August 2018)].

[62] On the other hand the state argues that in paragraph 38 of the summing-up the trial judge had dealt with how the assessors should consider the appellant's evidence stating *inter alia* that

> *'I have summarized the accuseds' cases for you from paragraphs 19 to 21 hereof. I repeat the same here. If you accept Accused No. 1's denial of the allegations against her, you must find her not guilty as charged. If you don't accept her denial, nevertheless consider the strength of the prosecution's case as a whole. If you are not sure of the accuseds' guilt, you must find them not guilty as charged on all counts. If you are sure of the accuseds' guilt, you must find them guilty as charged on all counts. It is matter entirely for you.'*

[63] I do not think that this ground of appeal has a reasonable prospect of success.

***11th ground of appeal (sentence)***

[64] The appellant's contention is that the trial judge had taken a wrong starting point in sentencing the appellant and considered extraneous and irreverent matters to guide the final sentence.

[65] The trial judge had taken sentencing tariff for money laundering as between 05 to 12 years and started with a sentence of 09 years having already set out the aggravating and mitigating factors. Thereafter, 05 years had been added for aggravating features and after giving discount for mitigating factors and time in remand, the trial judge had arrived at the final sentence of 11 years.

[66] The sentencing process does seem at odds with guidance provided in **Naikelekelevesi v State** [2008] FJCA 11; AAU0061.2007 (27 June 2008), **Koroivuki v State** [2013] FJCA 15; AAU0018 of 2010 (05 March 2013) and **Nadan v State** [2019] FJSC 29; CAV0007 2019 (31 October 2019).

[67] In ***Naikelekelevesi*** it was held by the Court of Appeal

> *22. 'In Fiji sentencing now involves a more structured approach incorporating a two tier process. The first involves the articulation of a starting point based on guideline appellate judgments, **the aggravating features of the offence [not the offender]**; the seriousness of the penalty as*

*set out in the act of parliament and relevant community considerations.* ***The second involves the application of the aggravating features of the offender*** *which will increase the starting point, then balancing the mitigating factors which will decrease the sentence, leading to a sentence end point. Where there is a guilty plea, this should be discounted for separately from the mitigating factor in a case.*

*23. In determining the starting point for a sentence the sentencing court must consider the nature and characteristic of the criminal enterprise that has been proven before it following a trial or as in this instance the facts that were outlined to the appellant after his guilty plea was entered and he was convicted, to which he voluntarily admitted. In doing this the court is taking cognizance of the aggravating features of the offence.*

[68] The Court of Appeal without citing ***Naikelekelevesi*** said in ***Koroivuki:***

*'[27] **In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this stage**. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.'*

[69] The Supreme Court remarked in **Nadan** particularly on double counting as follows:

*"The application for leave to appeal against sentence*

*[38] The challenge to the sentence is that the judge unwittingly double-counted some of the aggravating features. The argument runs like this. Having identified the tariff for the rape of a child as 10-16 years' imprisonment, the judge must have reflected some of the features which made this a serious case by taking 12 years as his starting point. That is because he said that one of the factors which had caused him to choose that starting point was "the seriousness surrounded with the circumstances of the offence". He then set out the aggravating factors which caused him to increase the length to 15 years. They were the age of the girl when the abuse began, the breach of trust which the abuse involved, the threats Nadan made to deter her from speaking out, and the impact which the abuse had on her. These were unquestionably all aggravating factors, but the difficulty is that we do not know whether all or any of these aggravating factors had already been taken into account when the judge selected as his starting point a term towards the middle of the tariff. If he did, he would have fallen into the trap of double-counting.*

*[39] This illustrates the pitfalls inherent in the mechanistic way judges arrive at an appropriate sentence in Fiji – assigning a particular additional term for any aggravating features and a particular lesser term for any mitigating*

*features. In many jurisdictions, the court identifies its starting point, states the aggravating and mitigating factors and then announces the ultimate sentence without saying how much was added for the aggravating factors and how much was then taken off for the mitigating factors. But the real problem which this case illustrates is the danger of a span of years representing the tariff without identifying where the judge should start within that tariff for a case without any aggravating or mitigating features. This problem has been highlighted before by the Supreme Court: see* ***Seninolokula v The State*** *[2018] FJSC 5 at paras 19 and 20 and* ***Kumar v The State*** *[2018] FJSC 30 at paras 55 and 56.*

*[40] Two other things which the Supreme Court said in Kumar at paras 57 and 58 in this context are relevant to the present case:*

> *"57. ... First, a common complaint is that a judge has fallen into the trap of 'double-counting', i.e. reflecting one or more of the aggravating features of the case more than once in the process by which the judge arrives at the ultimate sentence. If judges choose to take as their starting point somewhere in the middle of the range, that is an error which they must be vigilant not to make. They can only then use those aggravating features of the case which were not taken into account in deciding where the starting point should be.*
>
> *58. Secondly, the lower [end] of the tariff for the rape of children and juveniles is long. Sentences of 10 years' imprisonment represent long periods of incarceration by any standards. They reflect the gravity of these offences. But it also means that the many things which make these crimes so serious have already been built into the tariff. That puts a particularly important burden on judges not to treat as aggravating factors those features of the case which will already have been reflected in the tariff itself. That would be another example of 'double-counting', which must, of course, be avoided."*

*[41] Seninolokula and Kumar were, of course, decided well after the High Court passed sentence in Nadan's case, and the judge cannot therefore be criticised if he did not heed this advice. The fact is, though, that we just do not know whether the judge in arriving at his starting point of 12 years had already reflected any of the aggravating factors which caused him to go up to 15 years before allowing for mitigation. In case he had done that, and had therefore fallen into the trap of double-counting, I have considered for myself what the proper sentence in this case should be.*

*[42] It was, on any view, a bad case of its kind. I have already identified the factors which the judge rightly regarded as aggravating Nadan's offending. In addition there was the fact that there were three separate incidents, and they spanned almost two years. The girl would continually have been in fear with Nadan continuing to live under the same roof. In my opinion, concurrent sentences totaling 14 years' imprisonment for the totality of Nadan's offending would have been appropriate.*

[70] I get the feeling that the trial judge may have unwittingly indulged in double counting in the process of deciding the appellant's final sentence. I dealt with this aspect in detail in **Salayavi v State** AAU0038 of 2017 (03 August 2020) and do not wish to repeat those remarks here. However, as I said in ***Salayavi*** the final sentence will be tested in appeal in the legal framework pronounced made in **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006).

> *'13. ..... This argument misunderstands the sentencing process. It is not a mathematical exercise. It is an exercise of judgment involving the difficult and inexact task of weighing both aggravating and mitigating circumstances concerning the offending, and recognising that the so-called starting point is itself no more than an inexact guide. Inevitably different judges and magistrates will assess the circumstances somewhat differently in arriving at a sentence. **It is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered.** Different judges may start from slightly different starting points and give somewhat different weight to particular facts of aggravation or mitigation, yet still arrive at or close to the same sentence.'*
>
> *[15] Further, even if the starting point was too high, it does not follow that the sentence ultimately imposed will be one that falls outside an appropriate range for the offending in question. ..... '*

[71] Similar sentiments had been expressed earlier in **Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015) where the Court of Appeal stated:

> *'[39] ..... The present process followed by the courts in Fiji emanated from the decision of this Court in **Naikelekelevesi –v- The State** (AAU 61 of 2007; 27 June 2008). As the Supreme Court noted in **Qurai –v- The State** (CAV 24 of 2014; 20 August 2015) at paragraph 48:*
>
> > *"The Sentencing and Penalties Decree does not provide specific guidelines as to what methodology should be adopted by the sentencing court in computing the sentence and subject to the current sentencing practice and terms of any applicable guideline judgment, leaves the sentencing judge with a degree of flexibility as to the sentencing methodology, which might often depend on the complexity or otherwise of every case."*
>
> *[40] In the same decision the Supreme Court at paragraph 49 then briefly described the methodology that is currently used in the courts in Fiji:*

> *"In Fiji, the courts by and large adopt a two-tiered process of reasoning where the (court) first considers the objective circumstances of the offence (factors going to the gravity of the crime itself) in order to gauge an appreciation of the seriousness of the offence (tier one) and then considers all the subjective circumstances of the offender (often a bundle of aggravating and mitigating factors relating to the offender rather than the offence) (tier two) before deriving the sentence to be imposed."*

*[41] The Supreme Court then observed in paragraph 51 that:*

> *"The two-tiered process, when properly adopted, has the advantage of providing consistency of approach in sentencing and promoting and enhancing judicial accountability _ _ _."*

> *[45] In determining whether the sentencing discretion has miscarried this Court does not rely upon the same methodology used by the sentencing judge. The approach taken by this Court is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range. It follows that even if there has been an error in the exercise of the sentencing discretion, this Court will still dismiss the appeal if in the exercise of its own discretion the Court considers that the sentence actually imposed falls within the permissible range. However it must be recalled that the test is not whether the Judges of this Court if they had been in the position of the sentencing judge would have imposed a different sentence. It must be established that the sentencing discretion has miscarried either by reviewing the reasoning for the sentence or by determining from the facts that it is unreasonable or unjust.'*

[72] However, when the final sentence is reviewed by the Court of Appeal one of the essential matters that would be considered is the range of sentences for money laundering. In **Naidu v State** [2020] FJCA 80; AAU0099.2018 (16 June 2020), I looked at this aspect in somewhat detail as the trial judge had remarked that the tariff for money laundering was not well settled in Fiji and it was difficult to lay down guidelines for sentencing in money laundering cases but the trial judge in the end had concluded that the tariff for money laundering should range from 05 years to 12 years of imprisonment. Having examined all the decisions cited by the trial judge, I found that not all judges in the High Court have applied the above range of sentence and the sentences imposed on accused in money laundering cases have varied considerably across a wide range depending on the individual cases. Therefore, I felt that it would be better for the state to seek a guideline judgment from the Court of Appeal on the appropriate tariff in money laundering cases to ensure that there is some degree of

uniformity as remarked in ***Korolvuki.*** [See paragraph 33 of **Nadavulevu v State** [2020] FJCA 14; AAU119.20215, 115.2015, 129.2015 (27 February 2020) for similar comments]

> *'[26] The purpose of tariff in sentencing is to maintain uniformity in sentences. Uniformity in sentences is a reflection of equality before the law. Offender committing similar offences should know that punishments are even-handedly given in similar cases. When punishments are even-handedly given to the offenders, the public's confidence in the criminal justice system is maintained.'*

[73] In the circumstances above discussed, it is difficult to state at this stage that the appellant has a reasonable prospect of success in appeal on the sentence appeal even if the full court is to hold that there is a sentencing error based on double counting in terms of the guidelines in **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011).

[74] The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. For a ground of appeal timely preferred against sentence to be considered arguable there must be a reasonable prospect of its success in appeal. The aforesaid guidelines are as follows.

> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration.*

[75] However, in order for the full court to set down appropriate sentencing guidelines in terms of applicable tariff regarding money laundering cases, if taken up by the respondent, I allow leave to appeal against sentence.

[76] However, it should be clear from the above discussion on several grounds of appeal against conviction and sentence that the appellant cannot be said to have a *'very high likelihood of success'* in her appeal at this stage and therefore, she is not entitled to bail pending appeal. No other exceptional circumstances including extremely adverse

personal circumstances have been demonstrated on behalf of the appellant either. Therefore, it is futile to consider the rest of matters set out in section 17(3) of the Bail Act.

**Order**

1. Leave to appeal against conviction is allowed.
2. Leave to appeal against sentence is allowed.
3. Bail pending appeal is refused.

COURT OF APPEAL FIJI

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**Hon. Mr. Justice C. Prematilaka**
**JUSTICE OF APPEAL**