



2. According to the submissions of Counsel for the Complainant, the outstanding wages were due to the employees, primarily as a result of overtime hours worked and for failure to pay penalty rates for public holiday work during the relevant period.
3. Ms Mataigusu for the Labour Office produced the letter of demand served on Mr Dobui of the Defendant on 18 March 2014.
4. The Defendant has pleaded guilty to the offence.

### **Submissions of the Complainant**

5. Ms Mataigusu brought to the Tribunal's attention the following factors that she submits would warrant the maximum possible penalty to be imposed by the Tribunal. This included:-
  - The lack of assistance that Mr Dubui provided to the Labour Office in its investigation and demand process<sup>1</sup>; and
  - The number of workers involved.
6. On a positive note, Counsel advises that a Memorandum of Understanding has been proposed to the Defendant, in a bid to satisfy the demand. This is anticipated to be finalised within the week, or the alternative is that the Labour Office will prosecute for these unpaid entitlements also.<sup>2</sup>
7. Ms Mataigusu also sought that the Labour Office be reimbursed the costs of the investigation process in an amount of \$800.

### **Submissions of the Defendant**

8. Mr Raikanikoda advised the Tribunal of the following factors that should be taken into consideration as mitigation:-
  - The business is only in its infancy and is financially vulnerable;
  - Many of the workers employed by the business, were content to receive less than the prescribed statutory entitlement, rather than have no job at all;

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1. Ms Mataigusu advised that the Defendant had failed to attend four meeting opportunities, where he was invited to assist in the resolution of the issues. The Defendant also failed to respond to several telephone calls made by the Labour Office.

<sup>2</sup> I have taken this action into account when reviewing the appropriate capacity of the Tribunal to deal with this matter within the monetary limits imposed by Promulgation.

- An accounting report prepared by Jaswant Munesh and Associates reveals frugal trading conditions for the three year period 2012 -2014; and
- The Defendant is a first offender and will not likely reoffend.

### Considerations of the Tribunal

9. The relevant sentencing principles and guidelines are set out within Section 4 of the *Sentencing and Penalties Decree 2009*.
10. In reaching its decision, the Tribunal notes among other things that the Defendant was only provided with an amended set of complaints last week.<sup>3</sup> It is therefore acknowledged that the plea of guilty entered, has been done so with a view to provide for an expeditious dealing of the matter.
11. The Tribunal nonetheless notes the apparent large number of complaints regarding the exploitation of workers in this industry.<sup>4</sup> Too often workers are engaged in situations where they are provided little protection from bad weather conditions, they are required to work very long hours and in some cases working seven days per week. If it is the case on top of all that, they are not being paid in accordance with the prescribed Wages Order, creates a situation that requires intervention of the law and the denunciation of exploitative practices.
12. The fact that workers may seek to work in arrangements that provide less than the statutory entitlement,<sup>5</sup> is not the point. The prescribed entitlements have been identified to safeguard the conditions for all in the industry and without some level of protection, render the negotiating imbalance between employees and businesses, all too one sided.
13. In reaching its decision, the Tribunal also notes the large number of workers who have been impacted by the underpayment on this occasion. The Defendant, Mosese Qio Dubui is fined \$2000 to be paid within 60 days. Further, as a demonstration of the seriousness of this offence and the need to ensure that others are safeguarded against any possible ongoing conduct, I convict the Defendant to a term of imprisonment of 28 days, the term of which is fully suspended for a period of 12

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<sup>3</sup> See Section 4(2)(f) of the *Sentencing and Penalties Decree 2009*.

<sup>4</sup> See Section 4(1)(e) of the Decree.

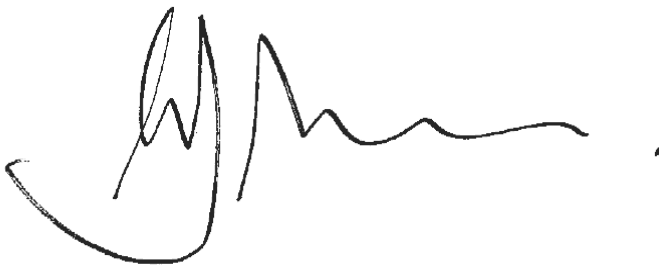
<sup>5</sup> Whether out of desperation or otherwise.

months. The Defendant is also required to pay the costs of the Complainant in the amount of \$800 within 30 days.

### **Decision**

This Tribunal Orders that Mosese Qio Dubui

- (i) Be sentenced to imprisonment for a period of 28 days, fully suspended, for a period of 12 months.
- (ii) Be fined the sum of \$2000 to be paid within 60 days.
- (iii) Pay the costs of the Complainant in the amount of \$800 to be paid within 30 days.

A handwritten signature in black ink, appearing to read 'A. See', with a large, stylized initial 'A' and a long, horizontal flourish extending to the right.

**Mr Andrew J See**  
**Resident Magistrate**