

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 007/2010**

**BETWEEN: THE FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION**

**PROSECUTION**

**AND**

**1. TEVITA PENI MAU  
2. DHIRENDRA PRATAP**

**ACCUSED**

**COUNSEL: Mr Aslam with Ms Leweni and Ms Lomani for the FICAC**

**Ms B Malimali and Ms M Savou for the 1st Accused  
Mr Raza for the 2<sup>nd</sup> Accused**

**Date of Hearing: 17/05/2013**

**Date of Ruling: 20/05/2013**

## **RULING**

01. The prosecution closed their case on 15/05/2013. At this stage counsels for the defence pursuant to section 231(1) of Criminal Procedure Decree 2009 invited the court to consider whether both accused has a case to answer. According to counsel for 1<sup>st</sup> accused all four elements of 1<sup>st</sup> charge are in dispute. According to counsel of 2<sup>nd</sup> accused he had no intention to extort monetary rewards from Post Fiji limited. But he only sought some recognition for his role as a Chartered Accountant. The accused are charged by an information as follows:

## **The First Count**

### **Statement of Offence**

**ABUSE OF OFFICE:** Contrary to Section 111 of the Penal Code Cap.17.

### **Particulars of Offence**

**TEVITA PENI MAU** on or about the 27<sup>th</sup> day of January, 2006 at Suva in the Central Division being a person employed in the public service namely as Managing Director of Post Fiji Limited, in the course of or in relation to his public office and in abuse of that office, did an arbitrary act in that he approved the payment of \$5,400.00 to Dhirendra Pratap the General Manager Finance of Post Fiji Limited, without the authority of Post Fiji Limited Board or the Higher Salary Commission, in prejudice to the rights of the said Post Fiji Limited.

## **The Second Count**

### **Statement of Offence**

**EXTORTION BY PUBLIC OFFICERS:** Contrary to Section 107 of the Penal Code cap 17.

### **Particulars of Offence**

**DHIRENDRA PRATAP** between the 31<sup>st</sup> day of January 2006 and the 28<sup>th</sup> day of February, 2006 at Suva in the Central Division, being a person employed in the Public Service as General Manager Finance for the Post Fiji Limited accepted a reward of \$5,400.00 for performance of his duty as General Manager Finance beyond his proper pay and emoluments.

02. In order to prove the offence of Abuse of Office against the 1<sup>st</sup> accused, the prosecution has to prove following elements beyond reasonable doubt.
  1. The accused was employed in the public service,
  2. He did an arbitrary act,
  3. He acted in abuse of the authority of his office,
  4. The act was prejudicial to the rights of another.
  
03. In order to prove the offence of Extortion by Public Officers against 2<sup>nd</sup> accused, the prosecution has to prove following elements beyond reasonable doubt.
  1. The accused was employed in the Public Service,
  2. He accepted a reward,

3. It was beyond his proper pay and emoluments,
  4. He accepted it for the performance of his duty as such officer.
04. The prosecution relies on direct, circumstantial and documentary evidence to prove the charges.
  05. The test at this stage of trial is whether there is some evidence on each elements of the offence. The evidence must be relevant and admissible. In **Kalisoqo v R** Criminal Appeal No: 52 of 1984, the Court of Appeal took the view that if there is some direct or circumstantial evidence on the charged offence, the Judge cannot say there is no evidence on the proper construction of section 293(1) (Under old Law). This view was later confirmed by the Court of Appeal in **State v Mosese Tuisawau** Cr. App. 14/90.
  06. In **State v Woo Chin Chae** [2000] HAC 023/99S Madam Shameem J summarized test under section 293(1):

*“In order to come to the conclusion that there was evidence direct or circumstantial, and irrespective of its weight, credibility or its tenuous nature it must be shown that the evidence in question is relevant, admissible and is in totality inculpatory of the accused. That means that the evidence in its totality must at least touch on all the essential ingredients of the offence”*
  07. In **State v George Shiu Raj & Shashi Shalendra Pal** [2006] AAU0081/05 Court of Appeal recently confirmed that the correct approach under 293(1) is to ask whether there is some relevant and admissible evidence on each element of the charged offence, and not whether the evidence is inherently vague or incredible.
  08. The prosecution led evidence in respect of 1<sup>st</sup> charge that that Post Fiji Limited is a Government Commercial Company which falls under the purview of Public Enterprises Act of 1996 and the managing Director was appointed by the Board of Directors of Post Fiji Limited. This evidence is agreed between the parties. Contract letter and the letter of appointment of 1<sup>st</sup> accused also had been agreed between the parties.
  09. Prosecution further submitted through their witnesses that the 1<sup>st</sup> accused authorised the payment to 2<sup>nd</sup> accused without the approval of Post Fiji Limited director board and Higher Salary Commission.
  10. It was agreed between parties that the Post Fiji Limited is a Government Commercial Company and the 2<sup>nd</sup> accused was appointed as General Manager Finance by the Managing Director. Also agreed that the 2<sup>nd</sup> accused received the payment of \$5,400.00. According to prosecution witnesses this payment was outside to his contract.

11. Without going in detail the evidence led by prosecution in support of the charged offence, I am satisfied that there is some evidence of involvement of accused persons in committing the offence. This matter, of course, a matter for the assessors to consider with all the evidence.
12. I find both accused persons have a case to answer and they are therefore put to their defence.

P Kumararatnam  
**JUDGE**

At Suva  
20/05/2013

