

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.: HAA 06 OF 2014**

**BETWEEN** : RAM JATTAN & SONS LTD  
**APPELLANT**

**AND** : FIJI COMMERCE COMMISSION  
**RESPONDENT**

**COUNSEL** : Mr. A. Kohli for the Appellant  
Mr. A. Reddy for Respondent

**Date of Hearing** : 23/06/2014  
**Date of Judgment** : 27/06/2014

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**JUDGMENT**

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01. Ram Jattan & Sons Limited (hereinafter "the appellant") was charged for one count of Offered for Sale by way of retail non-price controlled items without price being marked or displayed for the information of the public contrary to paragraph 3(a) of Legal Notice No: 29 of Counter Inflation (Price marking or Price Display of Non-Price Control Items and Services) Order 1992 amended Order 1994 breaching section 54(4) and Section 132(1) (2) and Section 129(3) of the Fiji Commerce Commission Decree No: 49 of 2010. The Charge was filed at the Labasa Magistrates' Court on 24/12/2013.

*The Particulars of Offence*

Ram Jattan & Sons Limited of Vulovi, Labasa in the Northern Division being a trader did on the 13<sup>th</sup> August 2013, offered for

sale by way of retail non-price controlled items without price being marked or displayed for the information of the public namely, 11 pieces of No. 13 Turks Corn Fed Chicken Frozen and 2 pieces of No. 14 Turks Corn Fed Chicken Frozen.

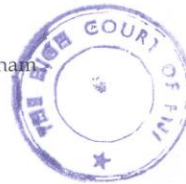
02. On 10/02/2014, the charge in respect of Criminal Case No: 716/2013 was read out to the Appellant. The Appellant pleaded guilty to the charge and admitted the summary of facts.
03. On the same day the appellant was sentenced to a penalty of \$10,000.00 and a cost of \$34.50 payable to the Fiji Commerce Commission.
04. The Appellant filed his appeal grounds against the sentence on 11/03/2014. The grounds of appeal against the sentence are that;
  - (i) The fine imposed is totally inconsistent with fines imposed on like cases;
  - (ii) The Learned Magistrate failed to take into consideration whether or not the Appellant has means to pay the fine imposed.
05. In the 1<sup>st</sup> ground of appeal the Appellant submits that the fine imposed totally inconsistent in comparison with like cases which had been decided by Magistrates' Courts in Fiji. The Appellant submitted two of such cases.
06. In the case of **Price & Income Board v R.C Manubhai** [2012] FJMC 36 the accused was charged with an offence of having for sale of non-price control items and failed to cause the same to be legibly and conspicuously either price marked or price displayed for the information of the public. The Magistrate in the above case imposed a fine of \$1,000.00 for the offence and in default 100 days imprisonment and prosecution was awarded a cost of \$33.75. The Appellant failed mention whether the accused had any previous convictions.
07. In the case of **Fiji Commerce Commission v Carpenters Fiji Limited**, Suva Magistrate's Criminal Case No: 124 of 2013 the accused in that case pleaded guilty to an offence of failing to display prices of non-price controlled items. The accused had previous conviction and as such this was the second offence that the accused trader was convicted and fined for breach of certain regulations of the Commerce Commission Decree 2010. The Learned Magistrate after careful consideration fined the accused the sum of \$1,000.00 to be paid in 30 days and in default 15 days imprisonment. A prosecution cost of \$34.50 was also ordered to be paid by the accused.

08. Upon perusal of the sentencing of this case the Learned Magistrate admitted that there were no aggravating factors. Further he disbelieved the explanation given by the Manager of the Appellant's company.
09. The Respondent cited the case of **Food For Less (Fiji) Limited v Fiji Commerce Commission** Criminal Appeal No: HAA 004 of 2014. The High Court Held:

*"This Court is not prepared to go behind the Magistrate's assessment of blame in the light of the Company's mitigation. This is the third offence of failure to mark the price of a price controlled item and in those circumstances the fine of \$7000.00 is not unreasonable. The Commission is controlling the price of certain goods for the benefit of the average family. Any action by the trader to thwart this intention must incur a heavy fine".*
10. Considering above mentioned Judgments from both Magistrates Court and High Court, I conclude that the fine imposed in this case is excessive.
11. As per paragraph 5 of the submissions of the Appellant it is quite evident that the Appellant's Company is well established and has been operating business in Labasa for a quite longer period of time. Hence the means test is not necessary in this case.
12. Considering all the factors in this case and submissions of both parties I substitute \$7,000.00 instead of \$10,000.00 fine imposed by Learned Magistrate. I make no order with regard to cost imposed by Learned Magistrate.
13. The Appeal against the sentence is allowed subject to above variation.
14. Appellant has 30 days to appeal.

P Kumararatnam

JUDGE



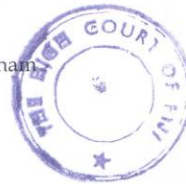
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09. The Respondent cited the case of **Food For Less (Fiji) Limited v Fiji Commerce Commission** Criminal Appeal No: HAA 004 of 2014. The High Court Held:

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P Kumararatnam

JUDGE



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