

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

**CRIMINAL CASE: HAC (FICAC) 2 OF 2014**

**BETWEEN** : **FIJI INDEPENDENT COMMISSION**  
**AGAINST CORRUPTION (“FICAC”)**

**AND** : **TIMOCI NAULU**

**Counsel** : **Ms F. Puleiwai & Ms L. Mausio for State**  
**Mr E. Maopa for Accused**

**Date of Hearing** : **29<sup>th</sup> September 2016 to 30<sup>th</sup> September 2016**  
**3<sup>rd</sup> October 2016 to 5<sup>th</sup> October 2016**

**Date of Closing Submissions :** **6<sup>th</sup> October 2016**

**Date of Summing Up :** **11<sup>th</sup> October 2016**

**Date of Judgment :** **12<sup>th</sup> October 2016**

**Date of Sentence :** **17<sup>th</sup> October 2016**

**SENTENCE**

1. Mr. Timoci Naulu, You have been found guilty and convicted by this court for two counts of Bribery contrary to Section 4(2) (a) of the Prevention of Bribery Promulgation No 12 of 2007. According to Section 12 (1) (a) (iii) of the promulgation, the penalty for the offence of Bribery as described under Section 4 (2) (a) is a fine of \$500,000 and an imprisonment of 7 years.
2. It was proved at the conclusion of the hearing that you, being the Crime Officer of the CID branch of the Border Police Station in Nadi, solicited an advantage of

FJD 5000 from one Kamlesh Kumar in order to finish two pending cases against him with the Border Police Station. At the time material to this case, you were holding a rank of the Acting Inspector of Police in the Fiji Police Force. You solicited the above said advantage of FJD 5000 from Kamlesh Kumar, while he was detained at the Border Police Station on the 25th of September 2013. Once Kamlesh Kumar was granted bail by the court on the 26th of September 2013, you had been calling him on his mobile phone, requesting him to give you the said advantage. You then made arrangement with Kamlesh Kumar to meet at the "Chicken Bites" Restaurant, Namaka, Nadi on the 29th of September 2013. You then received FJD 200 and AUD 200 from Kamlesh Kumar at the "Chicken Bites" Restaurant in order to finish the two pending charges against him with the Border Police Station. At the time you received the said advantage of FJD 200 and AUD 200, you were arrested by the FICAC officers.

3. Undoubtedly, offences of Bribery and Corruption committed by the public officers adversely and seriously affect the very fundamental fabric of the society. Public officers are the intermediary link between the State and Public. They are appointed to implement and provide the duties, responsibilities and the protection undertaken by the State towards the public. It is with the collective agreement of the citizens, that they hand over their individual and collective responsibilities, duties and rights to the State, while providing legitimacy for the functioning of the State. Hence, it is paramountly important to the State to maintain high standard of transparency and integrity in performing its duties and responsibilities through the public officers. Otherwise, the trust and the confident the public have entrusted in State would erode, leading to a catastrophic end of the State.

4. In view of the seriousness of the offences of this nature and its adverse effects on the public and the State, it is my view that the court in sentencing offenders of this nature must impose heavy and severe punishment. Accordingly, the main purpose of this sentence is founded on the principle of deterrence and protection of the community.
5. Having considered the serious nature of the offences of this nature, I now turn onto discuss the applicable tariff limit for an offence of Bribery as stipulated under Section 4 (2) of the Promulgation.
6. Justice P. Fernando in FICAC v Niraj Singh [2010] FJHC 94; HAC004.2010 (19 March 2010) having selected two years as the starting point, has imposed a sentence of eight months imprisonment period for an offence of bribery under the Section 4 (2) (b) of the Promulgation. In **Niraj Singh (supra)**, the accused has solicited an advantage of \$ 100 and then accepted \$ 100 in order to expedite the proceedings in the Small Claims Tribunal.
7. Justice Temo in State v Chen Xue Liang and Dechaun Zhao ( 2010) FJHC;HAC 050.2010S (16 June 2010) held that the tariff for the offence of bribery under Section 4 (1) (c) of the Promulgation is a sentence between 2 1/2 years to 4 years imprisonment. In **Chen Xus Liand (supra)** the Court imposed three years imprisonment period (suspending two years of it for a period of 12 months) for an offence of offering an advantage of one box of Chinese tea and FJD 6000 to the Permanent Secretary for Ministry of Finance.
8. In view of the sentencing approached adopted in FICAC v Mohammed [2015] FJHC 479; HAC349.2013 (24 June 2015) and FICAC v Maharaj [2016] FJHC 114;

HAC334.2013 (18 February 2016), it appears that the court has now been guided by the UK sentencing guideline in sentencing offenders for the bribery related offences.

9. In **FICAC v Mohammed (supra)** the accused persons were charged for the offence of Bribery of Public Official contrary to Section 134 of the Crimes Decree and for the offence of Receiving a Bribe contrary to Section 135 of the Crimes Decree. Both of the offences carry a maximum penalty of ten years of imprisonment. The punishment is similar to the corresponding punishment stipulated in the Bribery Act of UK 2010.
10. In **Maharaj (supra)**, the accused was charged with one count of Bribery contrary to Section 5 (2) (a) of the Promulgation, which carries maximum penalty of a fine of \$500000 and to imprisonment for 10 years. Having considered the guidelines for the determination of level of culpability as stipulated under UK Sentencing guidelines, the court set up the following tariff limits, that;
  - i) *5-8 years imprisonment for category A,*
  - ii) *3-6 years imprisonment for category B and*
  - iii) *18 months04 years imprisonment for category C,*
11. Though, the prescribed punishment for the offence under Section 4 (2) is not similar as of the punishment stipulated under Bribery Act of UK 2010, I find the consideration of the guideline would assist me to reach a suitable tariff limit in this sentencing.

12. The court could be guided by the following guidelines in determination of the level of culpability of the offender, they are;

*A – High culpability*

- i) A leading role where offending is part of a group activity*
- ii) Involvement of others through pressure, influence*
- iii) Abuse of position of significant power or trust or responsibility*
- iv) Intended corruption (directly or indirectly) of a senior official performing a public function*
- v) Intended corruption (directly or indirectly) of a law enforcement officer*
- vi) Sophisticated nature of offence/significant planning*
- vii) Offending conducted over sustained period of time*
- viii) Motivated by expectation of substantial financial, commercial or political gain*

*B – Medium culpability*

- i) All other cases where characteristics for categories A or C are not present*
- ii) A significant role where offending is part of a group activity*

*C – Lesser culpability*

*i) Involved through coercion, intimidation or exploitation*

*ii) Not motivated by personal gain*

*iii) Peripheral role in organised activity*

*iv) Opportunistic 'one-off' offence; very little or no planning*

*v) Limited awareness or understanding of extent of corrupt*

13. It was proved at the conclusion of this hearing that you were the main and sole architect of this entire episode of soliciting and accepting of advantage from the Complainant. The office of the Crime Officer of the Border Police Station is an important senior position in the Fiji Police Force. As it was revealed from the evidence of the two most senior police officers of the division, the crime officer himself could initiate any operation and gather information which are materially important for the security of the public. Hence, you are a senior law enforcement officer, entrusted with significant authority and responsibility. The advantage that you have solicited and eventually accepted is not substantially high as of **Maharaj (supra)**, **Mohammed (supra)** and **Chen Xue Liang (supra)**. In view of these reasons, I find the level of culpability is high and falls under category A.
14. Having considered the level of culpability and the seriousness of the offence, I select three (03) years as the starting point for each of the two counts.
15. As I discussed above, you were a senior law enforcement officer and entrusted with very significant responsibilities in the Fiji Police Force. In committing this crime, you have betrayed the trust and confidence that was reposed in you by the

Fiji Police Force and your fellow officers. It was proved that you manipulatively tried to portray this crime as a donation to the Border Police Force, which was still an unacceptable practice of a police officer pursuant to Force Standing Orders. The conversation that you had with the Complainant at the "Chicken Bites" Restaurant proved that you have employed a shrewd manoeuvre to assure that the complainant has not reported this matter to any law enforcement agency before you proceeded to accept the said advantage. You disgracefully utilised the vulnerable situation that the complainant found himself with the Border Police Station to obtain this bribe. I consider these grounds as aggravating circumstances of this crime.


16. The learned counsel for the defence in his submissions in mitigation submitted your personal and family circumstances. You are forty one (41) years old, married and have three young children. Your wife is presently expecting the birth of your fourth child. You are the sole breadwinner of the family. Moreover, it was submitted that you are suffering from Hypertension and regularly receive treatments.
17. You are a first offender. It is apparent that a good character is paramountly important to hold such a senior position in the Fiji Police Force. Offenders who has been given such responsibilities and betrayed it in committing offences of this nature should not be allowed to find refuge behind their good character in sentencing. Hence, your previous good character will not be counted in giving a discount in this sentence.

18. The learned counsel for the defence in his submissions stated that you are remorseful of committing this crime. However, I do not find any material that substantiates such remorsefulness.
19. Having considered the above discussed aggravating circumstances, I increase two (02) years to reach five (05) years of interim imprisonment. Having considered your age, your family circumstances and health condition, I reduce two (02) , making your final sentence for three (03) years of imprisonment for each of the two counts.
20. You had not been in remand custody prior to the hearing of this matter. Hence, you are not entitled for any deduction pursuant to Section 24 of the Sentencing and Penalties Decree.
21. Apart from the term of imprisonment, you are liable to be fined up to \$ 500,000. The learned counsel for the defence submitted your financial situation in writing. Having considered your financial situation and your means, I impose a fine of \$ 1,500 to be paid immediately, in default Hundred and Fifty (150) days of imprisonment, to be served consecutive to the main sentence.
22. I am mindful of the fact that this court could suspend a sentence which does not exceed three years of imprisonment period pursuant to Section 26 (2) (a) of the Sentencing and Penalties Decree. In view of the seriousness of this offence and the principle adopted in this sentence, I do not find any compelling reasons to suspend your sentence.



23. Having considered the serious nature of this offence and the opportunity for rehabilitation, it is my opinion that two (02) years of none parole period would serve the purpose of this sentence.
24. I accordingly sentence you as follows;
- (i) Three (03) years imprisonment period for the first count of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation No 12 of 2007.
  - (ii) Three (03) years imprisonment period for the first count of Bribery, contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation No 12 of 2007.
25. Both of the sentences to be served concurrently. Moreover, you are not eligible for any parole for a period of two years.
26. Furthermore, I impose you a fine of Fijian Dollars One Thousand and Five Hundred (1,500) to be paid immediately, in default Hundred and Fifty (150) days of imprisonment period, to be serve consecutive to the above main sentence.
29. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R. D. R. Thushara Rajasinghe  
Judge

At Lautoka  
17<sup>th</sup> October 2016

Solicitors: Office of the Fiji Independent Commission Against Corruption  
Messrs Babu Singh & Associates for the Accused person