

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

**Criminal Case No. HAC (FICAC) 03 of 2014**

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

**V**

**AISEA TUIDRAKI**

First Accused

**SAKARIA SERAU**

Second accused

**SURESH CHAND**

Third Accused

**Miss F. Puleiwai** with Mr. A. Sharma for FICAC

**Mr. K. Tunidau** for first and second accused

**Mr. W. Pillay** for the third accused


**Dates of Hearing** : 12, 13, 14, 15, 16, 20, 21, 22, 23, 26, 27  
November 2018  
**Date of Summing Up** : 28 November 2018  
**Date of Judgment** : 29 November 2018

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**JUDGMENT**

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- 1.] The original charge against these three accused,  
reads:  
“ **AISEA TUIDRAKI, SAKARIA SERAU and SURESH CHAND,**  
between 8<sup>th</sup> December 2009 and 17 December 2009 at Nadi in



the Western Division, whilst being employed in the public service respectively as a Special Administrator, Acting Chief Executive Officer and Senior Rates/Accounts Officer of the Nadi Town Council, in abuse of the authority of their office did an arbitrary act for the purpose of gain namely wrote off the rate and interest payable amounting to \$86,792.94 for Prajay Investments Ltd without the approval of the Minister of Local Government which is an act prejudicial to the rights of the Nadi Town Council, and the rate payers of Nadi.”

- 2.] At the beginning of the trial and after representations were made to the FICAC Commissioner, this charge was withdrawn from the third accused by way of a *nolle prosequi* leaving the first and second accused to face trial. The third accused did in fact plead guilty to 4 other related counts which charged him alone on the original indictment. I shall deal with those counts at the end of this judgment.
- 3.] The trial proceeded against the first and second accused.
- 4.] Three assessors have returned with mixed opinions. The first accused was found guilty by all three with two out of the three finding that he abused his office for gain. The second accused was found guilty of abuse of office by a majority of two and for the purposes of gain by the same two.
- 5.] The prosecution case was that in December 2009, Nadi ratepayer Mr. Prem Singh made submissions to the Council about being overcharged rates on a large parcel of land he had an interest in, located at Votualevu corner. The land was originally leased by his father. At the time of these submissions of complaint in December 2009, Prem Singh was a Director of

Prajay Investments Limited, which company had a development lease over the same land. He was therefore responsible for annual rates as well as any arrears of rates with the interest accrued on those arrears. By December those arrears amounted to approximately \$10,320 and the interest compounding since 1979 was approximately \$83,000.

6.] After discussion with the three accused, the Special Administrator (1<sup>st</sup> accused) the CEO (2<sup>nd</sup> accused) and the Senior Rates Clerk (third accused) of the Nadi Council were satisfied as to the justification for Mr. Prem Singh's grievances and they acceded to his request to waive the arrears of interest amounting to approx.\$83,000. They wrote to the ratepayer that very day advising him that his entreaties were successful, that the interest would be written off but in return he was to pay the full amount of principal outstanding without discount being offered by the Government.

7.] Section 80 of the Local Government Act Cap 79 stipulates:

*"80- A council may, in the case of hardship, with the approval of the Minister, write off rates which have been levied and any interest payable thereon in respect of rateable property, payment of which rates or interest is in arrear."*

8.] This strict requirement to obtain the Ministers approval to write off the arrears was known to both the first and second accused and the prosecution exhibited documents where they had complied with this approval mandate previously.

- 9.] There was no evidence found or produced that showed that approval had been sought and obtained and in any event the write off was done within days of the council's decision, when evidence proved that it would take at least a month to obtain approval from the Minister. Nor was there any evidence of hardship being the only reason allowable in Section 80 (*supra*) experienced or claimed by Mr. Prem Singh.
- 10.] Both first and second accused submitted to interview under caution and the records of those interviews were produced by consent. Both accused in their interviews admitted that consent was not given for this large sum of interest to be written off

**11.] The Defense Case**

Both the first and second accused gave evidence in their own defense.

The first accused conceded that he was a duly appointed public servant. He told of the pressure the council was under from the Government to collect rate arrears in 2009.

- 12.] With regard to the abuse alleged by the prosecution, he said that on receipt of Mr Prem Singh's complaints he instigated discussion of the submissions within his management and he had the Senior Rates Clerk prepare a schedule of the outstanding rates and interest on the land in question. On seeing that assessment, he felt that it was "not true" and in fact they were "fraudulent" as Mr. Prem Singh should never have been paying rates on the land. In reliance on an earlier authority from the Minister of Local Government to write off rates on unalienated native land, he decided to direct that all the interest purportedly owing by Prem Singh's company Prajay

Investments Ltd be written off. In doing that he was of the view that previous fraudulent and excessive rate assessments were being corrected.

- 13.] The second accused gave similar evidence for the most part; he too blamed the third accused, the senior Rates Clerk for grossly inflating the rates assessment on the land under discussion. He was present at the meeting discussing Prajay Investments grievances submitted by its Director Mr Prem Singh, and he was of the view that every submission made had merit. It was decided that the land in question was unalienated, unleased, unlicensed Crown land. The second accused too relied on an old authority of the Minister to write off rates on unalienated land and using this authority he advised Mr Prem Singh by letter of even date that his submissions succeeded and the large amount of accrued compound interest would be written off.
- 14.] Mr Prem Singh himself gave evidence for the defense. He repeated in Court what he had submitted to the Council in December 2009; that is that after subleasing about 25% of the original lot, the rates assessed were not decreased and that the Council was getting rates from both his company Prajay and the sublessees. Mr Singh conceded that, despite having an interest in the land ever since the demise of his father he had never paid rates and he was aware that the interest was compounding. When he learned that the interest was going to be waived he was "very happy".
- 15.] Of real interest is his evidence that when he attended at the council on or about the 8<sup>th</sup> December to discuss his submissions, a letter of assent had already been written by the second accused and given to him that day.

## **16.] Discussion**

The issues at large in this trial were simple; these two public servants did direct that an amount owing, according to the records of the council, be written off – a decision taken in one day. Section 80 of the Local Government Act stipulates that such an accounting waiver have the authority of the Minister and each accused admitted under caution that they did not have that explicit authority. The waiver of those rates reduced the funds payable to the council so the write off was to the prejudice to the citizen/ratepayers of the town.

17.] Every element of the offence (save the issue of gain which I will come to below) was proved beyond reasonable doubt to the satisfaction of the Court and a case to answer was found.

18.] In their defense the accused raised several defenses, which appeared to the Court to have been hastily contrived.


A great deal of time was wasted in dealing with the history of the land and whether it was rateable or not and whether any rates were in fact due and payable. This irrelevant defense ignored the fact that the sum owing was recorded as such in the accounts of the Council no matter what the provenance of the balance, and to write it off in defiance of the Minister's approval mandated by Section 80 of the act was an abuse of office.

19.] A second defense raised seemingly for the first time in Court was that they relied on a blanket authority given by the Minister on the 18<sup>th</sup> August 2009 (Ex.P13.3) for the write off of all rates on alienated land.

20.] Unfortunately, for the defense this authority only applied to a list of unalienated lots provided by the Council which list did

**not** include the subject land which in any event in December 2009 was not unalienated.

- 21.] Counsel's submission in his closing speech that it once having been unalienated it remained unalienated for all time despite being leased, is absurd.
- 22.] The evidence of the first accused was evasive and seemingly given in embarrassment. He never once looked at the court nor at his counsel, his evidence being addressed to the floor. Such a demeanour was not convincing.
- 23.] The second accused gave evidence which was bombastic and contrived.
- 24.] The purported defenses they raised in their evidence were proffered for the first time and were not put to prosecution witnesses as they should have been.
- 25.] Nothing either of them said caused me to doubt the certainty of proof of the prosecution case, and for that reason I adopt the majority opinions of the assessors and find both the first accused and the second accused guilty of the offence of abuse of office.
- 26.] Following Marshall JA's definition of "for the purpose of gain" in the Court of Appeal in ***Patel*** AAu0040.2011 (28 October 2011) this Court also adopts the majority view of the assessors that the abuse was for the gain of Prajay Investments Ltd.

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- 27.] Both accused are guilty of the felony of abuse of Office and are convicted accordingly.
- 28.] As said earlier, the third accused entered a plea at the beginning of the trial to Counts 3, 5, 6 and 7 on the original information, they being counts charging the felony of abuse of office. The court at that time was of the view that the trial would elicit evidence of those crimes, but that has not been the case. The Court will now call for a Summary of Facts to be agreed by the third accused along with his mitigation
- 29.] The Court will hear mitigation and sentencing submissions from FICAC at 10am on Tuesday December 4<sup>th</sup>.
- 30.] All three accused are remanded in custody and production orders issued to bring them up on the 4<sup>th</sup>.
- 31.] Before leaving the matter there is another issue which I must address.
- 32.] The conduct of this trial was unpleasant to a large degree. Unfortunately defense counsel was totally abusive and disrespectful to the Court. He failed to understand the rules of evidence and considered himself to be above the direction of the Court. Whenever he was told he was asking irrelevant questions, he would angrily shout at the Court and when told to stop shouting or talking, he would continue in a most aggressive manner. His arrogance and truculence were totally unprofessional. And it made for a tense atmosphere throughout the trial.



- 33.] His bad temper prevented him from making proper no case submissions and prevented him from assisting the Court in submissions on the content of the Summing Up when invited to.
- 34.] He completely lost objectivity in the trial and when challenged, he would loudly claim that the Court had pre-determined the matter, which of course was totally incorrect.
- 35.] His antagonistic demeanour and insolence to the Court was prolonged and profound.
- 36.] I will bring this matter to the attention of the Chief Registrar; the transcript and audio recording being evidence of these offensive outbursts. It was unsatisfactory professional conduct in the extreme.



**Paul K. Madigan**  
**Judge**  
**High Court Lautoka**

**Addendum:** The criticism of defense counsel made in paragraphs 32 to 36 of this judgment in no way refers to the conduct of Mr W. Pillay who was not in the trial but when appearing acted in his normal professional manner.