IIN THE HIGH COURT OF FIJI

<u>AT SUVA</u>

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 053 OF 2014S

BETWEEN: FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION [FICAC]

COMPLAINANT

- AND: 1. ANA LAQERE
 - 3. VACISEVA LAGAI
 - 4. VILISI TUITAVUKI
 - 6. TAVENISA TAVAGA
 - 7. KINIVILIAME TAVIRAKI
 - 8. SHALENDRA KUMAR

ACCUSEDS

Counsels	:	Ms. S. Fatafei for FICAC		
		Mr. J. Daurewa for Accused No. 1		
		Ms. S. Prakash for Accused No. 3		
		Ms. S. Prakash for Accused No. 4		
		Ms. S. Prakash for Accused No. 6		
		Mr. A. Rayawa for Accused No. 7		
		Mr. F. Vosarogo for Accused No. 8		
Hearings	:	17 and 20 September, 2019.		

Sentence : 18 November, 2019

SENTENCE

1. In this case, Ms. Amelia Vunisea (Accused No. 2) and Ms. Laisa Halafi (Accused No. 5) had been dealt with and sentenced on 10 August 2018. An amended information was filed

by the prosecution on 8 July 2019, without any objection from the defence. On 17 September 2019, the following information was put to the accuseds, in the presence of their counsels:

"Count 1

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to section 139 of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the public service as an Assistant Accounts Officer with the Public Works Department at Walu Bay, in abuse of the authority of her office, did arbitrary acts namely facilitating the processing of false payments to Professional Stationeries which was prejudicial to the rights of the Public Works Department.

Count 3

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to section 139 of the Crimes Act 2009.

Particulars of Offence (b)

VACISEVA LAGAI between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the public service as an Assistant Accounts Officer with the Public Works Department at Walu Bay, in abuse of the authority of her office, did arbitrary acts namely facilitating the processing of false payments to Professional Stationeries which was prejudicial to the rights of the Public Works Department.

Count 4

Statement of Offence (a)

ABUSE OF OFFICE: Contrary to section 139 of the Crimes Act 2009.

Particulars of Offence (b)

VILISI TUITAVUKI between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the public service as a Temporary Relieving Clerical Officer with the Public Works Department at Walu Bay, in abuse of the authority of her office, did arbitrary acts namely facilitating the processing of false payments to Professional Stationeries which was prejudicial to the rights of the Public Works Department.

Count 6

Statement of Offence (a)

<u>ABUSE OF OFFICE:</u> Contrary to section 139 of the Crimes Act 2009.

Particulars of Offence (b)

TAVENISA TAVAGA between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the public service as a Secretary with the Public Works Department at Walu Bay, in abuse of the authority of her office, did arbitrary acts namely facilitating the processing of false payments to Professional Stationeries which was prejudicial to the rights of the Public Works Department.

Count 7

Statement of Offence (a)

<u>ABUSE OF OFFICE:</u> Contrary to section 139 of the Crimes Act 2009.

Particulars of Offence (b)

KINIVILIAME TAVIRAKI between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the public service as an Acting Senior Technical Officer with the Public Works Department at Walu Bay, in abuse of the authority of his office, did arbitrary acts namely facilitating the processing of false payments to Professional Stationeries which was prejudicial to the rights of the Public Works Department.

Count 8

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with) VACISEVA LAGAI and LAISA HALAFI (dealt with) between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656086 amounting to FJ\$2930.63 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 9

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with), VACISEVA LAGAI, VILISI TUITAVUKI, LAISA HALAFI (dealt with) AND KINIVILIAME TAVIRAKI between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 835722 amounting to FJ\$2880.00 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 10

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

AMELIA VUNISEA (dealt with), VACISEVA LAGAI, LAISA HALAFI (dealt with) TAVENISA TAVAGA AND ANOTHER between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656183 amounting to FJ\$2936.25 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 11

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with), VACISEVA LAGAI, LAISA HALAFI (dealt with), KINIVILIAME TAVIRAKI AND ANOTHER between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656337 amounting to FJ\$2677.50 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 12

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with), VACISEVA LAGAI, LAISA HALAFI (dealt with) AND ANOTHER between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656289 amounting to FJ\$2677.50 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 13

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

AMELIA VUNISEA (dealt with), VACISEVA LAGAI, VILISI TUITAVUKI AND LAISA HALAFI (dealt with), between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656030 amounting to FJ\$1980.00 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 14

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

AMELIA VUNISEA (dealt with), VACISEVA LAGAI, VILISI TUITAVUKI AND LAISA HALAFI (dealt with), between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656031 amounting to FJ\$2350.00 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 15

Statement of Offence (a) CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with), VACISEVA LAGAI, LAISA HALAFI (dealt with) AND TAVENISA TAVAGA between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment for the sum of FJ\$1366.88 through cheque number 656170 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 16

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

AMELIA VUNISEA (dealt with), VACISEVA LAGAI, LAISA HALAFI (dealt with) AND TAVENISA TAVAGA between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment for the sum of FJ\$2745.00 through cheque number 656170 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 17

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with), VACISEVA LAGAI, LAISA HALAFI (dealt with) AND TAVENISA TAVAGA between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656197 amounting to FJ\$2908.13 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 18

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, VACISEVA LAGAI AND LAISA HALAFI (dealt with), between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment for the sum of FJ\$2941.88 through cheque number 656268 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 19

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, VACISEVA LAGAI, LAISA HALAFI (dealt with) TAVENISA TAVAGA AND ANOTHER between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment for the sum of FJ\$2500.00 through cheque number 656268 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 20

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with) AND VACISEVA LAGAI, between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656420 amounting to FJ\$2170.00 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 21

Statement of Offence (a)

CAUSING A LOSS: Contrary to section 324 (2) of the Crimes Act 2009.

Particulars of Offence (b)

ANA LAQERE, AMELIA VUNISEA (dealt with), LAISA HALAFI (dealt with) AND TAVENISA TAVAGA between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being employed in the Public Works Department, dishonestly caused a loss to the Public Works Department by falsely facilitating the process of payment of cheque number 656539 amounting to FJ\$1173.00 to be made to Professional Stationeries and knowing that the loss will occur or a substantial risk of the loss will occur to the Public Works Department.

Count 22

Statement of Offence (a)

<u>OBTAINING A FINACIAL ADVANTAGE:</u> Contrary to section 326 (1) of the Crimes Act 2009.

Particulars of Offence (b)

SHALENDRA KUMAR between 01st January 2010 and 31st May 2010 at Suva in the Central Division whilst being the Director of Professional Stationeries engaged in conduct namely caused payments amounting to FJ34,236.77 to be made to Professional Stationeries and as a result of that conduct obtained a financial advantage amounting to \$34, 236.77 from the Public Works Department and knowing that they were not eligible to receive the said financial advantage.

Count 23

Statement of Offence (a)

<u>ATTEMPT TO PERVERT THE COURSE OF JUSTICE:</u> Contrary to section 190 (e) of the Crimes Act 2009.

Particulars of Offence (b)

SHALENDRA KUMAR sometime on and about the 01st day of October 2018 at Suva in the Central Division whilst being the Director of Professional Stationeries Supplies attempted to pervert the course of justice by influencing one Mosese Vuetimaiwai a former RICOH employee to make a false statutory declaration to refute his FICAC statement in the case against the said Shalendra Kumar.

Count 24

Statement of Offence (a)

<u>ATTEMPT TO PERVERT THE COURSE OF JUSTICE:</u> Contrary to section 190 (e) of the Crimes Act 2009.

Particulars of Offence (b)

SHALENDRA KUMAR AND TAVENISA TAVAGA between 01st February 2014 and 31st December 2015 at Toorak in the Central Division attempted to pervert the course of justice by creating and signing false back dated Professional Stationery delivery dockets in order to be used as evidence in the case against them."

2. All the accuseds, except Accused No. 6 and 8, pleaded guilty to all the relevant counts that concerned them. The prosecution then presented their summary of facts for each accused. Briefly they were as follows. Between 1 January 2010 and 31 May 2010, Ms. Ana Laqere (Accused No. 1), Ms. Vaciseva Lagai (Accused No. 3), Ms. Vilisi Tuitavuki (Accused No. 4) and Mr. Kiniviliame Taviraki (Accused No.7) were working for the Public Works Department

(PWD), a government department for the Republic of Fiji. The Public Works Department does public work for the government of the Republic of Fiji. In performing its tasks, the Public Works Department often buys good and services from various companies in Fiji.

- 3. In purchasing goods and services, the Public Works Department had established procurement procedures. First, the request letter or memorandum for the goods and services is made by the relevant officer. Second, three quotations is obtained from three companies. Third, the above quotations are evaluated by the Tender Committee, who decides on the company to supply the goods and services. Fourth, a requisition form is prepared by the storeman. When approved by his supervisor, the storeman will prepare the Authority for a Local Purchase Order (ALPO). If the Authority for a Local Purchase Order is approved by the relevant officers, the storeman takes the Purchase Order to the selected company. The company later delivers the goods and services to the storeman at Public Works Department, with the company invoices and delivery docket. When all the goods and services are delivered, the above delivery docket and invoices are taken to the Accounts section to process payment to the company.
- 4. At the material time, both Accused No. 1 and 3 were employed by PWD as Assistant Accounts Officers. As Assistant Account Officers, it was their job to see that bills were properly received and paid, with all the necessary supporting documents being present. It was their job to see that when the PWD purchase goods and services, the above procurement procedures were compiled with, and all financial procedures and obligations are properly carried out. They check bills for payment, check schedules, vouchers and reports. They monitor weekly, monthly and quarterly financial reports. They advised management of any irregularities. Accused No. 4 was employed as Temporary Relieving Clerical Clerk. It was her duty to check quotation and other source documents before processing for payment, matching the invoices received against the purchase order, and other duties required by the Accountants. Accused No. 7 was employed as a Senior Technical Officer. His job was to control, monitor and report on technical issues. He attends

sectional, divisional and project site meeting and ensure that works are carried out in accordance with proper plans and specification.

- 5. At the material times, Accused No. 1, 3, 4 and 7 abused the authority of their offices by facilitating the processing of false payments to Professional Stationeries, which was prejudicial to the rights of PWD. In fact, they flouted the procurements rules, and "short-circuit" the system to enable payments to be made to Professional Stationeries without them providing goods and services to PWD. In total the money unlawfully paid to Professional Stationeries was \$34,236.77. The details of their offendings are outlined in the particulars of offences in counts no. 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.
- 6. The court later checked with the accuseds and their counsels on whether or not they had accepted the prosecution's summary of facts. All defence counsels said, their clients accepted the prosecution's summary of facts, including the relevant particulars of the offences in the counts that concerned them. As a result of the above, the court found Accused No. 1, 3, 4 and 7 guilty of the offences they pleaded guilty to on 17 September 2019, and convicted them on those counts.
- 7. On 20 September 2019, I heard defence's counsels' plea in mitigation. In fact, they all submitted written plea in mitigation and I have carefully read and considered them.
- 8. The maximum penalty for "Abuse of Office", contrary to section 139 of the Crimes Act 2009, is 10 years imprisonment. If the act was done for gain, the maximum penalty was 17 years imprisonment. "Causing a loss", contrary to section 324(2) of the Crimes Act 2009, carries a maximum penalty of 5 years imprisonment.
- 9. In <u>Fiji Independent Commission Against Corruption (FICAC)</u> vs <u>Ana Laqere and</u> <u>Others</u>, Criminal Case No. HAC 56 of 2014S, High Court, Suva, His Lordship Mr. Justice Rajasinghe discussed the earlier authorities in <u>Naiveli</u> v <u>The State</u>, Criminal Appeal No. 2 of 1992, Fiji Court of Appeal; <u>State</u> v <u>Kunatuba</u>, Criminal Case HAC 018 of 2006S, High Court, Suva; <u>State</u> v <u>Sorovakatini</u>, Criminal Case HAC 018 of 2005, High Court, Suva;

<u>State</u> v <u>Bola</u>, Criminal Case HAC 029 of 2005, High Court, Suva and <u>Fiji Independent</u> <u>Commission Against Corruption</u> v <u>Mau</u>, Criminal Case HAC 089 of 2010, High Court, Suva. After discussing the above authorities, His Lordship came up with the following tariff for "Abuse of Office" cases:

	High Level of Culpability	Medium Level of Culpability	Lesser Level of Culpability
High Level of Harm/Prejudice with gain	8-12	6-10	4-8
Medium Level of Harm/Prejudice either with medium level gain or without gain	6-10	4-8	2-6
Lesser Level of Harm/Prejudice either with less gain or without gain	4-8	2-6	1-4

I agree with His Lordship's tariff.

- 10. On the "causing a loss" charge, His Lordship said the following:
 - "...28. The maximum penalty for the offence of Causing a Loss contrary to section 324(2) of the Crimes Act is five (5) years of imprisonment.
 - 29. Justice Madigan in <u>Fiji Independent Commission Against Corruption (FICAC)</u> v <u>Mohammed</u> [2025] FJHC 479; HAC 349.2013 (24 June 2015) sets out the tariff for Causing a Loss, where His Lordship held that;

"Causing a loss is again a mirror image of obtaining a financial advantage in a case of corruption. Then as with that obtaining offence the tariffs for this offence can be split between causing a loss (simpliciter) and causing a loss where there is bribery or corruption involved.

The tariff for general dishonesty for causing a loss could be fixed at between suspended sentence to 4 years with suspended sentences to be passed for very small losses caused unwittingly."

Causing a loss when proved, in conjunction with a generating corruption offence will attract the higher tariff of 4 to 5 years..."

I also agree with him on the above

- 11. The final sentence however, will depend on the aggravating and mitigating factors
- 12. The aggravating factors in this case were as follows:
 - (i) Serious Breach of Employer Trust. All the accuseds were working for the Public Works Department at the time. As such, they were public servants. As employees of the Department, you all owe your employer the duty to be honest and faithful in the performance of your functions and duties. The Department acts through its employees to provide a service to the public. If you fail to perform your duties honestly, the Department will suffer in that it will be unable to serve the public faithfully. For breaching your duty to be honest to your employer, you will have to pay for that crime by losing your liberty, and you must not complain as a result.
 - (ii) Your offendings were a well-planned derogation of duty. You four deliberately flouted the department's procurement procedure rules by "short-circuiting" the system, and made sure that the moneys were paid to "Professional Stationeries", knowing fully well that the required goods and services were not supplied.
 - (iii) Your offfendings had resulted in a monetary loss to the tax payers of Fiji.
- 13. The mitigating factors were as follows:
 - (i) At the time you offended between 1 January to 31 May 2010, all of you, that is, Accused No. 1, 3, 4 and 7 were first offenders. Accused No. 1, you were 38 years old at the time. Accused No. 3, you were 48 years old at the time, Accused No. 4, you were 30 years old at the time. Accused No. 7, you were 47 years old at the time;

- (ii) Although you each pleaded guilty to the offences approximately 5 years 6 months 20 days after first call in the High Court on 28 February 2014, you nevertheless saved some court time, in doing so;
- (iii) This case had been hanging over your heads for approximately 6 years, and that worry and stress, must be a punishment in itself.
- 14. For each of you (i.e. Accused No. 1, 3, 4 and 7), on the "Abuse of office" charge (i.e. count no. 1, 3, 4 and 7), I find your culpability at the medium level, thus the tariff is a sentence between 4 to 8 years imprisonment. For each of you, on the relevant "Abuse of office" charge that concerned you, I start with a sentence of 4 years imprisonment. I add 2 years for the aggravating factors, making a total of 6 years imprisonment for each of you. I deduct 1 year for each of you being first offenders at the time of the offence, leaving a balance of 5 years imprisonment. I deduct another 1 year for each of you pleading guilty to the offence, leaving a balance of 4 years imprisonment. For the charge hanging over your heads for approximately 6 years, I deduct another 1 year, leaving a balance of 3 years imprisonment. For the "Abuse of office" charge, I sentence each of you to 3 years imprisonment.
- 15. On "causing a loss" charge (count no. 9), for each of you, I start with a sentence of 2 years imprisonment. I add 2 years for the aggravating factors, making a total of 4 years imprisonment. I deduct a total of 2 years imprisonment for all the mitigating factors, leaving a balance of 2 years imprisonment. On count no. 9, I sentence each of you to 2 years imprisonment.
- 16. I repeat the above process and sentence for each "causing a loss" charge you are each convicted of, that is, on counts no. 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21.
- 17. Because of the totality principle of sentencing, I direct that all the above sentences be made concurrent to each other, thus making a final total sentence for each of you, a sentence of 3 years imprisonment. I will not fix a non-parole period. This sentence is concurrent to any present prison sentence been served by each of you.

18. You all have 30 days to appeal to the Court of Appeal.

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Solicitor for Complainant

- Solicitor for Accused No. 1 $\,$:
- Solicitor for Accused No. 3 :
- Solicitor for Accused No. 4 :
- Solicitor for Accused No. 6 :
- Solicitor for Accused No. 7 :
- Solicitor for Accused No. 8 :



Fiji Independent Commission Against Corruption (FICAC)
R. Vananalagi, Barrister and Solicitor, Suva
Legal Aid Commission, Suva.
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Legal Aid Commission, Suva
A. Rayawa, Barristers & Solicitor, Suva.

F. Vosarogo, Barrister and Solicitor, Suva