

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 32 OF 2020

BETWEEN : TOMASI RAIKIVI

APPELLANT

AND : FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

RESPONDENT

Counsel : Appellant in person
Mr J Work for the Respondent

Date of Hearing : 18 November 2020

Date of Judgement : 19 November 2020

JUDGMENT

[1] This is an appeal against sentence only.

[2] The appellant is a former employee of the Judicial Department. Between 2015 and 2017 he dishonestly obtained \$1402.95 while being employed as a Revenue Collector at the Savusavu Magistrates' Court. After the anomaly was discovered, the appellant was terminated from his employment. He was formally charged with the offence of general dishonesty contrary to section 323 of the Crimes Act and produced in the Magistrates' Court on 1 July 2019.

[3] On 26 November 2019, the appellant waived his right to counsel and pleaded guilty to the charge. On 24 February 2020, the charge was amended. The appellant maintained his guilty plea. The learned magistrate gave the appellant 14 days to file written mitigation and adjourned the case for mention on 7 June 2020.

[4] On 7 June 2020, the case was not called in the Magistrates' Court due to Covid-19 restrictions. Instead the case was called on 10 July 2020. The appellant had no notice of this date and

therefore he did not appear in court. The learned magistrate issued a bench warrant and adjourned the case for sentencing on 18 August 2020.

[5] On 18 August 2020, the appellant voluntarily appeared in the Magistrates' Court after learning his case was going to be called that day. When he appeared in court, the learned magistrate pronounced the sentence without giving the appellant an opportunity to submit his mitigation. When the appellant informed the court that he had not submitted his mitigation, the learned magistrate advised the appellant to appeal his decision.

[6] The appellant was sentenced to 18 months' imprisonment. The appellant's main complaint is that he was denied an opportunity to mitigate before sentence was imposed on him.

[7] It is clear from the court record that the learned magistrate did accord the appellant an opportunity to file written mitigation. However, the timeframe for filing written mitigation was overtaken by lawful restrictions placed by Covid-19. The appellant was not at fault when he did not comply with the time frame to submit his written mitigation before sentence was imposed on him. When he eventually appeared before the learned magistrate he was not accorded an opportunity to present his mitigation. The learned magistrate pronounced sentence without hearing mitigation. The appellant was denied an opportunity to be heard before his personal liberty was curtailed by an immediate prison sentence. As the Supreme Court in *Singh v Chief Registrar* [2019] FJSC 8; CBV0002.2018 (26 April 2019) said at [39]:

In my judgment, he ought to have had the opportunity to pray in aid such matters as he considered relevant in mitigation of penalty. The fact that he was not provided with that opportunity is a material breach of the process to which any practitioner is entitled in the event of a finding of professional misconduct. (per Stock J)

[8] I reach the same conclusion in this case. The appellant was not at fault when he could not file written mitigation within the allocated timeframe before sentence was imposed. The fact that he was not provided with a further opportunity to mitigate before sentence was pronounced when he appeared in court on 18 August 2020 was a material breach of the process.

[9] For these reasons, the appeal is allowed and the sentence imposed in the Magistrates' Court is set aside.

[10] The case is remitted to the same magistrate to hear the appellant's mitigation before sentencing him afresh.

[11] The appellant is remanded in custody for sentencing hearing in the Magistrates' Court at Savusavu on 23 November 2020.



Solicitors:

Appellant in person

Office of the Fiji Independent Commission Against Corruption for the Respondent