

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 017 OF 2022

BETWEEN: **R. B. PATEL GROUP LIMITED** **APPELLANT**

A N D: **FIJIAN COMPETITION & CONSUMER** **RESPONDENT**
COMMISSION (FCCC)

Counsel: Ms. M. Rakai for Appellant
 Mr. K. Gauna for Respondent

Date of Hearing: 13th March 2023

Date of Judgment: 27th April 2023

J U D G M E N T

1. The Appellant was charged in the Magistrate's Court in Labasa with one count of Making False Representation on the Price Advantage of Goods, contrary to Sections 77 (1) (g) and 129 (1A) (3) of the Fijian Competition and Consumer Commission Act 2010. The Appellant had pleaded not guilty to this offence; hence, the matter had proceeded to the hearing. The learned Magistrate, in his judgment dated 14th of February 2022, found the Appellant guilty of the said offence. The Appellant was sentenced on the 12th of July 2022 with a fine of \$25000 (250 penalty units). The learned Magistrate had further imposed a cost of \$32.70.

Aggrieved by the conviction and sentence, the Appellant filed this appeal with ten grounds of appeal.

2. Though the Appellant filed ten grounds of appeal, the learned Counsel for the Appellant, during the hearing of this appeal, informed the Court that the Appellant relied on the ground that the sentence was harsh and excessive. Accordingly, the learned Counsel for the Appellant abandoned the rest of the grounds of appeal.
3. In an appeal against the sentence, the Appellate Court will examine whether the sentencing Magistrate had fallen into error in exercising his/her sentencing discretion. In doing that, the Appellate Court would take into consideration the following factors:
 - i) Whether the sentencing Magistrate acted upon a wrong principle;
 - ii) Whether the sentencing Magistrate allowed extraneous or irrelevant matters to guide or affect him;
 - iii) Whether the sentencing Magistrate mistook the facts;
 - iv) Whether the sentencing Magistrate failed to take into account some relevant consideration.
4. The errors in sentencing discretion may be apparent either from the reasons given in the sentence or by making inferences from the length of the sentence. (*vide; Saqainivalu v State [2015] FJCA 168; AAU0093.2010 (3 December 2015)*). The Appellate Court will determine whether the sentence given by the lower Court is within the permissible range. Even if there has been an error in exercising the sentencing discretion, the Appellate Court will still dismiss the Appeal if the Appellate Court considers the sentence given by the lower Court comes within the permissible sentencing range. (*vide; Sharma v State [2015] FJCA 178; AAU48.2011 (3 December 2015)*)
5. Section 129 (1A) and (3) of the Fijian Competition and Consumer Commission Act 2010 has prescribed the relevant penalties for this offence, where it states that:

(1A) Subject to subsections (2) and (3), a person who commits an offence under this Act for which no other penalty is provided is liable upon conviction to a fine not exceeding \$10,000 for a first offence and \$100,000 for a second or subsequent offence, or imprisonment for a term not exceeding 10 years or both.

(3) The maximum penalty for an offence under a provision of this Act committed by a body corporate is a fine that is 5 times the fine provided for in the provision or, as the case may be, a fine that is 5 times the fine provided for in subsection (1)

6. The learned Magistrate had accurately considered the relevant prescribed penalty for this offence and found the Appellant is a body corporate and adversely recorded with two previous convictions under this Act. Accordingly, the applicable sentence is a fine not exceeding \$ 500,000.

7. The learned Magistrate had found no aggravating factors in this case in his sentence. (*vide Paragraph 9 of the Sentence*). He then considered the mitigating factors submitted by the Appellant in paragraph 10 of the Sentence. Accordingly, the learned Magistrate had considered the following factors as mitigating grounds:

i) This was an isolated incident,

ii) The Complainant had been continuously shopping at the Appellant's supermarket even after this incident,

iii) The Appellant is still operating this business with seven hundred employees with 10 branches around the Country,

iv) The Manager of the Appellant had offered the Complainant to refund the money or the product,

- v) *The price display was removed immediately,*
 - vi) *The Appellant is an honest trader,*
 - vii) *It was an error of a staff,*
8. Having considered these mitigating grounds, the learned Magistrate had found a fine would be sufficient for this offence. He then picked the lowest amount of \$5000 and multiplied it by five to reach the final penalty of \$25,000. (*vide paragraphs 12,14,15 and 18 of the Sentence*)
9. After accurately applying relevant sentencing principles, I find the learned Magistrate had actually imposed a fine closer to the lowest end of the prescribed fine. Hence, I find no merit in this ground of Appeal.
10. The order of the Court:
- a) The Appeal is dismissed,
11. Thirty (30) days to appeal to the Fiji Court of Appeal.




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Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

27th April 2023

Solicitors

Messrs. Sherani & Company for the Appellant

Fijian Competition & Consumer Commission for the Respondent.