

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

Criminal Case : 1370/2015

STATE

V

FIU KATARINE GOUNDEN

Counsel : Ms.J.Prasad for the State
Ms.Kunatuba for the Accused

Date of Sentence : 27th of January 2016

SENTENCE

1. **FIU KATARINE GOUNDEN**, you have pleaded guilty in this Court to one count of Money Laundering contrary to section 69(2) and (3) of the Proceeds of Crime Act 1997.
2. You also admitted the following facts presented by the state :
Fiu Katarine Gounden, the third defendant, was employed in the Finance Office of Pacific Theological College since 1998 until the end of 2006.
Pacific Theological College maintains a Westpac Bank Account Number 71127300.
On 22nd November 2012, Nilesh Avinesh Sharma, Director Finance and Administration of Pacific Theological College received a query from the auditors of Pacific Theological College regarding the Fiji Electricity Bills. Mr. Sharma went to the Finance Office and discovered a large amount of unopened envelopes and hidden documents. Due to this finding, Mr. Sharma together with the management of Pacific Theological College started an investigation into the affair of the Finance Office of Pacific Theological College.

In the months of June to December 2006, the third defendant was responsible for preparing of cheques and requisitions for payment of wages to the staff of Pacific Theological College.

The procedure for the processing of a cheque at Pacific Theological College was:

Payment Vouchers was raised and approved first by authorized officers;

After approval of the payment voucher, cheques are prepared for signature by the signatories of the Pacific Theological College Bank account.

The signatory upon checking the attached documents would sign the cheque.

In relation to the processing of wages and salary of the staff of Pacific Theological College, all staff were paid by transfer of salary into their respective bank accounts with the exception of a few staff who were paid in cash. The salary was processed in an excel sheet and approved by Finance Director. A cheque would then be raised as per procedure in paragraph 4. One cheque would be prepared for payment of several staff wages.

A bank deposit sheet was also prepared which would contain the details of all the employees, their account numbers and the amount to be paid. This would accompany the cheque to the signatories who would check the same and sign the cheque.

The third defendant instead of sending the correct bank deposit sheet attached to the cheque which was seen by the signatories would instead substitute it with a false bank deposit sheet. This false bank deposit sheet would then be sent to respective Bank along with the cheque.

This false bank deposit sheet would have an increased salary payable to the third defendant.

Based on the false bank deposit sheet, the Bank would then transfer money into each staff's bank account.

Westpac Bank Cheque No. 1305

On 21st June 2006, a false bank deposit sheet was substituted and processed along with a Westpac Bank Cheque number 1305 of account number 71127300 for the sum of \$3887.28. This cheque was for the payment of wages.

The third defendant was only entitled to receive \$140.91 as her normal salary however due to the false bank deposit sheet, the third defendant received an additional sum of \$1064.49.

The third defendant was aware that she was not entitled to the extra sum of money and that money was proceeds of crime, that is, that substitution of false bank deposit sheet with the correct bank deposit sheet.

The additional sum of \$1064.49 was used up by the third defendant.

Westpac Bank Cheque 1364

On 5th July 2006, a false bank deposit sheet was substituted and processed along with a Westpac Bank Cheque number 1364 of account number 71127300 for the sum of \$3731.80. This cheque was for the payment of wages.

The third defendant was only entitled to receive \$140.91 as her normal salary however due to the false bank deposit sheet, the third defendant received an additional sum of \$1000.000

The third defendant was aware that she was not entitled to the extra sum of money and that money was proceeds of crime, that is, the substitution of false bank deposit sheet with the correct bank deposit sheet.

The additional sum of \$1064.49 was used up by the third defendant.

Westpac Bank Cheque 1428

On 19th July 2006, a false bank deposit sheet was substituted and processed along with a Westpac Bank Cheque number 1428 of account number 71127300 for the sum of \$3594.65. This cheque was for the payment of wages.

The third defendant was only entitled to receive \$140.91 as her normal salary however due to the false bank deposit sheet, the third defendant received an additional sum of \$1000.00.

The third defendant was aware that she was not entitled to the extra sum of mone and that money was proceeds of crime, that is, the substitution of false bank deposit sheet with the correct bank deposit sheet.

The additional sum of \$1000.00 was used by the third defendant.

Westpac Bank Cheque 2106

On 5th December 2006, a false bank deposit sheet was substituted and processed along with a Westpac Bank Cheque number 2106 of account number 71127300 for the sum of \$4414.60. This cheque was for the payment of wages.

The third defendant was only entitled to receive \$140.91 as her normal salary however due to the false bank deposit sheet, the third defendant received an additional sum of \$2000.00.

The third defendant was aware that she was not entitled to the extra sum of money and that money was proceeds of a crime, that is, the substitution of false bank deposit sheet with the correct bank deposit sheet.

The additional sum of \$1000.00 was used up by the third defendant.

As a result of the substitutions of the bank deposit sheets, the defendant obtained \$5064.49 which were the proceeds of a crime, knowing that the said \$5064.49 was from the substitution of false bank deposit sheets.

The third defendant is a first offender.

The third defendant has paid Pacific Theological College a sum of \$15,000 on 17th April 2015.

3. I am satisfied that your plea was made on your own free will after fully understanding the legal consequences and therefore convict you for this charge.

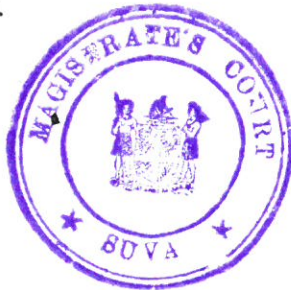
The Law and tariff

4. The maximum penalty for this offence is 20 years imprisonment.
5. In State v Singh [2015] FJHC 785; HAC250.2014 (19 October 2015) his Lordship Justice Wengappuli said :

“The maximum penalty for money laundering is a fine of \$ 120,000 and /or a term of imprisonment of 20 years. In State v Robin Shyam[2013] FJHC529 and State v Stephens [2012] FJHC 1010 the tariff for offence of money laundering was accepted as range of imprisonment between 5 years and 12 years.”

6. In **Laisiasa Koroivuki v the State** (Criminal Appeal AAU 0018 of 2010)the Fiji Court of Appeal discussed the guiding principles for determining the starting point in sentencing and observed :
- "In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".
7. Therefore considering the gravity of offending, I select 06 years as the starting point for your sentence.
8. **Aggravating factors** :
- a. You laundered the monies of your employer and therefore breached the trust ;
 - b. You directly benefited from these amounts;
 - c. This was committed for period of time which shows the level of planning and execution.
9. For these aggravating factors I add 04 years to reach 10 years imprisonment.
10. **Mitigating Factors** :
- a. First offender;
 - b. Remorseful of her behavior and made full restitution and also paid additional amount back;
 - c. Sole breadwinner of the family ;
 - d. Contributor to the society and helps dilkusha home .
11. For the above mitigating factors I deduct 04 years to reach 06 years imprisonment.
12. In **Vilimone v State** [2008] FJHC 12; HAA 131-132.2007 (8 February 2008) the court said :
"Because the appellant pleaded guilty at the first available opportunity, his sentence should be reduced by a third"

13. In view of the above guideline, giving full credit to your early guilty plea I deduct 1/3 to reach 04 years imprisonment.
14. In Laisiasa Koroivuki v the State(supra) the court said if the sentence is below or above the tariff the sentencing court has to give reason. In this case I have come to this sentence based on the mitigating factors and early guilty plea of the accused even though this is below the tariff.
15. Pursuant to section 26(2) (b) of the Sentencing and Penalties Decree this Court has no power to suspend this sentence. But considering your early guilty plea and full restitution I fix only 01 year as the non-parole period in this case.
16. **FIU KATARINE GOUNDEN**, for the offence of Money Laundering contrary to section 69(2) and (3) of the Proceeds of Crime Act 1997 this Court sentenced you to 04 years imprisonment with a non-parole period of 01 year.
17. 28 days to appeal.




Shageeth Somaratne
Resident Magistrate