IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 53 OF 2012
(High Court No. HAC 88 of 2010)

BETWEEN	:	**JOHNNY ALBERT STEPHEN**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Calanchini P** **Gamalath JA** **Prematilaka JA**
Counsel	:	**Mr J. Savou for the Appellant** **Ms. P. Madanavosa for the Respondent**
Date of Hearing	:	**10 May 2016**
Date of Judgment	:	**27 May 2016**

JUDGMENT

Calanchini P

[1] I agree that a new trial should be ordered.

[1] This is an appeal against the conviction and sentence based on a charge of Money Laundering. It is alleged that the appellant had been hacking into the accounts of some customers of Westpac Bank. Filing an amended information on 29 March 2012, the Director of Public Prosecution proffered two charges against the Appellant Johnny Albert Stephen, namely;

> *"**Count One***
>
> ***Statement of Offence***
>
> ***MONEY LAUNDERING:*** *Contrary to Section 69(3) (b) of the Proceeds of Crime Act 1997.*
>
> ***Particulars of Offence***
>
> ***JOHHNY ALBERT STEPHEN,*** *between the 6th day of August to the 24th day of September 2009 at Suva, in the Central Division received money amounting to $17,420.90 and disposed of the same, that is the proceeds of crime knowing or ought to have reasonably known that the said $17,420.90 is derived or indirectly from some form of unlawful activities.*
>
> ***Count Two***
>
> ***Statement of Offence***
>
> ***MONEY LAUNDERING:*** *Contrary to Section 69(3) (b) of the Proceeds of Crime Act 1997.*
>
> ***Particulars of Offence***
>
> ***JOHHNY ALBERT STEPHEN,*** *between the 25th day of September 2009 at Suva, in the Central Division received money amounting to $21,440.56 that is the proceeds of crime knowing or ought to have reasonably known that the said $21,440.56 is derived or indirectly from some form of unlawful activities."*

[2] In order to prove the case against the appellant the prosecution adduced the evidence of witnesses from Westpac Bank who in their testimonies explained the manner in which the fraudulent money transactions had taken place in which some accounts of the Westpac Bank had been hacked into and money had been remitted to the account of the appellant on several specific occasions.

[3] The accounts that were hacked into were as follows; Sun Vacations, Bruce Moonie, Coconut Rentals, Westpac, Rarotonga.

[4] The modus operandi adopted in hacking into these accounts was discovered by the Westpac Bank officials assigned to conduct investigations into suspicious transactions of this nature. They formed the witnesses for the prosecution.

[5] Epeli Racule, a Westpac Bank Officer in Charge of fraud investigations for over 6 years, testified for the prosecution, and explained the fraudulent transaction quite lucidly and simply.

[6] Accordingly, it was found out during the investigation conducted by the Bank, that these unauthorised transactions had been carried out by duping the customers to part with their passwords and PIN numbers, ostensibly for an official purpose of the Bank.

Explaining the unauthorised transaction, the witness Epeli Racule had the following to state;

> *"We discovered that the hoax email sent to Carlos of Sun Vacation. She logged in and revealed her password and PIN number. I have seen the hoax email. This is the hoax email from an unknown source sent to a number of customers of Westpac.*
>
> *This email did not come from Westpac. It contains a link to a purported authenticated process to continue the customers. If clicking on the link it would take you to Westpac website copied from the original but to a doctored site."*

[7] Further explaining the suspicious transaction, the witness stated that appearance wise there was hardly any difference between the authentic Westpac online Internet Banking site page and the bogus one, save that the address appearing in the bogus one was different. Unless one is extremely vigilant, this may not be detected by the naked eye.

[8] Once the customers linked up with the bogus website, they were asked to reveal their password and the PIN number, the kind of confidential information that no bank would want the customers to part with. However, in the instant case the unsuspecting customers had revealed this information, exposing themselves to a financial risk.

[9] Westpac, being alerted by this scam, informed the police and had taken necessary steps to find the identity of the account holder of 980211709, and following the information coming from the CCTV recordings at Westpac – Suva, the identity of the appellant was established and the appellant was arrested.

[10] While in custody the appellant made a caution statement, which is seemingly an exculpatory statement. His position has been that the money that appeared in his account – like a manna from heavens – was sent to him by one David Turner, who he made contact with through emails.

[11] The caution statement reveals that David Turner was living in England, and never had any meetings with the appellant in person. All their transactions had been on the emails. David had convinced the appellant that they should start a joint venture in Fiji. As an initial investment, David Turner would be sending $15,000,000.00 to the appellant's account at Westpac.

[12] The money for the proposed investment was lying in deposit in the Bank of USA. David Turner had informed him that for $15,000,000.00 to be released from the US bank, there were certain tax requirements to be fulfilled and until that is satisfied it would not be possible for $15,000,000.00 to be remitted to the Appellant's account.

[13] Continuing his statement, the Appellant further said that according to the instructions given by David Turner , the Appellant should keep in touch with a woman living in

the USA, one Sherrill Strampher, who, on behalf of both he and David Turner would be attending to all the banking transactions for them to start the business in Fiji.

[14] Sherrill Strampher was an employee of one "Bank of America".

[15] Thus started the process through which the appellant was receiving money from David Turner into his account. Following the instructions of David Turner, the Appellant would be remitting the money into the account of Sherrill Strampher, who in turn will use the money to meet the tax expenses required for transferring $15,000,000.00 to the Appellant's account in Fiji. When all is well, David Turner and the Appellant will launch the business as discussed via email.

[16] In the caution statement the Appellant further admitted that he used to receive telephone calls occasionally through a Nigerian telephone number too. This was in addition to the calls from David Turner and at times someone from South Africa also had contacted him over the telephone. Every one of them had shown avowed interest in starting business with him in Fiji. These people are supposed to have informed the Appellant that in order for them to start joint business ventures with him, they were ready to send money into his account. However, finally it was only David Turner who had actually facilitated the process by sending money into his account.

According to the caution statement, David Turner and the appellant had signed an online contract to carry on business. The terms of the agreement was such that 20% of the money could be spent by the Appellant for personal use while the other 80% was for him to use for the investment purposes and management of the account.

[17] Most importantly, as stated earlier, from then onwards the Appellant continued to receive money into his account. The initial amount he received was US$6,200.That was to be transferred to Sherrill Strampher to be used for the release of $5,000,000.00 into the appellant's account.

[18] The appellant maintains in the caution statement that by duly following the instructions of David Turner, he transferred a part of $6,000.00 to Sherrill Strampher in the USA, through Western Union. This was done one week prior to his arrest, through Western Union situated next to the Post Office.

[19] In effect, at one point of time before his arrest, he has had around FJ$12,000.00 in his account, remittances by David Turner.

[20] Out of this amount, the Appellant had transmitted FJ$6,000.00 to Sherrill Strampher in the USA and the rest was used for his personal purposes. He further gives the breakdown of his expenses and accordingly FJ$400 was spent on buying a mobile phone, some for the food and the rest for the drinking sprees with the friends.

[21] The caution statement further reveals that the appellant ended up in receiving close to FJ$30,000.00 altogether from David Turner. Out of this money, he had sent out about $6,000.00 to Sherrill Strampher in the USA.

[22] Another recipient of money from the Appellant was one Oleh Stowbanenko, introduced by David Turner who instructed him to send him FJ$385.00.

[23] As a proof of transmitting money, the suspect had submitted two receipts of the Western Union; nos. 20972 and 20944.These receipts were exhibits in the trial.

[24] The above in effect is the essential information contained in the caution statement of the appellant.

[25] During the course of the investigation, police had traced several money transferring documents belonged to Western Union. The two documents that were referred to by the Appellant in the caution statements are available with the case record and having perused them I find, that both transfers had been in favour of one Sherrill Strampher of Vancouver, Washington, USA; the transfer order 20972 had been sent by the Appellant himself while 20944 was sent by one Sainimili Marama. The appellant admitted that he sometimes sought the assistance of others for the purpose of transferring money to Sherrill Strampher. However, quite strangely, these two documents do not reflect any account number to which the money is supposed to have been sent and that makes this whole story of sending money to one Sherrill Strampher quite incredulous.

[26] Ilisapeci Viwa, the wife of the Appellant and Kalesi Sobu, the neighbour of the appellant had given evidence for the prosecution and explained how the appellant had them also involved in transferring the money out.

The Appellant's Evidence

[27] As far as the Appeal is concerned what comes under its direct focus is the scenario in which the Appellant had been receiving money directly into his account at Westpac and corresponding to these strange transactions, there had been unauthorised withdrawals of money from the accounts of three customers of Westpac, who alleged that their accounts had been hacked into. The other important side of the scenario is that the Appellant in this case had been remitting a portion of the money he received to one Sherrill Strampher in the USA because he was interested in starting a business with one David Turner from England. Appellant denies that he ever hacked into anyone's account. His benefactor had always been one David Turner whose actual existence was not known even to the Appellant. They have been operating through emails. Presenting his side of the story the Appellant testified in the trial and firmly protested his innocence.

[28] Some salient features of his evidence are as follows ;

1. That he did not consider it illegal for him to receive money through David Turner.
2. He had no idea that the remittances into his account were as a result of certain fraudulent activities through which the bank accounts of three Westpac customers had been hacked into.
3. He verily believed that David Turner was not a fictitious person or even a figment of his imagination; but a real person with whom he had communications and through him he received money into his account, which has now become the subject matter of the legal proceedings against him.
4. All along he acted on instructions of David Turner, who guided him as to the manner of handling the money that mushroomed in his personal account.

[29] At the conclusion of the case for the prosecution the Appellant had elected to testify.

[30] The testimony of the appellant in the trial did not contain any discrepancy with the caution statement.

The Proceeds of Crime

[31] On 3 April 2012, at the end of the case for the prosecution, in the absence of the assessors, the Learned Trial Judge questioned the prosecutor as to the availability of "evidence to prove proceeds of crime".

[32] In responding, the prosecutor informed that they are relying on the evidence of Westpac officers to prove that "it was money unlawfully obtained".[emphasis added]

[33] Consequently, the learned High Court Judge decided that there is a *prima facie* case established against the appellant and the defence was called in.

Discovery of an offence

[34] In the light of the available evidence nothing would be furthest from the truth to contend that the evidence led in the trial did not disclose a crime of any sort, for it is crystal clear from the evidence, that there is evidence to prove the Westpac customers accounts were hacked into by means of illegal methods and had incurred loss of money. That money has found its way straight into the account of the appellant making him unjustly enriched.

[35] In dealing with this appeal one matter that comes up for initial determination is that in the light of the material available in this case whether it is possible to state with certainty that the appellant could be found guilty for the Money Laundering charges.

[36] This issue would now make us turn the search light towards the grounds of appeal upon which the appeal is sought to be prosecuted.

The sequence of events relating to the Appeal

[37] Following the conviction on the two counts prescribed in the indictment, the Appellant was sentenced to 7 years imprisonment. Challenging the conviction and the sentence the Appellant moved this Court on 16 grounds of appeal. Ignoring the fact that it was out of time the Learned Single Judge heard the application and ruled that all grounds of appeal against conviction are without a proper basis and thus no leave was granted. However, he saw merits in the ground of appeal against the sentence and thus the leave was granted.

[38] In this renewed appeal, the appellant is once again seeking to challenge his conviction and sentence and distilling his original grounds of appeal against conviction into the following two grounds, this Court is now required basically to examine whether the Learned Trial Judge had adequately dealt with the ingredients of the offence of

Money Laundering and whether the evidence of the case had been properly evaluated in the backdrop of the ingredients of the offence.

The two grounds of appeal against the conviction

[39] a) Misdirection/or failure to direct on the law concerning the offence of Money Laundering in the Summing up and;

b) Misdirections/Unfair directions on the facts of the case in the Summing up.

The First Ground:

[40] Having carefully examined the Summing up I find merits in the first ground of appeal. In order to understand this position I will now deal with the relevant passages of the summing up.

[41] Firstly, the directions of the learned trial judge on the ingredients of the charge was found in the following passage;

> *"[14] The accused faces two charges of money laundering. Money Laundering is the handling of money obtained from illegal sources to disguise the illegality of the funds and make the money look as if it has come from legitimate sources. To prove the offence of money laundering the State has to prove to you, so that you are sure of the following elements:*
>
> *(i) That it was this accused.*
> *(ii) That he received and/or disposed of the funds.*
> *(iii) The funds were the proceeds of crime; and*
> *(iv) That he knew, or ought reasonably to have known that the funds came from some form of unlawful activity."*

[42] After traversing with the assessors through the gamut of evidence in the trial, the Learned Trial Judge, condensing the relevant law had directed the assessors in the following manner;

> *"[26] Well, Madam and Gentlemen that is the evidence and how should you use that to justify yourselves, so that you are sure, that*

the State has proved each of the elements I outlined to you earlier in this summing up. First there is no dispute that it was this accused that we are dealing with. It has never been suggested that the State has charged the wrong person. Secondly I do not think you will have any trouble given the banking evidence in finding that he received the funds and that in respect of the first charge he disposed of them, nor I suggest will you have difficulty in finding that these funds were the proceeds of crime. It is a matter for you, and I repeat that whatever I think, you do not have to accept unless you agree with me.

[27] The real question (in fact it is two questions) that you have to decide on in this case is this:

(a) Would any common sense right thinking member of the community in these same circumstances have the reasonable assumption that the property that the accused was dealing with was derived, either directly or indirectly from some form of illegal activity, and

(b) Did the accused know of those same circumstances, or were there reasonable grounds existing that should have reasonably led him to believe that the funds were illegal."

In essence in the Judgment, paragraph 26 seems to explain the physical element involved in the Offence while paragraph 27 is dealing with the mental element.

[43] In so far as the interpretation of the offences in the summing up is concerned, I am constrained to state, that I am unable to come to terms with it and it is my view that there is much to desire as far as the directions to the assessors are concerned.

The Proceeds of Crime Act 1997 as amended by the Act No. 7 of 2005

[44] In the Proceeds of Crime Act 1997 as amended by the Act No. 7 of 2005, in Chapter V that deals with the Money Laundering Offence contains Section 69 which defines the offence of Money Laundering.

[45] Section 69 ...

69(3) ... A person shall be taken to engage in money laundering if, and only if;

(a) The person engages, directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime, or ...

(b) The person receives, possesses, conceals, uses, disposes of or brings into Fiji any money or other property that are proceeds of crime or ...

(c) The person converts or transfers money or other property derived directly or indirectly from a serious offence or a foreign serious offence with the aim of concealing or disguising the elicit origin of that money or other property, of aiding any person involved in the commission of the offence or evade the legal consequences thereof, or ...

(d) The person conceives or disguises the true nature, origin, location, dispossession, movement or ownership of the money or other property derived directly or indirectly from a serious offence or a foreign serious offence or

(e) The person renders assistance to a person falling within paragraph (a), (b), (c) or (d)...

(4) The offence of money laundering is not predicated on proof of the commission of a serious offence or foreign serious offence."

[46] As can be seen, there is no possibility to understand the efficacy of this section without having an accurate and precise comprehension of the force of the words that provides the bricks and mortar of the crime; especially the phrase "proceeds of crime" because money laundering is all about having to deal with proceeds of crime, in the sense it is the ill gotten money or property that gets converted in to legitimacy through laundering. Stating it succinctly *Archbold* 2012, paragraph 261; page 2475 defines it to be:

> *"the process by which the proceeds of crime are converted into assets which appeared to have a legitimate origin, so that they can be retained permanently or recycled into further criminal enterprises."*

[47] Any Court dealing with an offence of Money Laundering must have a clear grasp of the meaning of the phrase "proceeds of crime" and in particular in the context of Fiji it is imperative for a Judge to direct the assessors what it means in law to be "proceeds of crime". If this interpretation is not consonant with what contains in the interpretation clause of the Proceeds of Crime Act, that fact must be acknowledged as

a fundamental flaw in the Summing up that deals with the ingredients of the offence. For the purpose of accuracy, therefore, one should turn to the Interpretation Clause of the Act which states as follows;

[48] Section 4 of the principal Act is amended –

"(a) after subsection (1) by inserting the following subsection –

> *1(A) In this Act, in relation to a serious offence or a foreign offence "proceeds of crime" means property or benefit that is*
>
> > *(a) Wholly or partly derived or realised directly or indirectly by any person from the commission of a serious offence or a foreign serious offence;*
> > *(b) Wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence of;*
> > *(c) Wholly or partly acquired proceeds of a serious offence or a foreign serious offence;*
>
> *and includes; on proportional basis, property into which any property derived or realised directly from the serious offence or foreign serious offence is later converted, transformed or intermingled; and any income, capital or other economic gains derived or realised from the property at any time after the offence; and ...".*

[49] The task of the Court in interpreting the offence of Money Laundering does not end by merely citing the section as referred to above. It is incumbent upon the trial judge to provide the assessors with very specific definitions of some key words and phrases that contain in the Act and those words must be clearly stipulated in precise, unambiguous, simple, lucid terms so that the legitimate interpretation could be parted with the assessors in a comprehensible manner. The importance of this exercise is paramount because without having a clear understanding of the meaning of the words involved in a *sui generis* offence like Money Laundering offence, it is difficult to believe that the assessors would be able to assist the court in arriving at a proper conclusion with regard to the culpability of accused. Further, in the absence of such an understanding, the exercise of juxtaposing the facts with the relevant law would be an impossibility. In that context, it is the bounded duty of the trial judge to present to

the assessors the correct interpretation of the offence and to bridge the gap between the facts involved in the case and the ingredients of the offence.

[50] Another very important interpretation that must have been left with the assessors is the meaning that must be accorded to the phrase "serious offence". Serious offence is defined in Section 3 (h) of the Act to mean *"an offence for which the maximum penalty prescribed by law is death or imprisonment for not less than 6 months or a fine not less than $500.00"*. Throughout the summing up, there is a conspicuous absence of the interpretation of these words and phrases according to how they have been laid down in the statute itself. This I think is a serious flaw to be found in the Summing up.

[51] Further these interpretations should be in the forefront of not only the Trial Judge hearing a Money Laundering case, but also the prosecutors who are duty bound to make an explicitly clear statement in the information involved in the Money Laundering crime when the task is for them to prefer charges accurately.

[52] On that score, it is unfortunate that what I find in the present case is that the charges preferred are lacking in precision and wanting in details and this in effect can tantamount to a denial of a fair trial. It is important to remember that a person accused of a serious crime should have a full and complete understanding of the nature of the charges he has to face and this is an indispensable, *sine qua non* for a fair trial.

[53] I wish to reiterate that the learned High Court Judge had failed to explain to the assessors the exact, accurate meaning of the phrases "proceeds of crime", "serious offence", "unlawful activity" in the manner as how they are described in the relevant sections of the Proceeds of Crime Act of Fiji and that in my view is tantamount to a serious miscarriage of justice.

The mental element of the offence of Money Laundering

[54] The immediately preceding paragraphs are dealing primarily with the physical element of the crime. In the section that deals with the offence of Money Laundering the mental element is contained in the following phrase;

"and the person knows, or ought reasonably to know, that the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity."

See Section 69(3) of the Act

[55] However, dealing with the mental element involved in the crime in paragraph 27 of the Summing up the Learned Trial Judge has imported a citation from a decision from the Privy Council which is based on a Hong Kong case and in the instant case of this Appeal, the Learned Trial Judge had left the assessors with that interpretation as the accurate interpretation to follow in understanding the operation of Section 69(3) of the Money Laundering offence of Fiji.

[56] Out of justifiable curiosity I examined the citation to find out that the decision of the Privy Council had been in relation to an offence committed under the Summary Offences Ordinance and the Drugs Trafficking (Recovery of Proceeds) Ordinance of Hong Kong.

[57] The relevant sections that came under the judicial scrutiny has absolutely no resemblance to the Money Laundering Offence of our law. These ingredients do not mirror the offence of Money Laundering as stipulated in our law.

[58] In the circumstances it is my opinion that this is a serious misdirection of law, that most certainly would have left the assessors in a state of bewilderment to say the least.

[59] In this appeal I do not wish to be engaged in a lengthy discourse on the interpretation of the Money Laundering offence at this juncture fearing that it may lead to prolixity and beside this appeal is all about to find whether the conviction of the appellant could be sustained in the backdrop of the material available in the trial against him under the offence of Money Laundering.

[60] Suffice it to state at this stage, in dealing with the mental element involved in a crime, it is trite law that the word "knowledge" with its grammatical variations connotes the requisite mental element of the crime. In that sense, in order to substantiate the

offence of Money Laundering the prosecution is required to prove that the perpetrator "knew" or ought reasonably "to have known" that the money or other property involved in the crime have been derived or realised directly or indirectly by some unlawful activity.

Some legal perspectives on "knowledge" as the ingredient on the mental element of an offence

[61] It is settled law that whenever the word "knowledge" is included in the definition of an offence, it connotes the mental element of the requisite intention to commit the crime.

> *"Where the word is included in the definition of an offence it makes it plain that the doctrine of mens rea applies to that offence."*

Archbold 2012, paragraph 17-49; page 16.

[62] In certain jurisdictions, in order to prove knowledge, the prosecution must prove knowledge on the part of the offender by taking into account all the material circumstances of the offence.

[63] For example, on a charge of "knowingly having in his possession an explosive substance, the State must prove that the accused knew both that he had it in his possession and that it was an explosive substance.

R v. Hallan [1957] 1 Q.B. 569. 41 Cr. App. R. 111, C.C.A.

Wilfully Shutting one's eye to the Truth

[64] There is some authority for the view that in the criminal law "knowledge" includes wilfully shutting one's eyes to the truth. **Warner v. Metropolitan Police** (1969) 2 AC 256 at 279 HC.

[65] The most important matter in determining whether a person had the requisite knowledge is to carefully examine the relevant evidence and to draw an inference based on that exercise.

[66] The dictum of Lord Bridge in **Westminster City Council v. Caravel Grange Ltd**. 83 Cr. App. R. 155 at 164 it was held that;

> *"... it is always open to the tribunal of fact ... to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not wish to have his suspicions confirmed."*

R v. Sherif, Ali (Siraj); etal – The Times, February 11, 2009 CA; "Jury are entitled to conclude, if satisfied that the defendant deliberately closed his eyes to the obvious because he did not wish to be told the truth, that that fault was capable of being evidence in support of a conclusion that the defendant did indeed either know or believe the matter in question – *Archbold* 2012 paragraph 17-49, page 1817.

[67] In **Tracey v. DPP**, Lord Diplock had said that

> *"Knowledge or belief" are words of ordinary usage and in many cases no elaboration at all was needed."*
> Emphasis added.

[68] The other component in the Act is that in the case of Money Laundering it is sufficient even if the prosecution can prove that the accused ought reasonably to know that the money or other property is derived or realised, directly or indirectly, from some form of unlawful actions. See section 69(3).

[69] In here, it is my opinion that the meaning of the phrase 'ought reasonably to know', as against having actual knowledge, should be understood to mean, either constructive

knowledge or with having reference to all the attendant circumstances a person ought to have known the existence of the unlawfulness involved.

[70] In any case these are matters to be decided by referring to the evidence involved in the case.

[71] The foregoing discussion would make it abundantly clear that the learned trial judge had not adequately and correctly explained to the assessors the ingredients of the charge of Money Laundering and that is a serious non direction tantamount to an incurable misdirection in this appeal.

[72] As found in *Archbold* 2012, paragraphs 7 – 61 page 1097;

> *"Where there was a simple failure to direct the jury fully as to the ingredients that had to be proved the convictions had been quashed."*

[73] There are a series of cases where these postulations have been articulated and to cite a few would be;

R v. Manners – Ashley, 52 Cr. App. R. 5

R v. Ashley 52 Cr. App. R. 42

R v. Gambling [1975] Q.B. 207, 60 Cr. App. R. 25

R v. McVey [1988] Crim. L. R. 127

[74] **Stephen Russell Gambling** [1974] 80 Cr. App. R. 25

[75] In section 69 of the Proceeds of Crimes Act knowledge is stratified into two categories. The section goes as follows

> *"... and the person knows or ought reasonably to know that the money or other property is derives or realised, directly or indirectly, from some form of unlawful activity."*

Two matters for me to focus under this section.

1. The accused either should know that the money or other property comes from some form of an unlawful activity or;

2. He ought to have reasonable knowledge that the property or money comes from an unlawful activity.

Conclusion

[76] In dealing with this appeal I placed a special emphasis on the misdirection in the judgment on the offence of Money Laundering. There cannot be any dispute over the fact that the ingredients involved in a crime should be dealt with to a mathematical precision. The canons of interpretation demands that laws dealing with crimes should be interpreted in a strict sense and if any room is left for ambivalence it could lead to injustice. A trial judge has a bounded duty to comprehend the ingredients of a crime precisely, accurately within the four corners of the law and to share that knowledge with the assessors so that their task in pursuing the course of justice could be protected and fostered with the legal sanctity that it should be accorded with. In this case this aspect seems to have paled into oblivion and that I view as a misdirection to be dealt with. Therefore the appeal should be allowed.

[77] However, as discussed in this judgment this is not the case where the available evidence is insufficient to be brought under the judicial scrutiny anew, for there is clear evidence to demonstrate that the banking system of the country had been dabbled with and the rights of some innocent customers have been violated in the process. It is indubitable that the integrity of the financial institutions should be preserved and the innocent customer's rights should be protected. In my view in this case there is evidence to be reconsidered by a court of law to decide where the justice lies. In that context acting under section 23(2)(a) of the Court of Appeal Act Cap12 and in the interest of justice I would order a new trial.

Prematilaka JA

[78] I have read the draft judgment of Gamalath JA and agree that the appeal against conviction should be allowed.

Orders of the Court

1. *Appeal is allowed.*
2. *The conviction is set aside.*
3. *In the interest of justice a new trial is ordered.*
4. *The accused is remanded in custody and is to be brought on 10 June 2016 before the High Court at Suva for the purpose considering any bail pending trial application and further directions..*

Hon. Mr Justice Calanchini
PRESIDENT, COURT OF APPEAL

Hon. Mr Justice Gamalath
JUSTICE OF APPEAL

Hon. Mr Justice Prematilaka
JUSTICE OF APPEAL