

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 251 OF 2013S

STATE

VS

- 1. JOSEFA SAQANAVERE**
- 2. TUIMOALA RAOGO**
- 3. SAVENACA BATIBAWA**

Counsels : Ms. J. Prasad and Ms. A. Khan for State
Mr. A. Vakaloloma and Mr. N. Bulisea for All Accuseds

Hearings : 23 to 26 February, 29 February, 1 to 4 March, 7 to 11 March,
14 March, 2016

Summing Up : 15 March, 2016

Judgment : 15 March, 2016

Sentence : 18 March, 2016

SENTENCE

1. In a judgment delivered on 15 March 2016, the court found all of you guilty and convicted each of you on the following information:

FIRST COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69 (2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

JOSEFA SAQANAVERE and TUIMOALA RAOGO with another between the 4th day of May, 2010 and the 3rd day of September, 2012 at Suva in the Central Division, engaged directly or indirectly in transactions involving proceeds of crime amounting to a total sum of \$214,736.62 which was channelled through **ANZ Bank Account No. 10089840** knowing or they ought to have reasonably known that the money is derived directly or indirectly from some form of unlawful activity.

SECOND COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69 (2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

JOSEFA SAQANAVERE and TUIMOALA RAOGO with another between the 31st day of December, 2009 to the 2nd day of August 2012, at Suva in the Central Division, engaged directly or indirectly in transactions involving proceeds of crime amounting to a total sum of \$94,387.88 which was channelled through **BSP Bank Account No. 6945606** knowing or they ought to have reasonably known that the money is derived directly or indirectly from some form of unlawful activity.

THIRD COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69 (2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

JOSEFA SAQANAVERE and SAVENACA BATIBAWA with another between the 1st day of July 2010 and the 3rd day of September 2012, at Suva in the Central Division, engaged directly or indirectly in transactions involving proceeds of crime amounting to a total sum of \$239,407.20 which was channelled through **ANZ Bank Account No. 371087** knowing or they ought to have reasonably known that the money is derived directly or indirectly from some form of unlawful activity.

FOURTH COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

JOSEFA SAQANAVERE and SAVENACA BATIBAWA with another between the 3rd day of October 2011 and the 2nd day of August 2012, at Suva in the Central Division, engaged directly or indirectly in transactions involving proceeds of crime amounting to a total sum of \$84,959.46 which was channelled through **BSP Bank Account No. 7703198** knowing or they ought to have reasonably known that the money is derived directly or indirectly from some form of unlawful activity.

FIFTH COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

JOSEFA SAQANAVERE and SAVENACA BATIBAWA with another on the 2nd day of September 2011, at Suva in the Central Division, engaged directly or indirectly in transactions involving proceeds of crime amounting to a total sum of \$5411.10 which was channelled through **BSP Bank Account No. 1242892** knowing or they ought to have reasonably known that the money is derived directly or indirectly from some form of unlawful activity.

2. The brief facts were as follows. At the material time, between 2009 and 2012, Accused No. 1 headed the "Trust Unit" of the iTaukei Land Trust Board [TLTB], as Acting Accountant Landowners Affairs [ALA]. He had six Distribution Clerks working under him. The "Trust Unit" was responsible for paying out itaukei landowner's leasemoney on a monthly basis via their Landsoft computer system. At times, they also pay out TLTB cheques if the landowners request payment before the end of the month. It was Accused No. 1's job to see that the "Trust Unit" pays out the itaukei landowners' leasemoney on time and in the correct amount.

3. However, in count no. 1 and 2, Accused No. 1, with the assistance of Accused No. 2 and another distribution clerk, stole a total of \$309,124.50 from the itaukei landowners' leasemoney, deposited the same in Accused No. 2's bank accounts, and later withdrew the same and used it on themselves. In doing the above they tampered with the TLTB Landsoft computer system and created numerous fraudulent TLTB cheques.
4. The above modus operandi was repeated by Accused No. 1, Accused No. 3 and the same distribution clerk in count no. 3, 4 and 5. Accused No. 1 and the distribution clerk tampered with the TLTB Landsoft computer system data and created numerous TLTB fraudulent cheques to ensure the theft of \$329,777.76 of itaukei landowners' leasemoney. Accused No. 3 provided his brother's two ANZ and BSP bank accounts to store the above stolen money. Thereafter, the three accuseds withdrew the money and used it on themselves. A total of \$638,902.26 worth of itaukei landowners' leasemoney was stolen and laundered by the accuseds. Not a single cent had been recovered.
5. The public through their representative in Parliament, view the offence of "money laundering" seriously, and had prescribed it a maximum penalty of 20 years imprisonment, or a fine not exceeding \$120,000, or both (see section 69 (2)(a) of the Proceeds of Crime Act 1997). The tariff for "money laundering" is now set at 5 to 12 years imprisonment: see **State v Robin Surya Subha Shyam**, Criminal Case No. HAC 146 of 2010S; **State v Monika Monita Arora**, Criminal Case No. HAC 125 of 2007S, and **State v Doreen Singh**, Criminal Case No. HAC 086 of 2009S – all Suva High Court authorities. Of course, the actual sentence will depend on the mitigating and aggravating factors.
6. The aggravating factors in this case were as follows:
 - (i) *Serious Breach of Trust*: The TLTB was originally set up to control and administer native land for the benefit of i-taukei landowners. Approximately 87% of the land in this country are native owned. TLTB was your employer at the time. TLTB rents out native land, collects leasemoney and pays them to itaukei landowners. TLTB had set up the "Trust Unit", at the material time, to pay out leasemoney to itaukei landowners. Accused No. 1 was the head of the Unit, at the time, under the Manager Finance's supervision. You all acted together as a group, aided by a distribution clerk, to steal a total of \$638,902.26 of leasemoney, from i-taukei landowners. This was a serious breach of trust by Accused No. 1 and 3, who were TLTB employees at the time. You

have seriously breached the trust your employer and the landowners had in you. You allowed your personal greed to take over you, and steal \$638,902.26 of landowners' leasemoney. You will have to be punished with a custodial sentence to warn all dishonest TLTB employees not to abuse the trust placed on them, and to act as a deterrence to others.

- (ii) As for Accused No. 2, you were not employed by TLTB at the time. However, you had worked in government for so many years and was a police officer for 5 years. You should have known better not to engage yourself in this type of criminal activities. A large sum of money was deposited into your accounts, and not a single cent was recovered. You will have to serve a custodial sentence as a deterrence to others.
- (iii) This was a well planned and executed fraud on TLTB for 3 years. The head of the Trust Unit at the time, Accused No. 1, allowed the "Trust Unit" to be plundered systematically by the group. You, as a group, hid the offence for 3 years until the late Kalevu of Nadroga complained to TLTB General Manager. The police investigated the matter and found the rot you have built into the Trust Unit of the TLTB. You have really undermined the TLTB and the itaukei landowners of Fiji. You will have to accept that you will have to be punished, and given a custodial sentence, to restore the credibility of the "Trust Unit" and the TLTB, as a whole. You should not complain about your sentence, because you have done a great disservice to the i-taukei landowners of Fiji.
- (iv) Furthermore, the \$638,902.26 you all stole had not been recovered. You will have to pay with the loss of your liberties for the amount of money stolen.
- (v) Although you all have the right to defend yourselves in a court of law, you each showed no remorse throughout the trial, and even after it.

7. The mitigating factors were as follows:

- (i) For Accused No. 2 and 3, you have not offended in the last 10 years;
- (ii) For Accused No. 1, you have been remanded in custody for approximately one year, while Accused No. 2, you had been remanded in custody for about a month.

8. In **State v Monika Monita Arora**, Criminal Case No. HAC 125 of 2007S, High Court, Suva, the accused committed “money laundering” against Vinod Patel and Company between 9 December 2005 and 11 May 2007 in the sum of \$472,466.47. None of the money was recovered. She was sentenced to 7 years imprisonment, with a non-parole period of 6 years. In **State v Doreen Singh**, Criminal Case No. HAC 086 of 2009S, High Court, Suva, the accused committed “money laundering” against the ANZ Bank Samabula from 24 May 2008 to 14 February 2009 in the sum of \$157,423.94. None of the money was recovered. She was sentenced to 6 years imprisonment, with a non-parole period of 5 years. In **State v Robin Surya Subha Shyam**, Criminal Case No. HAC 146 of 2010S, High Court, Suva, the accused committed “money laundering” against the Fiji Revenue and Customs Authority from 1 March 2008 to 30 September 2010 in the sum of \$349,870.63. None of the money was recovered. He was sentenced to 12 years imprisonment, with a non-parole period of 10 years.

9. As for Accused No. 1, on count no. 1, I start with a sentence of 10 years imprisonment. I add 4 years for the aggravating factors, making a total of 14 years imprisonment. I deduct 1 year from 14 years, for time already served while remanded in custody, leaving a balance of 13 years imprisonment.

10. For Accused No. 1, I repeat the above process and sentence for count no. 2, 3, 4 and 5.

11. As for Accused No. 2, on count no. 1, I start with a sentence of 10 years imprisonment. I add 4 years for the aggravating factors, making a total of 14 years imprisonment. I deduct 1 year for the mitigating factors, leaving a balance of 13 years imprisonment.

12. For Accused No. 2, on count no. 2, I repeat the above process and sentence.

13. As for Accused No. 3, on count no. 3, I start with a sentence of 10 years imprisonment. I add 4 years for the aggravating factors, making a total of 14 years imprisonment. I deduct 1 year for the mitigating factors, leaving a balance of 13 years imprisonment.

14. For Accused No. 3, on count no. 4 and 5, I repeat the above process and sentence.

15. The summary of your sentences are as follows:
 - (i) Accused No. 1 : Count No. 1 : 13 years imprisonment.
 Count No. 2 : 13 years imprisonment.

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| | Count No. 3 | : | 13 years imprisonment. |
| | Count No. 4 | : | 13 years imprisonment. |
| | Count No. 5 | : | 13 years imprisonment. |
| (ii) | Accused No. 2 | : | Count No. 1 : 13 years imprisonment. |
| | | : | Count No. 2 : 13 years imprisonment. |
| (iii) | Accused No. 3 | : | Count No. 3 : 13 years imprisonment. |
| | | : | Count No. 4 : 13 years imprisonment. |
| | | : | Count No. 5 : 13 years imprisonment. |

16. Because of the principle of the totality of sentencing, all the above sentences are made concurrent to each other, that is, each accused will serve a final total sentence of 13 years imprisonment each.
17. Mr. Josefa Saqanavere, Mr. Tuimoala Raogo and Mr. Savenaca Batibawa, for committing various offences of "money laundering" against TLTB and the itaukei landowners of this country, when you, as a group, stole a total of \$638,902.26 from them, I sentence each of you to 13 years imprisonment, with a non-parole period of 12 years imprisonment, effective forthwith.
18. In terms of Section 4 of the Sentencing and Penalties Decree 2009, this sentence is designed to punish you in a manner that is just in all the circumstances. It is also designed to protect the community, especially the unsuspecting itaukei landowners, who are the TLTB's beneficiaries. The sentence is also designed to deter future TLTB staff, who handles TLTB trust money and itaukei landowners' lease money. The sentences also signify the court and the community denouncing these types of offences.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for All Accuseds : **A. Vakaloloma, Barrister and Solicitor, Suva.**