

**IN THE MAGISTRATES' COURT OF FIJIAT SUVA  
CRIMINAL JURISDICTION**

Criminal Case No. 239 of 2016

**STATE**

-v-

**HANNAN WANG**

**Counsel for Prosecution:** Ms. M. Khan & Ms. P. Lata for the Director of Public Prosecution  
(Hearing)

Mr. Shah, Saif (Sentencing Submission)

**Counsel for the Defendants:** Mr. N. Shivam & Mr. Gosai of Neel Shivam Lawyers

Date of Hearing: 02/10/2017, 03/10/2017, 04/10/2017, 05/10/2017, 06/10/2017, 09/10/2017  
11/10/2017, 12/10/2017, 23/10/2017, 24/10/2017, 10/11/2017, 21/11/2017  
and 24/11/2017

Date of Judgment: 22/02/2019

Date of Sentence: 09/04/2021

**SENTENCE**

1. **HANNAN WANG**, you are here to be sentenced after the State appealed this Court's decision of acquittal to the High Court. The Learned High Court Judge, Rajasinghe, R.D.R.T, J overturned this court's decision and convicted you for one count of Money Laundering contrary to section 69(2)(a) and 3(a) of the **Proceeds of Crime) Act , (Amendment) Number 61 of 2012.**
2. You were charged as follows;

**Statement of offence (a)**

**Money Laundering:** Contrary to section 69(2)(a) and 3(a) of the **Proceeds of Crime (Amendment) Act Number 61 of 2012.**

### Particulars of offence (b)

**Hannan Wang** and **another** between the 9<sup>th</sup> day of June, 2015 to the 24<sup>th</sup> day of June, 2015 at Suva in the Central Division engaged directly or indirectly in transactions involving ANZ Bank account number 12339449 to the total sum of \$675,774.98 that are the proceeds of crime, knowing or ought reasonably to know that the money is derived directly or indirectly from some form of lawful activity.

2. The High Court found you guilty and convicted you for being involved in transactions worth \$31,800.00.
3. 3. The brief facts of the case as revealed by the evidence is that you between 9<sup>th</sup> June, 2015 and 24<sup>th</sup> June, 2015 had withdrawn cash to the total amount of \$31,800.00 from ANZ Bank account number 12339449 belonging to Chunxiao Tour Company (CTC). The funds in CTC account were derived from unauthorized transfers from several foreign credit cards. There is evidence that EFTOPS machines installed at the CTC office at 160 Waimanu Road, Suva were used to illegally skimmed foreign cards.

### Sentencing Guidelines

4. Before sentencing you, this court has considered the principles of sentencing in sections 4(1), 4(2), 15 and 16 of the Sentencing and Penalties Act, 2009.

### Law and Tariff

5. The maximum penalty for Money Laundering is 20 years imprisonment or fine not exceeding \$120,000.00, or both if the offender is a natural person. Prescribed maximum sentence indicates that money laundering is a serious offence.
6. In **O’Keefe v State** [2007] FJCA 34; AAU 0029.2007 (25 June 2007) it was held by the Court of Appeal that:

*“When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person who is to be sentenced. Money Laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity. Of necessity, it is an international problem and undoubtedly smaller jurisdiction may be seen as useful and unsuspecting conduits. That is why parliament imposed the heavy penalties under the Proceeds of Crime Act.”*

*“However, where is here, the court is sentencing for the associated criminal offences which produced the money to be laundered, it must base its sentence on the relative seriousness of the individual offences.”*

7. The principle in **O’Keefe** was cited in **State v Sinha** [2010] FJHC 480; HAC 046.2008 (29 October 2010) by His Lordship, Gounder, D. J where he sentenced Salendra Sen Sinha for similar offences, a starting point of 4 years was selected. The amount of money withdrawn by the accused using FIRCA cheques in that case was \$187,333.57.

8. In State v Stephen HAC 088 of 2019 [12 April 2012] Madigan J considered some of sentencing guidelines from the Hong Kong jurisdiction. The Learned Judge cited the Hong Kong Court of Appeal decision in HKSAR v Javid Kamran (CACC 400/2004) where it was observed:

*“Money Laundering is a very serious offence as it is an attempt to legitimize proceeds from criminal activities. Serious criminal offences are very often motivated by financial gains and those who assist criminals in laundering money indirectly encourage them in their criminal activities. Successful deterrents against money laundering could be effective measures against crime.”*

*“It is not feasible to lay down sentencing guidelines for sentence of money laundering offences, as there is a very wide range of culpability factors arising include the nature of the offence that generated the laundered money, the extent to which the offence assisted the crime or hindered its detection, the degree of the sophistication of the offence and perhaps the accused’s participation including the length of time the offence lasted and the benefit he derived from the offence.”*

9. In State v Arora [2012] FJHC 1004; HAC 125.2007 (17 February 2012), His Lordship Justice Salesi Temo observed that:

*“Money Laundering is a serious offence, and it carries a maximum penalty of 20 years imprisonment, or fine not exceeding \$120,000.00, or both. (Section 69(2) (a) of the Proceeds of Crime Act 1997). His Lordship Mr. Justice Paul Madigan, in the case of The State v Anand Kumar Prasad & Others, Criminal case No. HAC 024 of 2010, High Court Lautoka noted in in April 2011 that, “there was no real precedent in Fiji for the offence of moneylaundering,” despite it carrying a maximum penalty of 20 years imprisonment.” His Lordship suggested a tariff between 8 to 12 years imprisonment.”*

*“Given the seriousness in which Parliament regards “money laundering” offence in the Proceeds of Crime Act 1997, by giving it a maximum penalty of “20 years imprisonment, money laundering in Fiji should be a sentence 8 to 12 years imprisonment. This tariff gives effect Parliament’s intention of treating ‘money laundering’ as a serious offence. A lighter tariff would be counter – productive to Parliament’s intention as enshrined on the Proceeds of Crime Act 1997. Of course, the final sentence will depend on the aggravated and mitigating factors.”*

10. In the said case, a starting point of 8 years was taken for the count of money laundering of \$472,466.47 and on second count of corrupt practices a sentence of 6 months imprisonment ordered.

11. Furthermore, in State v Stephen [2012] FJHC 1010; HAC088.2010 (12 April 2012). His Lordship Mr. Justice Paul K. Madigan stated that:

*“Within range of five to twelve years imprisonment for this offence, domestic money laundering on a small scale of little sophistication and with little benefit to the accused would attract sentences at the lower end of this scale. The laundering of funds*

intentionally and where the accused gains substantially in an affair of high sophistication will attract penalty at the upper end of the scale."

(underlining my own)

### **Starting Point**

12. In considering the above case laws, the court selects a starting point of 05 years

### **Aggravating Factors**

13. The following will be regarded as aggravating factors;

- (a) The high gain you received (\$31,800.00);
- (b) You targeted foreign credit cards because they are not present in Fiji to lodge a complaint with the Banks; and
- (c) The high degree of planning and sophistication of the offence.

14. In considering the above factors, I enhance your sentence by 04 years and arrive at an interim of 09 years imprisonment.

### **Mitigation factors**

15. The Learned Defence Counsel submitted the following on behalf of accused;

- (a) That he is a first offender;
- (b) He had remained in the country after his co-accused had fled and left the country;
- (c) That he has always been a friendly person and eager to help others. He is involved in this case because he had helped Mr. Lin by paying his rent;
- (d) Due to this case he has not been able to conduct business because people had a certain stigma on him;
- (e) He cooperated with the police at every stage of the investigation;
- (f) Furthermore, he adhered to the stop departure orders;
- (g) His business of wholesale has contributed to Fiji's economy;
- (h) He financially supports two of his children whose ages are 22 and 8. They reside in China;
- (i) Additionally he supports his sick elderly parents in China;
- (j) He has been in remand since 4<sup>th</sup> February, 2021;
- (k) That he is willing to reparate the total sum of \$31,800.00; and
- (l) That he begs the court for a non-conviction and for him to pay a fine.

16. For the above factors, the Court reduces 03 years from your sentence and finally arrive at 06 years imprisonment.

### **Sentence**

17. **Hannan Wang**, you are sentenced to 06 years imprisonment.

**Time spend in custody**

- 18. **Section 24** of the **Sentencing and Penalties Act, 2009**, requires the Court to deduct from the accused sentence time he has been in custody. He has been remanded in custody since 4<sup>th</sup> February, 2021 (02 months).
- 19. The court therefore deducts 02 months from his sentence. The accused final sentence is 05 years and 10 months imprisonment.

**Sentencing Remarks**

- 20. You have requested for a non-conviction and for you to pay a fine. However, considering the serious nature of the offence and the circumstances of offending, a custodial term is inevitable.
- 21. People who get themselves involved in money laundering must face the consequences of their actions.


**Order**

- 23. **Hannan Wang**, you are sentenced to custodial term of 05 years and 10 months imprisonment.
- 24. Acting under **section 18 (1)** of the **Sentencing and Penalties Act, 2009**, I impose 4 years as non- parole period.

**Appeal Period**

- 25. 28 days to appeal to the High Court.



  
Waleen M George  
**Senior Resident Magistrate**

Dated at Suva this 9<sup>th</sup> day of April, 2021.