

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 024 OF 2009

STATE

-v-

TOMASI KALITOGA KESI

Date of Hearing: 21st July 2009

Date of Sentence: 22nd July 2009

Counsel: Ms W. George for State
Accused in person

SENTENCE

[1] The accused is convicted of the following offences on his pleas of guilty:

FIRST COUNT

Statement of Offence

FORGERY: Contrary to Section 341(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 1st day of May 2007 at Suva, in the Central Division, with intent to defraud, forged an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 by purporting to be Semira Maseinawa.

SECOND COUNT

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 1st day of May 2007 at Suva in the Central Division, with intent to defraud, uttered an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing the same to be a false document.

THIRD COUNT

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 1st day of May 2007 at Suva in the Central Division, with intent to defraud, obtained \$300.00 cash by virtue of a forged Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing to be forged.

FOURTH COUNT

Statement of Offence

FORGERY: Contrary to Section 341(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 2nd day of May 2007 at Suva in the Central Division, with intent to defraud, forged an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 by purporting to be Semira Maseinawa.

FIFTH COUNT

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 2nd day of May 2007 at Suva in the Central Division, with intent to defraud, uttered an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing the same to be a false document.

SIXTH COUNT

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 2nd day of May 2007 at Suva in the Central Division, with intent to defraud, obtained \$400.00 cash by virtue of a forged Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing to be forged.

SEVENTH COUNT

Statement of Offence

FORGERY: Contrary to Section 341(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 3rd day of May 2007 at Suva in the Central Division, with intent to defraud, forged an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 by purporting to be Semira Maseinawa.

EIGHTH COUNT

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 3rd day of May 2007 at Suva in the Central Division, with intent to defraud, uttered an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing the same to be a false document.

NINETH COUNT

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 3rd day of May 2007 at Suva in the Central Division, with intent to defraud, obtained \$300.00 cash by virtue of a

forged Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing to be forged.

TENTH COUNT

Statement of Offence

FORGERY: Contrary to Section 341(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 5th day of May 2007 at Suva in the Central Division, with intent to defraud, forged an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 by purporting to be Semira Maseinawa.

ELEVENTH COUNT

Statement of Offence

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap. 17

Particulars of Offence

TOMASI KALITOGA KESI, on the 5th day of May 2007 at Suva in the Central Division, with intent to defraud, uttered an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing the same to be a false document.

TWELVETH COUNT

Statement of Offence

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 5th day of May 2007 at Suva in the Central Division with intent to defraud, obtained \$250.00 cash by virtue of a forged Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing to be forged.

THIRTEENTH COUNT**Statement of Offence**

FORGERY: Contrary to Section 341(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 8th day of May 2008 at Suva in the Central Division, with intent to defraud, forged an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 by purporting to be Semira Maseinawa.

FOURTEENTH COUNT**Statement of offence**

UTTERING FORGED DOCUMENT: Contrary to Section 343(1) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 8th day of May 2007 at Suva in the Central Division, with intent to defraud, uttered an Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing the same to be a false document.

FIFTEENTH COUNT**Statement of Offence**

OBTAINING MONEY ON FORGED DOCUMENT: Contrary to Section 345(a) of the Penal Code, Cap. 17.

Particulars of Offence

TOMASI KALITOGA KESI, on the 8th day of May 2007 at Suva in the Central Division, with intent to defraud, obtained \$300.00 cash by virtue of a forged Australian and New Zealand Banking Group Limited withdrawal slip Account Number 9075217 knowing to be forged.

- [2] The accused was employed by the Fiji Military Forces as a Territorial Force Officer in 2004. He was terminated from the RFMF in 2007.
- [3] Between 1 May 2007 and 8 May 2007, the accused on five separate occasions forged the signature of his colleague, Semira Maseinawa, on withdrawal slips belonging to the Australian and New Zealand Banking Group Limited. The withdrawal slips were presented at the ANZ Bank and a total sum of \$1550.00 was withdrawn from Semira Maseinawa's account.
- [4] The accused is 25 years old. He is married with two children. Currently, he is separated and his elderly parents are looking after his children. He is serving a total sentence of five years and one month imprisonment and will be released on 12 September 2012.
- [5] The tariff for fraud offences is 18 months to 3 years imprisonment (***State v. Saukilagi HAC 21 of 2004S***). Suspension of sentence is only considered where an early restitution is made as true expression of remorse and not just an attempt to buy one's way out of prison (***State v. Cakau HAA125 of 2004S***).

[6] In ***Pannikar v. State*** Cr. App. No. 28 of 2000, Pathik J adopted the English guidelines on the proper level of sentence to be imposed in dishonesty cases that are set out in the case of ***John Barrick*** (1985) 81 Cr. App. R 78 at 82 as follows:

- (i) the quality and degree of trust reposed in the offender including his rank;
- (ii) the period over which the fraud or the thefts have been perpetrated;
- (iii) the use to which the money or property dishonestly taken was put;
- (iv) the effect upon the victim;
- (v) the impact of the offences on the public and public confidence;
- (vi) the effect on fellow-employees or partners;
- (vii) the effect on the offender himself;
- (viii) his own history;

- (ix) those matters of mitigation special to himself such as illness, being placed under great strain by excessive responsibility or the like; where, as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police.

[7] The accused is not a stranger to the criminal justice system. He has twenty four convictions since 2003. His current sentences relate to similar offences (see ***State v. Kolinitoga*** Criminal Cases No. 1499/07, 08/08 and 09/08). While in the army,

he became familiar with the signatures of his colleagues and he forged their signatures to obtain monies from their bank accounts.

[8] Albeit the defrauded amount is small in this case, the accused committed a systematic fraud in breach of trust. He has not offered any restitution to the complainant. These are the aggravating features. The mitigating factors are his guilty plea and family circumstances.

[9] I take eighteen months as my starting point and add six months for the aggravating factors. For the small amount defrauded and the mitigating factors I reduce the sentence by one year and arrive at a term of twelve months imprisonment.

[10] On each count, the accused is sentenced to twelve months imprisonment, to be served concurrently.

[11] When a serving prisoner is being sentenced, the sentencer must have regard to the principle of totality (*Sharma v. State Cr. App. No. 27 of 1997*). The sentencer must consider the current sentence being served together with the imprisonment sentence for the further offending to ensure that the total sentence is appropriate to the total offending (*R v. Millen (1980) 2 Cr. App. R(s) 357*).

[12] The accused is serving a pre-existing sentence of five years and one month. I take the view that this is a long term to serve and adding another twelve months will offend the principle of totality. I order the accused serve his twelve months imprisonment concurrently with his pre-existing sentence.

Daniel Goundar
JUDGE

At Suva
22nd July 2009

Solicitors:

Office of the Director of Public Prosecutions for State
Accused in person