

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. HAA 72 of 2018**  
**(on appeal from Ba CC117 of 2018)**

**OSEA KELEIWAI RANITU**

**Appellant**

v

**STATE**

**Respondent**

Miss Vulimainadave (L.A.C.) for the Appellant  
Mr. J. Niudamu for the State

**Date of Hearing** : 16 November 2018  
**Date of Judgment** : 22 November 2018

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**JUDGMENT**

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- 1.] On the 29<sup>th</sup> day of August 2018 in the Magistrates Court at Ba, the appellant was convicted of one count of theft, contrary to section 291(1) of the Crimes Act 2009.
- 2.] He was said to have stolen \$20,090 by dishonestly making 33 withdrawals from the account of another.
- 3.] On the 13<sup>th</sup> September 2018 he was sentenced to 2 years imprisonment, with no minimum term being imposed.
- 4.] This appeal is against sentence and the petitioner's prayer is that
  - The starting point of sentence was inexplicably high

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- Not enough weight was given to the mitigating factors
- An incorrect credit for the guilty plea was made

5.] The facts of the case were that on the 24<sup>th</sup> August 2017, the accused opened a bank account with the BSP with a deposit of \$15.00. He was issued with an ATM card to operate the account through that bank's ubiquitous ATM machines. On that same day the accused used the card in a machine to find that his account was in credit by approximately \$20,000. Without alerting the bank he then proceeded to withdraw money in various sums between 24<sup>th</sup> August 2017 and 23<sup>rd</sup> September 2017. He made 33 withdrawals in the total sum of \$20,090,00 in the knowledge that the money being withdrawn did not belong to him, the money belonged to a certain Vijay Prasad who had a strikingly similar account number.

6.] The error was noted by the bank when it was seen that the number assigned to the accused's ATM card was in fact the account number of Mr. Prasad, not of the accused. The bank reimbursed Mr Prasad's account and reported the matter to the Police. The accused was arrested and interviewed under caution. He freely admitted the withdrawals.

7.] A search of his home found building materials and home appliances all to the value of \$10,000. These items were recovered.

8.] The charge that the accused pleaded guilty to reads as follows”

“THEFT: Contrary to section 291(1) of the Crimes Act 2009

**OSEA KELEIWAI RANITU** between the 24<sup>th</sup> August 2017 to(sic) 23<sup>rd</sup> September 2017, along the corridor of Lautoka to Ba in the Western Division, on thirty three (33) occasions , dishonestly appropriated (withdrew) cash to the total value of \$20,090.00, the property of **VIJAY PRASAD** with the intention to permanently deprive the said **VIJAY PRASAD** of his property. “

9.] The appeal is against sentence, however this Court would of its own motion allow the appeal on the basis that the charge that the accused entered a plea to in the Court below is defective, being both duplicitous and naming the wrong victim of the offence. The accused was unrepresented below and had the matter gone to trial a no case submission would have certainly succeeded leading to a dismissal of the charge and an acquittal of the accused.

10.] While section 70 of the Criminal Procedure Act provides that it shall be sufficient for the charge to specify the gross amount stolen; that cannot apply in this case. The facts state that the amount stolen from the funds due to Vinay Prasad is \$20,000 yet the sum stated in the charge is \$20,090. Moreover the accused had funded his account with \$15, so the withdrawal of \$10 on the 20<sup>th</sup> September 2017 could well have been of his own monies and not theft at all.

- 11.] Given that of all 33 actions charged as theft, one may well not be theft, then the charge is duplicitous and therefore defective.
- 12.] What's more the charge names Vijay Prasad as the victim in this case. The victim is in fact the Bank of South Pacific ("BSP"). The bank is the owner of all the funds , no matter who the account holder . The accused had no intention at all of depriving Vijay Prasad of the property; he probably didn't even know him; each time he made a withdrawal of the ill-gotten balance he deprived the BSP of a chose in action.
- 13.] The charge being defective in two respects, it cannot stand. The plea of guilty to the charge has resulted in a miscarriage of justice.
- 14.] The conviction is quashed and the sentence set aside.
- 15.] This matter is an example to all Magistrates in the case of an unrepresented accused to check that the charge is relevant and valid. An unrepresented accused will rarely have the legal skills to challenge a defective charge. .
- 16.] There is no need to consider the grounds of appeal against sentence, suffice as to say that it would have succeeded. It is a manifestly excessive sentence in the circumstances for a theft that was a first time opportunistic theft .
- 17.] Theft of monies wrongly credited to another's bank account is hardly prevalent in the community as stated by the Magistrate , and there is therefore no need for a deterrent sentence.

18.] The convicted being quashed, the Appellant is acquitted of the charge and is to be released from custody immediately.



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**P.K. Madigan**

**Judge**

**High Court Lautoka**

**22<sup>nd</sup> November 2018**