

IN THE MAGISTRATES COURT AT NASINU

Criminal Case No. 16/2011

MINISTRY OF HEALTH

V

FARAMA FAREEN

Mr. **N. Waqa** for the Ministry of Health

The accused is present and represented by **Messrs Gordon & Chaudhry Lawyers**

SENTENCE

1. You, **FARAMA FAREEN**, are here, to be sentenced on admission of guilt on your own accord for the following offences namely:

CHARGE:

Statement of Offence [a]

2. **SALES OF TOBACCO PRODUCTS IN SMALL QUANTITIES:** Contrary to Section 16 (1) (a) and Section 16 (2) of the Tobacco Control Degree 63/11.

Particulars of Offence [b]

3. **FARAMA FAREEN f/n Abdul Janief** on the 11th of April 2001 at Abdul's Mini Mart in the Central Division being the shop attendant of the above store did sell a single Benson and Hedges roll to **Ratu Peni Verebasaga**.

4. SUMMARY OF FACTS can be summarized as follows;

On the 11th day of April 2011, Authorised Officers of the Ministry of Health and a Police Officer were inspecting tobacco product retailers in the Nasinu area when they came across the accused. Ms. Farama Fareen f/n Abdul Janif of Lot 3, Caubati Road, Caubati Housing, Nasinu selling a single cigarette roll to a Mr. Ratu Peni Verebasaga.

On the day in question Authorised Officers Michael Bonnar, Mikaele Kocovanua with Police Constable 3984 Iosefo Lesidra of Valelevu Police Station were inspecting retailers in Caubati Housing. At about 8.43 pm, the team was passing by Abdul's Mini Mart in Caubati when Authorised Officer Kocovanua noticed Mr. Verebasaga came out of the shop with an ignited cigarette roll in his hand. Authorised Officer Kocovanua approached and asked Mr. Verebasaga where he bought the cigarette roll from and he pointed to the shop he just came out from.

Mr. Verebasaga was also asked if he could identify the person who sold him the cigarette roll and he pointed at the accused who was serving at the counter that time. Authorised Officer Kocovanua relayed his observations to Authorised Officer Bonnar.

On the basis of the information provided, Authorised Officer Bonnar with PC 3984 Lesidra approached the accused. The accused was told that she had committed a prohibited act by selling a single cigarette roll to Mr. Verebasaga. The accused was then booked for the **sale of tobacco products in small quantities Contrary to Section 16 (1) (a) and (2) of the Tobacco Control Decree 63/2010**. She was served with a Tobacco Control Fixed Penalty Notice in the presence of PC 3984 Lesidra and warned for Prosecution.

5. The offence describes in Section 16 of the Tobacco Control Decree states as follows:-

"16. – (1) A person must not sell or cause or permit to be sold-

(a) Loose cigarette sticks or cigarette roll; or

(b) Loose tobacco in package that contains less than twenty (20) grams of tobacco.

(2) A person found to be contravening subsection 1 commits an offence and shall be liable to a fixed penalty in Schedule 7".

6. Schedule 7 of the Tobacco Control Decree fixes the penalty for Section 16 offences at 10 penalty points which is equivalent to \$100 per point totaling \$1,000.00.

7. In your written mitigation you stated as follows;

- The accused is 17 years of age and is the daughter of the shop keeper operating a suburban shop along Caubati Road in Nasinu. She has been of good character so far with no offences or cases alleged against him except for the present charge.
- Her good character thus far culminated in her acceptance that she has done wrong and pleading guilty.
- The accused has learnt her lesson and is very remorseful and regrets unknowingly breaking the law. The accused has realized the hardship she has placed her family in during the time she spent in Court and the embarrassing experience she has put her parents and family through. Though it is too late to stop the commission of the offence, the accused has learnt a big lesson after this incident. She assures this Honorable Court that she will not re-offend, and go through the same experience again.

- The fact that this is the first time she had to continuously appear at mentions in any Court of law, and that the accused was under investigations, have made the accused very remorseful, and realize the consequences of her actions. She has made a commitment to her father who owns the shop and her family not to re-offend.
- A conviction will definitely affect the accused's studies, future overseas migration plans and future employment. In any professional registration, there is a prerequisite requirement for Police clearance. A conviction whether custodial or otherwise would affect the probability of undergoing any form of registration.
- The accused has pleaded guilty at an early stage in the first available opportunity since receiving full disclosures.
- By her early guilty plea, the accused has saved the Court's and everyone's time.
- The accused is very remorseful for her actions and asks for the Court's forgiveness.

8. In sentencing I draw my attention to sentencing principles which set out in Sentencing and Penalty Decree 2009.

Section 4(2) provides; "In sentencing offenders a court must have regard to —

- (a) the maximum penalty prescribed for the offence;
- (b) current sentencing practice and the terms of any applicable guideline judgment;
- (c) the nature and gravity of the particular offence;
- (d) the offender's culpability and degree of responsibility for the offence;
- (e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
- (f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;
- (g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;
- (h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;

- (i) the offender's previous character;
- (j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and
- (k) any matter stated in this Decree as being grounds for applying a particular sentencing option."

9. Further Section 15 (1) (e) and (f) through (j) and (j) state as follows:-

"15. (1) If a Court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence, and subject to the provisions of this Decree-

(e) with or without recording a conviction, make an order for community work to be undertaken in accordance with the Community Work Act 1994 or for a probation order under the Probation Offenders Act (Cap 22);

(f) With or without recording a conviction, order the offender to pay a fine;

(i) Without recording a conviction, order the release of the offender on the adjournment of the hearing, and subject to the offender complying with certain conditions determined by the Court;

(j) Without recording a conviction, order the dismissal of the charge".

10. You asked non conviction Section 16. (1) of said Decree gives powers to that . It says "In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including —

- (a) the nature of the offence;
- (b) the character and past history of the offender; and
- (c) the impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects."

11. The fixed penalty is \$1000 for this offence. You asked 4 150 to be imposed as fine without conviction. . Section 31(2) provides to impose lesser fine than maximum.

"The maximum fine that a court may impose under sub-section (1) is the maximum amount specified in the provision which prescribes the relevant offence, and a court may impose any lesser fine than the maximum."

12. Section 45(1) gives power to record a non conviction after found guilty. It Says;

"A court on being satisfied that a person is guilty of an offence may dismiss the charge and not record a conviction"

13. You have sought non conviction and I consider the courts' attitudes of first young offenders.

14. In Prasad v The State [1994] FJHC 132; Haa0032j.94s (30 September 1994) S W Kepa J enunciated that the fact that **Appellants are first offenders ought to be a very strong mitigating factor in their favour.**". (Emphasize is mine)

15. In Prasad v State [1994] FJCA 19; Aau0023u.93s (24 May 1994), Fiji Court of Appeal held that **".... Courts ought to bend backwards to avoid immediate custodial sentence for first offenders."**

16. Singh v The State [2000] FJHC 115; Haa0079j.2000s (26 October 2000) Shameem J went on saying;

"However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse."

17. In State v Mocevakaca [1990] FJHC 87; [1990] 36 FLR 19 (14 February 1990) Fatiaki J (As he then was) dealt with similar type of situation. His Lordship stressed on sentencing in young offenders. His Lordship added;

"Needless to say, in the case of young first offenders there can rarely ever be any conflict between the general public interest and that of the offender."

If I may say so society has no greater interest than that its young people should become useful law-abiding citizens and the difficult task of the Courts is to determine what punishment or treatment gives the best chance of achieving that end. The realisation of that objective is the primary and by far the most important consideration in sentencing young first offenders."
(Emphasize is mine).

18. Hence, It could be seen even more grave criminal cases the court have shown leniency to the young first offender. Thus as a first offender you get the benefits and I think this is fit and proper case to exercise the discretion of the court. You are given a final chance. I have considered the prosecution submission with relating to legal points on sentencing. The fixed penalty is \$1000 and normally this court imposes \$500 for these types of cases. . I have no reason to reduce this penalty further. Considering you mitigation and law relating to sentencing, I wish to act under section 15(1) (f) of the Sentencing and Penalty Decree.

19. I record a non conviction but you pay \$500 fine in default 50 days in imprisonment. This sentence will not affect your future prospect of migration, job or career.

20. 28 days to appeal.

On 08th February 2012, at Nasinu, Fiji Islands

**Sumudu Premachandra
Resident Magistrate**