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BETWEEN: PENISONI PENITANI - *Appellant*

AND: POLICE - *Respondent*

BEFORE THE HON. JUSTICE CATO

Mr. Pouono for the Appellant
Ms. Moa for the Respondent

JUDGMENT

[1] This appeal was against sentence. The appellant, at the time of the offence of theft, was a serving police officer. He had been convicted of stealing a memory card out of the complainant's phone. She was a fellow police officer. Initially, the appellant denied having done so but eventually he admitted he had done so. He returned the phone and later the card. Although he gave the complainant back the card in the meantime he had distributed to other police officers very personal material ɨthat she had stored in the memory. The appellant pleaded guilty to the offence and Magistrate Mafi sentenced him to pay compensation of $500.00 to the complainant within 2 weeks and in default of payment serve three months imprisonment. Also, he was placed on probation for good behaviour for three months.

[2] The grounds for the appeal against sentence was that because the card had been returned and was worth only $20.00 the compensation order was manifestly excessive. Mr Pouono raised before the Magistrate that the appellant was looking after his elderly parents and

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was the breadwinner for the family. He had been suspended from the police force.

[3]   I do not consider that the Learned Magistrate erred in the sentence he imposed in principle; but in two lesser respects I vary the sentence imposed for the reasons given below.

[4]   Quite aside from the fact that his was a serving police officer committing an offence of dishonesty in a professional setting, the dissemination of very private and personal material to other members of the force would be very distressing, if not humiliating, for the complainant. Although the value of the card was only $20.00, in the circumstances of this case, I agree with the Magistrate that the value was of much less importance than the other factors I have mentioned. The dissemination of private personal material to other members of the force considerably aggravated, in my view, his offending. Without the theft, he would not have had access to this very private material. I consider the compensation order was entirely merited and very appropriate.

[5]   I have ascertained from Mr Pouono this morning that the appellant's wife is in gainful employment and he should be well able to pay the compensation to the complainant, in my view. I vary the order of the Magistrate from two weeks to three months, however to enable him to pay the order of $500.00 compensation because he is not in gainful employment, it seems, at the moment. In default of payment within three months as the Magistrate ordered, he is sentenced in default to one month imprisonment. I vary the period in default because under the 2012 amendment, Parliament saw first to increase the maximum amount of compensation from $500.00 to

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$5000.00, whilst at the same time reducing the default period from 12 months to three months only. (sections 2 and 3, Criminal Offences Amendment Act, 2012) It seems to me that three months default should apply to higher awards of compensation than the $500.00 compensation ordered here. In other words, the default period should bear a reasonable relationship with the quantum of compensation ordered.

[6]   Mr Pouono did not seriously contend that ordering him to be on probation for good behaviour for 12 months was wrong, in the circumstances, either.

[7]   For these reasons, I allow the appeal but only to the extent of varying the Magistrates' order to give the appellant three months to pay the compensation of $500.00, and in lieu of three months imprisonment in default, I substitute one month imprisonment in default.

DATED: 24 MARCH 2014   **J U D G E**