

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 15-18 of 2016

22/11/16
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R E X

V

1. 'ISILELI KAUMAVAE

2. SIONE SOSEFO 'AHOHAKO

3. SIONE KIVALU HELETA

4. OLA TAMEIFUNA

BEFORE THE HON. JUSTICE CATO

Mr Aho for the Crown
Mr Niu SC for Kaumavae
Mr Tu'utafaiva for 'Ahoako
Mr Corbett for Heleta and Tameifuna

Sentence

[1] Submissions were heard on Friday the 11th November, 2016 and I adjourned until today for sentence to be delivered. In the case of the accused Ms Tameifuna, I requested the Crown to report as to whether in the light of her medical condition, a bipolar disorder, she could be adequately accommodated in prison.

[2] This sentencing arose from offences in which all accused were involved in various ways in seeking to obtain a false passport in the name of Connor James Tameifuna at the request of a third party, a Tongan, who is I am told is overseas. He had approached a

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friend, the accused Mr 'Ahohako, who was a long serving clerk at the Magistrate's court to assist him to obtain a passport. Mr 'Ahohako had certified that he had known the applicant Connor James Tameifuna for 25 years. On being interviewed by Police, Mr Ahohako admitted that he did not know a Connor James Tameifuna nor had he met the person that appears in the passport photograph on the application who purported to be the said Connor James Tameifuna.

- [3] Mr 'Ahohako had subsequently approached Mr Kaumavae, a friend with whom he had previously worked and who at the time of the offending was employed as a Public Servant to obtain a false birth certificate which he did engaging in forgery.
- [4] Mr Heleta, at the time of the offending, had Ms Tameifuna residing with him as had been the third party. Mr Heleta instructed Ms Tameifuna to write a letter to Immigration to confirm that she was the mother of the Applicant, and what details were to be put in the letter. She obliged and wrote a letter to Immigration Tonga in support of the application in which she confirmed that the Applicant was her illegitimate son when she knowingly knew that the Applicant was not her son. Tameifuna admitted this when interviewed by the Police.
- [5] It is unclear as to whether any of the accused received remuneration or were motivated by this except Mr Kaumavae who admitted he was expecting some financial reward. Mr Niu SC for Mr Kaumavae did not depart from this assertion which appeared in the probation report and indeed suggested that the offer had been made by Mr 'Ahohako. Ms Tameifuna

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suggested she received a small amount as reward. I think it very unlikely any of these accused, particularly those involved in public service positions would take part in such an obviously dishonest scheme unless they expected to receive payment. I cannot, however, speculate. I am content to treat what Mr 'Ahohako and Mr Kaumavae did as serious abuses of their trust as public servants. They both acted in dereliction of their duty to approach their duties with probity, and I will treat this as an aggravating feature of their offending.

[6] The deception failed. On or about the 14th September 2015, Immigration officer Bernadette Fifita was approached by Mr 'Ahohako and asked to assist in expediting an application for a new passport. He then handed Ms Fifita an envelope containing a completed application form, the birth certificate of the purported applicant (Connor James Tameifuna), the fee, and other supporting materials. During the following week, Ms Fifita made some preliminary enquiries into the application. She could not find any information on the Applicant's natural mother as shown on the birth certificate. However, when she made inquiries with various sources, she was told that the natural mother on record, Ms Tameifuna did not have an illegitimate son by the name of Connor James Tameifuna. Ms Fifita and she should be commended for her insight, reported the matter to her superior, Mr Viliami Lolohea, who reported it to the police.

[7] All four accused have pleaded guilty to serious criminal offending. Mr 'Ahohako pleaded guilty to one count of making a false declaration for the purpose of obtaining a passport under section 21(1) (a) of the Passports Act. Mr Kaumavae pleaded guilty to one count of forgery

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under section 170(1)(a), 3(b), (4) and 171 of the Criminal Offences Act. Mr Heleta pleaded guilty to one count of causing to be made a false statement for the purpose of obtaining a passport under section 21(1) (a) of the Passport Act. Ms Tameifuna pleaded guilty to obtaining a passport by making a false statement under section 21(1)(a) of the Passports Act. All offences under the Passports Act carry a maximum sentence of 10 years imprisonment. Forgery carries a maximum sentence of 7 years imprisonment.

[8] This is, as I have said, serious offending and it is one of the first cases where seriously deceptive conduct has been involved an attempt to obtain a false passport to have come before a Court in Tonga. Mr Aho, for the Prosecution, in a thoughtful submission, contended that the creation of a false passport impugned the very integrity of the passport regime which is fundamental to the administration of Tongan passports to be used as evidence of identity and citizenship of Tongan subjects travelling internationally. The actions of the accused, he argued, undermined the capacity of Government to administer passports and the Act, and obstructed the proper regulation of movement of people into and out of Tonga and its treaty obligations in that respect.

[9] I agree and this Court must respond by imposing terms of imprisonment which reflect the seriousness of this offending which constitutes a criminal act against the Kingdom of Tonga. I had discussions with counsel concerning the starting point for such offending. For a single episode of offending such as arose here, I consider that, in the case of the passport offences, where the maximum is ten years, the starting point

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should be three years imprisonment. In the case of the forgery, it being a lower maximum penalty of 7 years, but none the less forgery intended to undermine the passport system, two and half years imprisonment. I stress that an offender who is proven to have indulged repeatedly in such activity for profit or who has corrupted others by repeatedly inveigling them into such schemes could expect a higher starting point. The starting point must reflect the seriousness of the offending, be an adequate deterrent and be protective of the integrity of the Tongan Passport regime.

[10] In the case of Mr 'Ahohako, or any of the accused, I do not accept that any friendship with the third party who commissioned their assistance was a mitigating factor. All should have had the good sense and honesty to refuse entreaties from the third party. As a public servant and one of several years standing, Mr 'Ahohako's breach in making a false statement and in corruptly persuading Mr Kaumavae to assist by forging a birth certificate is reprehensible. His gross breach of trust is a serious aggravating feature for which I impose an additional year of imprisonment. The overall starting point in his case is 4 years imprisonment.

[11] As to Mr Kaumavae, he was candid enough to admit he expected a reward for his corrupt behaviour. He too should have known better. He also had a career of some years as a public servant and corruptly breached the trust and confidence that the people of the Kingdom of Tonga are entitled to expect of a public servant. I view his role as also integral to this fraud but his involvement as less than Mr 'Ahohako who was an organiser. I sentence him to an additional 6 months for

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his breach of trust or confidence. The starting point in his case is an overall three years imprisonment.

[12] As to Mr Heleta and Ms Tameifuna, they may also have been influenced by a friendship with the third party who had lived at the premises of Mr Heleta for a period but they must have appreciated that their conduct was very dishonest, and should not have become involved. Both adopted serious parts or roles in furthering the illegal enterprise. In my view, a starting point of three years is appropriate also in their cases.

[13] By way of mitigation, I have read the probation reports of the accused. In the case of Mr 'Ahohako, it reveals that he is aged 37, is married and has one child. They are separated as a consequence of this offending. He was appointed a civil servant in 2000 and was suspended in October 2015 from the Magistrate's Court. He had worked in the Ministry of Justice since 2010. He expressed remorse for his actions. He accepts he has significantly breached his employer's trust and that of his family and others. He is a first time offender. He denies any financial benefit but says he acted out of peer pressure. He will plainly find employment more difficult to find now, but to the extent that is the case he is the author of his own misfortune. The Crown submission states he was co-operative.

[14] In my view, his guilty plea, expression of remorse, the fact he is a first offender and was co-operative merit a reduction in his sentence of 15 months imprisonment. He will be sentenced to a term of imprisonment of two years and nine months. I consider that he is a suitable candidate for his sentence to be partially suspended. I suspend the final 12 months of his sentence on

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condition he does not commit any offences punishable by imprisonment during the period of his suspension.

[15] In relation to Mr Kaumavae, he admitted his corrupt motive, and indicated he expected financial gain. His counsel blamed Mr 'Ahohako for making this offer. Mr 'Ahohako had been his best friend in their earlier careers, he said. He expressed remorse and regret. He has no previous convictions. He is aged 30 and he and his wife have fostered two daughters. He appears, though having a difficult childhood, to have done well academically. He has been suspended since 2015 having been appointed a civil servant in 2008. He had been promoted to his current position as a computer Assistant at the Ministry of Justice in October, 2015. He also has ruined his career by his corrupt behaviour.

[16] In my view, he is entitled to 12 months mitigation for his guilty plea, obviously genuine remorse and co-operation. Accordingly, the sentence imposed upon him is one of two years imprisonment. He is also a worthy candidate for rehabilitation and I similarly suspend the final year of his sentence on the condition he commit no offence punishable by imprisonment for the period of his suspension.

[17] Mr Heleta seems to have become involved in this offending also because of his acquaintance with the third party, when Ms Tameifuna also shared accommodation with him. He is aged 26. He has one illegitimate child. He has no stable income and relies on his aunt for support. He expressed in his probation report a desire to set aside his plea suggesting he has limited remorse for what has occurred. He did not persist with this application on sentence. He had one

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previous conviction for manslaughter by negligent driving for which he was sentenced to 18 months imprisonment and his sentence suspended for two years. I consider the only mitigating factor in his case is his guilty plea for which I allow him 9 months discount. He did not appear to me to show any genuine remorse, and was influential in corrupting his cousin Ms Tameifuna to participate in the scheme. He is sentenced to 2 years and 3 months imprisonment.

[18] Although he has a previous conviction that was about 8 years ago. He seems to have performed his sentence satisfactorily on that occasion and remained out of trouble until this offending. Because of his guilty plea, I also suspend the final 12 months of his sentence on the condition that he not commit any offences punishable by imprisonment for 12 months.

[19] In relation to Ms Tameifuna, I do not accept that she did not know the criminality inherent in what she was doing. She is aged 55 and obviously, in my view must have appreciated that she was furthering a very corrupt activity that is consistent with her plea. She admitted to receiving a small sum for her participation. She was staying at her cousin, the accused Heleta's home, where she met the third party. The third party became a friend, it seems also. She has a diagnosis of bipolar affective disorder and is on medication. Her employment is domestic duties. She receives remittances from a son who is in the United States. She has no previous convictions. She expressed contrition for her activity. She has experience in community activities, and there is support for her, expressed in the probation report. I take the view that she acted fraudulently in order to accommodate the

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aspirations of the third party and her cousin Heleta and obtain knowingly a false passport. I consider her guilty, plea, remorse, and previous good character including her community work as entitling her to 12 months mitigation. The sentence I pass upon her is two years imprisonment.

[20] I come now to Mr Corbett's submission that I should fully suspend her sentence. I am reluctant to do this because, in my view, offending against the passports regime of the kind she participated in should generally carry some period of actual custody. I do, however, consider that there may be difficulties in her being imprisoned at Hu'atolitoli Womans' prison for any length of time. The information, I have received from the Prison service is that the prison has no special facility for such character disorder but has no problem in carrying out its duty if the Supreme Court orders that a person with bipolar affirmative disorder is sent to Hu'atolitoli prison. Against, this is a letter or certificate from Dr Violet Tupou, a psychiatric specialist at the psychiatric unit at Viola Hospital, who suggests that she be remanded there. She says a recent review showed Mrs Tameifuna was extremely upset and the Ministry were concerned she may be showing early signs of relapse of her illness. She also observed that the Ministry's experience with bipolar affective disorder was that it had proven to be extremely difficult for its staff and the staff of the female prison as in the past, persons with bipolar affective disorder who were sent to Hu'atolitoli prison were aggressive and disruptive during their incarceration. This had resulted in transferring those persons back into the psychiatric unit as it was extremely difficult for its staff to monitor and treat them whilst they were incarcerated. This letter

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confirmed my concern that the prison regime could not adequately deal with the accused for any length of time. I direct under sections 70-72 of the Mental Health Act, the Superintendent of Prisons take steps forthwith to transfer the prisoner in his custody to the Psychiatric unit of Vaiola Hospital to be under the care of Dr V Tupou in furtherance of a term of imprisonment. I enclose with a copy of this judgment the letter to the Police Commissioner from Dr Tupou of the Ministry of Health which in my view is a sufficient basis for the Superintendent of Prisons to effect an immediate transfer under section 72.

[21] If there are any further problems with this sentence, the Crown is at liberty to place the matter before this Court.



DATED: 18 NOVEMBER 2016

JUDGE