

**IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
PANGAI REGISTRY**

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**CR 124 of 2016**

**BETWEEN: REX**

**Prosecutor**

**AND : MIKAELE LE'OTA**

**Accused**

**BEFORE LORD CHIEF JUSTICE PAULSEN**

**Hearing : 12 May 2017.  
Date of Ruling: 12 May 2017.**

**Counsel : Mr. J Lutui for the Crown  
The accused in person**

**RULING ON SENTENCE**

- [1] Mr. Le'ota has pleaded guilty to one count of possession of illicit drugs contrary to section 4(a)(ii) of the Illicit Drugs Control Act 2003 and one count of cultivation of illicit drugs under section 4(a)(ii) of the Illicit Drugs Control Act 2003. In both cases the illicit drugs were 52.42 grams of cannabis plant. He appears today for sentencing.
- [2] A summary of facts was read to the Court and Mr. Le'ota takes no issue with anything contained in it. It is not necessary to set it out in full. It is sufficient to say that Mr. Le'ota is 31 years old. The complainant is his partner. There were a number of incidents which lead the complainant to be suspicious that

Mr. Le'ota was involved in drugs. On 9 April 2016 the complainant was advised by a third party that Mr. Le'ota was growing marijuana plants. In addition he would go off into the bush nearby the house in the mornings and evenings and return red eyed. On 16 April 2016 Mr. Le'ota was not at home and the complainant looked for him and found him in the bush where he said he was going to the toilet but appeared to be doing something else. Later the complainant returned and found a sack containing marijuana. She reported this to the Police and a search found that Mr. Le'ota was in possession of 25 cannabis plants weighing 52.42 grams. He was cooperative with the Police and admitted his offending and has no previous convictions.

**The prosecutions submissions**

- [3] The prosecution argues this is a serious offence but acknowledges the mitigating factors that Mr. Le'ota appears as a first offender, he pleaded guilty at the first opportunity and co-operated with the Police. The prosecution notes also that he has family responsibilities. I was referred to three previous cases which are said to be comparable for sentencing purposes which I shall refer to below. An order for the destruction of the drugs was sought.

**The pre-sentence report**

- [4] I have a pre-sentence report which gives me helpful information about Mr. Le'ota's background and personal circumstances. He is the fourth of 10 children in his family and comes from a humble background. The family was heavily dependent on fishing and subsistence farming and Mr. Le'ota was his father's main helper while his siblings went to Tongatapu for work and education. He dropped out of school in Form 5 and is not presently in paid employment but spends his time going to the bush and fishing. He did do seasonal work in Australia in 2012 and 2013 but quit that to care for his widowed mother and siblings. He has a defacto partner of seven years and they have an 8 month old daughter. Mr. Le'ota's mother, partner and

daughter are all dependent upon him for support. His mother and partner are understandably fearful of the consequences of his offending. It appears Mr. Le'ota has been using cannabis for some time. He said that he grew cannabis for his own use and as an exhaustion reliever and it became a habit that he enjoyed with his friends over the years.

- [5] The pre-sentence report advises that Mr. Le'ota is a good man, with family responsibilities and the love and support of his family. It emphasises that he appears for sentence as a first time offender. The recommendation is for a fully suspended sentence with supervised community work.

**The nature of the offences**

- [6] It has long been recognised that the drug related offending is very serious matter and has the potential to cause considerable disruption to Tonga society and the wellbeing of citizens. Parliament has recognised this by imposing very substantial penalties for this type of offending and in 2001 the then Chief Justice issued a press release indicating that henceforth possession of even a small amount of cannabis would attract a sentence of imprisonment. For this reason the Courts must impose sentences which seem to deter such offending particularly if there are aspects of the commercialisation or growing drugs for the use of others.

**Comparable cases**

- [7] In arriving at the appropriate sentence in this case I have had regard to a number of previous decisions.
- [8] In *R v Talia'uli* [2007] Tonga LR 226 the accused was 23 years old and pleaded guilty to possession of 3 bags containing 22.5g, 26.76g and 4.99g which the accused had collected from Fua'amotu airport by passenger from Fiji. He was a first time offender and cooperated with the authorities. He was sentenced to imprisonment for two years with the last six months being

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suspended for a period of two years on condition that he attended a drug and alcohol awareness programme. In *R v Leua* [2007] Tonga LR 234 a 28 year old pleaded guilty to possession of 19.34g of marijuana that he intended to cultivate for his own use and to sell. It was accepted that he was remorseful and he was a first time offender. He was sentenced to imprisonment for 18 months with 9 months suspended for two years. In *R v Hufanga* [2010] Tonga LR 206 the accused was found in possession of 1.5g of cannabis leaves, seeds and flower fragments in a bin in his house and .32g fragments of cannabis in his car. He had a previous conviction for a completely different type of offence. The Chief Justice noted the seriousness of this sort of offending and the fact that it will usually attract a sentence of imprisonment but that 'the personal circumstances of the offence may occasionally dictate a different result'. Given the very small amount of cannabis found the Judge imposed only a fine. In *R v Mafi* (Supreme Court, CR 96 of 2011, 13 November 2012) the offender pleaded guilty to one count of possession of 300 seeds of cannabis and other material. Whilst he had previous relevant convictions the Judge accepted that he was no longer involved with cannabis and had not been for some time. A period of two years imprisonment was imposed but that was fully suspended for three years.

- [9] The prosecution referred me to three recent sentencing decisions of Cato J. *R v Uinise Fa'oa* (CR 79/16) involved a first time offender who pleaded guilty to possession of 116 gms of cannabis. The accused was sentenced to a term of 18 months imprisonment fully suspended on conditions. In *R v Huni* the accused pleaded guilty to possession of 1.7 ounces of cannabis seeds. He was sentenced to two years imprisonment fully suspended on conditions. In *R v Mesui* (CR 55/13) the accused pleaded guilty to possession of 22.9 ounces of cannabis plants and one count of supplying illicit drugs. He was also a first time offender and was sentenced to imprisonment for 18 months on the count of possession and two years six months on the charge of supplying. In both cases the sentences were fully suspended subject to conditions.

**Aggravating factors of the offending**

[10] There are in my view two aggravating features of the offending. They are that the accused has grown and used cannabis for some years and that he has been sharing it with others. In the circumstances he might consider himself fortunate not to be facing additional charges.

**Mitigating factors**

[11] In mitigation Mr. Le'ota has no previous convictions, he pleaded guilty at the first opportunity and he has been cooperative with the Police. I accept that he has been otherwise of good character throughout his life and has the support of his family notwithstanding the rather unusual circumstances under which his offending came to the attention of the Police. I am also prepared to accept that he has cultivated cannabis for social rather than commercial purposes.

**Decision**

[12] The maximum penalty for the offences of possession and cultivation of a class B illicit drug of more than 28 grams is seven years imprisonment or a fine of \$50,000 or both. I accept that with this type of offending there is a need to discourage others from similar offending.

[13] Looking at Mr. Le'ota's offending as a whole, particularly having regard to the amount of cannabis involved and the fact that Mr. Le'ota's offending had gone on for some time and included sharing cannabis with others (albeit on a social basis), I consider that the appropriate starting point for the purposes of sentence is two years and 9 months imprisonment.

[14] However as I have noted there are significant mitigation factors in this case. Mr. Le'ota is entitled to credit for the fact that he is a first offender, his early guilty plea and the full cooperation that he has offered to the Police. For this

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I allow him a discount of 9 months on his sentence. That means that I impose upon him a sentence of 2 years imprisonment.

- [15] Turning to the question of whether I should suspend any part of the sentence I have considered the principles in *Mo'unga v R* [1998] Tonga LR 154 and note that a suspended sentence may be appropriate where an offender is likely to take the opportunity offered by the sentence to rehabilitate himself and where there has been co-operation with the authorities. Both circumstances are applicable in this case and I consider it appropriate (in line with the recent authorities) to fully suspend Mr. Le'ota's sentence subject to conditions.

**The result**

- [16] On the counts of possession and cultivation of cannabis Mr. Le'ota is convicted and sentenced to 2 years imprisonment to be served concurrently. The sentences are fully suspended on the following conditions:

[16.1] Mr. Le'ota is not to commit any further offences punishable by imprisonment for a period of 2 years.

[16.2] Mr. Le'ota is to be placed on probation during the period of his suspension.

[16.3] Mr. Le'ota is not to drink alcohol or to take illicit drugs during the period of his suspension.

[16.4] Mr. Le'ota is to undertake 70 hours of community work involving cleaning of the areas from Koulo to the Lea'aetohi Field and such other areas as directed. This work is to be performed under the supervision of Miss Lesita Palu an officer in charge of the Governor's Office and at such times as directed by her. Miss Lesita Palu shall report in writing to Mr Patelisio Pale of the Probation Service at least once in every two

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months on the number of hours and details of the work performed by Mr. Le'ota during that period.

[17] I order the destruction of the cannabis plants seized from Mr. Le'ota.

**A final comment**

[18] Mr. Le'ota the sentence I have imposed was arrived at only after much consideration and I was heavily influenced by the recent decisions to which the prosecution referred me without which I would have been minded to require you to serve some period in prison. I regard the sentence as lenient but I am offering you an opportunity to reform and cease your involvement with illicit drugs. You should be aware that if you breach any of the conditions of your suspension you may be required to serve your sentence of imprisonment. If you appear before the Court again on similar offences it is very likely also that you will be sent to prison.

**PANGAI, HA'APAI: 12 May 2016.**



O.G. Paulsen

**LORD CHIEF JUSTICE**