

Scan ifh + Upload

17/12/18

**BETWEEN:** R E X - Prosecution

**AND:** LESIELI HALAFIHI - Accused

**BEFORE THE HON. JUSTICE CATO**

Counsel: Mr. T. 'Aho for the Prosecution  
Ms. S. Vaipulu for the Accused

**SENTENCE**

- [1] The prisoner, Lesieli Halafihi, was convicted after jury trial lasting several days of one count of serious fraudulent conversion by a government servant contrary to section 53(1) of the Criminal Offences Act. The maximum sentence for this offending is 10 years imprisonment.
  
- [2] The amount for which the jury convicted was \$71,500.42 which the prisoner, as chief cashier for the Ministry of Finance in the Vava'u branch, so the jury found, was guilty of converting, during the course of her employment. Various false entries were made in books of account which an audit revealed. None of this money has been repaid. The prisoner has been in custody since the date of her conviction. She was in a senior position and was a trusted employee.
  
- [3] Mr Aho, who prosecuted the trial invited me to give a written sentencing judgement because there has only been one other sentence for offending under this legislation. He submitted and I agree that protection of the process of honest government has to be reflected in the starting point for this offending and this should be higher than that for embezzlement which carries a maximum sentence of 7 years. Parliament has directed the courts that civil servants who steal from Government must be severely punished.

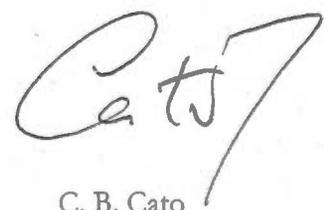
read 12/12

- [4] It is unnecessary for me to detail the method by which the fraud was carried out. At all material times, the prisoner had access to the books of account and the money for which she was responsible and by the end of June 2017 this was found to be in deficit.
- [5] The prisoner is aged 35, single and has two children who, I ascertained, would be looked after by their grandmother whilst she is in custody. The probation report and other documents suggest she was active in the community, had received a good education and had worked in the Treasury office at Vava'u for a long time since 2002. She has by this fraud forfeited her good name, the experience and seniority she has gained since 2002 as well as her employment. She was the sole bread winner for the family.
- [6] She has received a high commendation for church and youth activities in Vava'u and her role or contribution to the sport of soccer in the area. She is described by her parish priest as very brilliant. There is a warm reference from an officer of the Vava'u Football Association which details her importance as a playing member and her support of junior soccer and encouraging young people to engage in healthy activities and diet to reduce weight.
- [7] Concerning for me, is that she still does not accept responsibility for her offending and this is mentioned in the probation report. I find this troubling because she had admitted in a record of interview complicity in the offending. I excluded this record of interview because of breaches of the procedures laid down in the Police Act for taking records of interview but I do not think that the irregularities affected the reliability of the admissions gained. In the probation report, she appears to shift responsibility to a third party who has yet to be tried, he having elected a judge alone trial. She did not give evidence at trial. I do not accept that any possible role that her co-offender might have had minimizes her responsibility as the head cashier for the deficit.
- [8] I consider that the evidence plainly pointed to her involvement as the Jury found.
- [9] She is a first offender and I will take this into account and to a limited degree also the fact that she is a mother of two children. I see no other mitigating factors.

[10] The starting point for this offending, as I have said, must reflect the higher maximum penalty Parliament laid down in order to foster high standards of ethical behaviour by government servants so that government business is not adversely compromised by dishonest practices especially by senior civil servants. The sum involved by Tongan standards is significant and led to a time consuming audit. It constitutes a serious breach of trust. In my view, a suitable starting point is four years imprisonment. From this, I allow her 9 months mitigation for her previous good character, community work and because being a sole parent, imprisonment will adversely affect her children, their relationship with her and her ability to provide for them. The sentence I impose upon her is three years and three months imprisonment backdated to the date of her remand in custody.

[11] I turn now to the issue of whether I should suspend her sentence in part. Mr Aho rightly in my view questioned whether any part of her sentence should be suspended. She continues to seemingly maintain a denial of responsibility, and has not been co-operative at all with the authorities. No part of the deficit has been repaid. There has been no contrition. I consider that it is very arguable that those who do not co-operate with authorities and do not admit their guilt or show contrition should forfeit any claim for suspension. However, as against this in her case she is a first offender with two children. I consider that there is more to be gained in her case from a rehabilitative aspect by suspending at least a part of her sentence so she can be united with her children sooner and can take an active role in their lives, although that period must be limited because of her failure to accept responsibility. I suspend the final 6 months of her sentence on the following terms;

- (a) She is not to commit any offences punishable by imprisonment for the period of her suspension.



C. B. Cato

JUDGE

NUKU'ALOFA: 10 December 2018