

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

Sea, Fish & Upland

[Signature]
17/04/19

CR 03 of 2019

BETWEEN:

REX

Prosecution

AND:

SIONE LATU KITEAU

Accused

BEFORE LORD CHIEF JUSTICE PAULSEN

Counsel: Mr 'A Kefu SC for the Prosecution
The Accused in person

Date of Hearing: 17 April 2019

Date of Decision: 17 April 2019

SENTENCING REMARKS DELIVERED ORALLY

- [1] Mr Kiteau appears before me today for sentence having pleaded guilty to one count of possession of sea cucumbers during the closed season contrary to section 102 of the Fisheries Management Act and s 26(4) of the Fisheries Management (Conservation) Regulations. The maximum penalty for this offence is a fine not exceeding \$250,000.
- [2] The particulars of the charge are that on or about 2 November 2011 at Patangata Mr. Kiteau possessed a significant number of sea cucumbers during the closed season.

- [3] Mr Kiteau accepts that he was in possession of the sea cucumbers and that he had harvested them from around the island of Onevai where he resides with his family. He was unaware that it was the closed season.
- [4] It took 7 years for a charge to be brought against Mr. Kiteau in the Magistrate's Court. I requested an explanation for this. The file was not passed to Crown Law until September 2017 so it is not to blame. However no other explanation was provided.
- [5] In the Crown's first sentencing submissions it was argued that the appropriate sentence is a fine of \$5,000 and in default of payment three months imprisonment. I also received a pre-sentence report and heard from Mr Kiteau on 5 March 2019 and it was apparent that he has no prospect of paying such a large fine.
- [6] Mr. Kiteau is 45 years old and married with 8 children. Of these children, six are at school and two are yet to go to school. The family lives at Onevai. He attends the Mormon Church and is well regarded and there are two references attached to the pre-sentence report attesting to this. He is the only breadwinner in the family and makes a living by fishing, which he has been doing since he was 16 years old. He earns about \$200 per week, although this is weather dependent. He said that if he has to pay a substantial fine he will need to keep three of his children back from school so that they can help him fish. I believe he is genuine about that.
- [7] Before me today Mr. Kefu accepted that in the particular circumstances of this case it was appropriate to impose only a nominal fine of \$200. Mr Kiteau said he is able to pay a fine of that amount.
- [8] In a case like this the Court must take into account the ability of an accused to pay a fine along with other considerations such as the seriousness of the offending, its prevalence and the need for deterrence.

[9] I am satisfied that Mr. Kiteau is a first time offender with no previous convictions who unknowingly committed the offence and that there is a substantial degree of unfairness in having him brought before the Court after 7 years with no explanation as to the reasons for that delay. He has expressed remorse and is unlikely to reoffend. I am also satisfied that he does not have the means to pay anything other than a nominal fine when he is supporting a large family on just \$200 per week.

[10] In the unusual circumstances of this case, particularly given the delay I have mentioned, I had considered discharging Mr Kiteau on a good behaviour bond but on reflection I do not consider that would be a proper outcome given the significant number of sea cucumbers he possessed. I consider that a financial penalty should be imposed as proposed by the Crown.

Result

[11] Mr Kiteau is convicted of the offence of being in possession of sea cucumbers during the closed season contrary to section 102 of the Fisheries Management Act.

[12] I sentence Mr. Kiteau to pay a fine of \$200 within 2 months of today and in default of payment he shall be imprisoned for a period of 14 days.

[13] It should be noted that this sentence is a reflection of the peculiar circumstances of this case and the level of the fine should not be considered a precedent in future cases.



A handwritten signature in black ink, appearing to read "O.G. Paulsen".

O.G. Paulsen

NUKU'ALOFA: 17 April 2019

LORD CHIEF JUSTICE