

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

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12/04/19

CR 30 of 2018

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**BETWEEN:**

**REX**

**Prosecution**

**AND:**

**VILIAMI LATU**

**Accused**

**BEFORE LORD CHIEF JUSTICE PAULSEN**

**Counsel:** Mr 'A Kefu SC for the Prosecution  
Mr. S. Tu'utafaiva for the Accused

**Date of Hearing:** 17 April 2019

**Date of Decision:** 17 April 2019

**SENTENCING REMARKS**

[1] Mr Latu was charged with one count of falsification of accounts contrary to s. 159(b) of the Criminal Offences Act and one count of simple fraudulent conversion by a Government servant contrary to s. 53(1) of the Criminal Offences Act. He entered not guilty pleas to both charges. After a trial without a jury he was acquitted on the first charge but convicted of simple fraudulent conversion. He is to be sentenced today.

- [2] The offence of simple fraudulent conversion is punishable by a term of imprisonment not exceeding 3 years.

### **The facts**

- [3] Mr Latu was employed as the Senior Accounting Officer at the Vava'u office of the Ministry of Finance and National Planning. It was a senior position of responsibility. From around February 2017 Mr. Latu had a junior employee give him sums of Government money totalling around \$1,200 for his own use. He did so dishonestly knowing that this was strictly prohibited. This was discovered when an internal audit found that there was a substantial cash deficit of more than \$70,000 as a result of the criminal activities of the same junior employee. Mr. Latu says that he asked for the money for his own needs and paid it back the same day but there was at least one instance when he did not and he has nothing to prove any of the money was repaid.

### **The material before me**

- [4] I have been provided with and considered:
- (a) A pre-sentence report and a supplementary report concerning the availability of community service work for Mr Latu.
  - (b) Written submissions from the Prosecution.
  - (c) Written submissions on behalf of Mr Latu.
- [5] Mr Latu is married with six children and he is a hardworking husband and father. He did well at school and was educated to Form 6. He left school in 1988 to work as a security officer. He was an excellent sportsman and was selected to represent Tonga in rugby. He got successive positions in Government and served the Kingdom for a total of 29 years. Until this offending he was well regarded. He takes an active part in the development of rugby in Vava'u and there are nine letters of support for him attached to the pre-sentence report. Mr. Latu is ashamed of what he did and has

expressed remorse. As a result of this offending he has been terminated as a Government servant and has lost his retirement benefits.

- [6] The pre-sentence report writer suggests that Mr. Latu should be placed on unsupervised probation and a good behaviour bond for one year. Before me today, both Counsel are agreed that Mr. Latu should be sentenced to undertake community work.

### **Discussion**

- [7] Mr. Latu has provided good service to the Government over many years. This case involves the taking of a relatively small amount of money and I am prepared to accept that it was Mr. Latu's intention to repay the money. However, his offending is not trivial and to my mind has significant aggravating features. First, the offending involved a significant breach of trust by a senior employee of the Government who should and did know better. Secondly, it appears that Mr Latu did not need the money rather he was using the Government as a bank for his convenience. Thirdly, Mr. Latu involved a junior employee in his offending and was aware that it would be necessary for that employee to falsify the records of the Ministry to cover up the fact that he had taken money if it was not repaid immediately. He acknowledged this happened on one occasion.
- [8] I do not accept the recommendation in the pre-sentence report as to do so would fail to send the correct message that dishonesty by Government servants will not be tolerated. However, I have decided against imposing a prison sentence for these reasons. First, the Court of Appeal has said that imprisonment for purely property offences should not imposed unless there are unusual circumstances that render that appropriate (*R v Mo'unga* [1998] Tonga LR 154). Secondly, Mr Latu has no previous convictions and has led an otherwise blameless life providing good service to the Kingdom and through his sporting interests to the community also. Thirdly, the amount taken was small and I accept that Mr. Latu's intention was to repay the

money. Weighing these matters against the aggravating features mentioned earlier, I agree with Counsel that the appropriate outcome is to impose a community service order.

### **The Result**

- [9] On the charge of simple fraudulent conversion by a Government servant contrary to s. 53(1) of the Criminal Offences Act, Mr Latu is convicted and is sentenced to 60 hours community work cleaning public areas at Vava'u under the supervision of the Bailiff Officer at Vava'u. The work shall be completed within 9 months of today. Mr Latu is to work on such days and times as directed and for not less than 4 hours but not more than 7 hours on any one occasion.
- [10] Mr. Latu is to report to the offices of the Probation Service at Nuku'alofa before 4pm on 18 April 2019 to confirm arrangements for the performance of the community work.
- [11] I also make an order under s. 25 Criminal Offences Act that within 60 days Mr Latu is to repay to the Ministry of Finance and National Planning at Vava'u the sum of \$1,200 and in default of payment he is to serve imprisonment for 1 month.



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

O.G. Paulsen

NUKU'ALOFA: 17 April 2019

LORD CHIEF JUSTICE