

23/05/19

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

CR 140 of 2018

BETWEEN: REX

- Prosecution

AND: MELE TOKILUPE HAUSIA

- Accused

BEFORE LORD CHIEF JUSTICE PAULSEN

Counsel: Miss L Macomber for the Prosecution
Mr. S. Tu'utafaiva for the accused

Date of Hearing: 21 May 2019

Date of Ruling: 21 May 2019

RULING ON SENTENCE

The charges

[1] The accused appears for sentence having pleaded guilty to one count of forgery contrary to s. 170(1) and 2(b) Criminal Offences Act, one count of knowingly dealing with forged documents contrary to s. 172 Criminal

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Offences Act and one count of obtaining money by false pretences contrary to s. 164 Criminal Offences Act.

- [2] The maximum penalty for forgery is 7 years imprisonment. The maximum penalty for knowingly dealing with forged documents is 5 years imprisonment. The maximum penalty for obtaining money by false pretences, given the amount involved, is 3 years imprisonment.

The facts

- [3] The complainant is the National Reserve Bank of Tonga (NRBT). The accused is a former employee and held the position of Senior Exchange Control Officer until her employment was terminated due to her offending. In or about August 2017, one 'Etivise Tatafu approached the accused seeking her help in applying for a New Zealand visitor's visa for her younger sister Meliame Tatafu. The accused requested \$2,500 from 'Etivise Tatafu and informed her that the money was to be used as evidence to show financial support for the visa application. Another sister, Minola Pousima, took the money to the accused at the NRBT and was provided with a letter of 9 January 2018 stating that a Government bond was registered in the name of Meliame Tatafu in the amount of \$2,500 with a 13% interest rate and that it would mature on 5 February 2018. When Minola Pousima sought to redeem the bond an investigation revealed that there was no bond registered under Meliame Tatafu's name and that the letter of 9 January 2018 was a forged letter.
- [4] In addition, between the months of August 2017 and January 2018, the accused obtained an amount of approximately \$3,600 from 'Etivise Tatafu which she claimed was necessary to cover Meliame Tatafu's visa application fees, airfares to New Zealand and also cash evidence to show financial support. Some of this money was spent by the accused on personal expenses.
- [5] I understand that there is agreement that all of the money the accused received has been repaid except for an amount of approximately \$800 (the Prosecution

says \$850) which is an amount that the accused spent on an airfare for Meliame Tatafu that was wasted because her visa application was unsuccessful.

The material before me

[6] I have before me and have considered:

- (a) A pre-sentence report;
- (b) The sentencing submissions from the Prosecution.

[7] I have also heard from Mr Tu'utafaiva for the accused

[8] On the face of it this offending is surprising. The accused is 24 years old. She comes from a good family and did very well in her studies. She is married with five children, the latest having been born on 16 May 2019 just 5 days ago. She is plainly intelligent, industrious and a valued member of her Church where she involves herself in community development work. Since she lost her employment with the NRBT she has obtained other employment and works two jobs and has earned the trust of her new employers. She is a first time offender who has taken responsibility for the offending by entering pleas of guilty (albeit that she had originally indicated an intention to defend two of the charges) and is said to be remorseful and to have learned her lesson. Against this background the only possible explanation for the offending is that she accused allowed her greed and ego get the better of her.

[9] The Prosecution highlights the seriousness of the offences, that the offending was premeditated and the accused breached the trust reposed in her by the NRBT and also by 'Etivise Tatafu. In mitigation it is accepted that the accused is entitled to credit for her guilty pleas, that most of the money taken has been repaid and that the accused is a first time offender.

Discussion

[10] The lead offence is forgery. I consider the accused's offending was audacious. It is a most serious matter for an employee of the NRBT to forge

official documents. I have considered the comparable cases referred to by the Prosecution and find that even taking into account the relatively modest sums involved in this case the starting point for sentencing purposes must be at least 2 years 6 months imprisonment, which I increase by a further 6 months to reflect the breaches of trust involved and the accused's related offending. The starting point then on the charge of forgery is 3 years imprisonment.

- [11] The accused is entitled to credit for the money she has repaid and her good record for which I discount her sentence by 6 months. She is also entitled to credit for her guilty plea and I discount her sentence by a further 6 months. This takes into account that the accused did not plead guilty to the offences at the first opportunity. In the result the accused is sentenced to two years imprisonment on the charge of forgery.
- [12] On the charge of dealing with forged documents she is sentenced to 18 months imprisonment. On the charge of obtaining by false pretences she is sentenced to 12 months imprisonment. All sentences shall be served concurrently.
- [13] The Prosecution accepts that in this particular case it is appropriate to fully suspend the sentence of imprisonment (*R v Mo'unga* [1998] Tonga LR 154). There have been cases of similar offending where fully suspended sentences have imposed (*R v Tu'iono* CR 119/12). I have decided to fully suspend the sentence because the accused is relatively young, she is a first time offender, has shown remorse, provided some restitution and I consider it very unlikely she will offend again. In addition an unusual factor that weighs with me is that the accused has a new baby and I do not consider that her criminality is so serious as to justify separating mother and child. I believe however that there must be a punitive element to the sentence by the imposition of a condition that the accused perform community work and also that compensation be paid.

[14] In relation to compensation, Mr Tu'utafaiva submitted that the \$800 that has not been repaid was spent on the air ticket and not for the accused personally and that 'Etivise Tatafu should take steps to recover that through the Courts. I cannot agree. The bond was required to support the visa application. In fact there was never a genuine bond. The accused must have intended either to submit a fraudulent visa application or submit the application without the bond thereby deceiving 'Etivise Tatafu as to the need for a bond. It is hard to imagine that had the facts been known to 'Etivise Tatafu or Meliame Tatafu that the air ticket would have been purchased. The accused should bear the entire cost of her dishonesty.

Result

- [15] On the count of forgery the accused is sentenced to 2 years imprisonment.
- [16] On the charge of dealing with forged documents she is sentenced to 18 months imprisonment.
- [17] On the charge of obtaining by false pretences she is sentenced to 12 months imprisonment.
- [18] All the sentences above are to be served concurrently and are fully suspended subject to the following conditions:
- (a) The accused is not to commit any offence punishable by imprisonment during the period of the suspension;
 - (b) She is placed on probation during the period of suspension;
 - (c) She is to undertake 60 hours of community work cleaning public areas in Nuku'alofa (or such other work as directed) under the supervision of her Probation Officer. The work shall be completed within 12 months of today. She is to work on such days and times as directed.

(d) She is report to the offices of the Probation Service at Nuku'alofa before 4pm on 22 May 2019 to confirm arrangements for the performance of the community work.

[19] The accused is warned that if she breaches any of these conditions she may be required to serve the full term of the suspended prison sentence.

[20] In addition to the above, I order pursuant to s. 25 Criminal Offences Act that the accused is to pay compensation to 'Etivise Tatafu in the sum of \$800 within 2 months of today. I have given her time to pay reflecting the fact that I understand she has financial commitments and may suffer some reduced earnings due to the performance of community work.

[21] The accused is warned that should she fail to pay the compensation as ordered she may be imprisoned for a period of up to three months.



NUKU'ALOFA: 21 May 2019.

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

O.G. Paulsen
LORD CHIEF JUSTICE