

Policiator General

16/07/19

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

CR 34 of 2019

BETWEEN:

REX

- Prosecutor

AND:

'OFA SAVIETI

- Accused

BEFORE HON. JUSTICE NIU

Counsel : Ms. T. Kafa for the Crown
Mrs. F. Vaihu, for accused

Hearing : Submissions on sentence on 14 June 2016

Sentence date : 12 July 2019

SENTENCING

- [1] You have pleaded guilty to three charges against you, 'Ofa Savieti, and you now appear before me to be sentenced for those offences.
- [2] The offences are serious. Two of them are of forgeries and are punishable with imprisonment of up to 7 years. The other offence is using a forged document and is punishable with imprisonment of up to 5 years. When they are committed by a person in a position of trust like a bank employee who is entrusted to handle the money of the customers, it is more serious. You were

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such a person when you committed these 3 offences. And you committed them to obtain the money of the customer for yourself.

- [3] This customer came to you with a cheque for some AUD\$6,000 or so, the proceeds of his labours as a fruit picker in Australia for many months. His wife and family who have waited for that money in all those months were full of joy at the prospect of the use of that money, may be to build a house for themselves or to buy a motor vehicle for their use. The customer was told by another customer to come and ask for you at the bank because you had handled his own cheque from fruit picking for him. He therefore came to you and you filled in the relevant forms at the bank and opened an account for him at the bank and deposited his money in it on 24 January last year.
- [4] Already on that day you were already contemplating to use that customer's money or part of it for yourself because you told the customer that even though the amount of the money was already entered into his account, the cheque needed to be cleared from Australia and that it would take 6 weeks for that to happen. You lied to him. The money was already in the account because you took \$3,000 from it on 2 February 2018, just a week later. But you told him that lie so that he would not need to check his account for some 6 weeks when you would have paid back the \$3,000 by then.
- [5] You were able to withdraw the \$3,000 from the customer's account on 2 February 2018 because you forged the customer's signature on a withdrawal slip and you forged his signature again on a deposit slip and had the money deposited into an account of an organisation in which you were the treasurer and to which you were signatory. You then withdraw the \$3,000 and used it for your own personal purpose.
- [6] That was despicable.
- [7] I do not see any difference in what you did and what other bank employees did in cases where they were sentenced to imprisonment for similar forgeries for their own benefit. In the case of *R -v- Hausia* (CR140/2018) the amount involved was \$3,600 and the applicable sentence was 3 years imprisonment but

was reduced to 2 years because of the guilty plea and because all but \$800 was already repaid to the bank.

- [8] Your counsel informed me that you have had the \$3,000 repaid and I asked that the receipt for that payment be filed in Court by Friday 21 June 2019, but to date I have not seen it. Accepting that you have repaid the money you took and that you have pleaded guilty when you were arraigned, I consider that the appropriate sentence for you is 2 years, as was in the Hausia case.
- [9] In the Hausia Case, the 2 year imprisonment sentence was fully suspended because it was her first criminal offence, that she was of a young age and she was not likely to reoffend. But she had to serve a community service of 60 hours, as well as paying off the remaining \$800 in 2 months.
- [10] In your case, you are a mature woman of 45 years of age, but considering that this is your first criminal conviction in all those years and that it is unlikely that you will reoffend in future, which is shown by your willingness to accept your folly in this instance and have shown remorse by pleading guilty to what you have done, I consider that your 2 year imprisonment sentence be fully suspended for a period of 2 years from today but that you serve community service of 60 hours.
- [11] That means that if you do not commit another offence within the next 2 years and if you serve your 60 hours of community service as directed by the Probation Officer, you will not have to serve your 2 year imprisonment sentence anymore.
- [12] To summarise: You are sentenced as follows:
- (a) 2 years imprisonment on the count 1 of forgery.
 - (b) 2 years imprisonment on the count 2 of forgery.
 - (c) 6 months imprisonment on the count 3 of using a forged document.
 - (d) All the imprisonment sentences in (a), (b) and (c) are to be concurrent, that is, they are to be served together.

- (e) All the imprisonment sentences in (a) (b) and (c) are fully suspended for a period of 2 years from today.
- (f) You are to serve 60 hours of community service as directed by the Probation Officer.

NUKU'ALOFA: 12 July 2019.



A handwritten signature in black ink, appearing to read "L. M. Niu", is written over the seal.

L. M. Niu
J U D G E