

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

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BETWEEN: R E X - Prosecution

AND: 'ALIFELETI POIFI KATOA - Accused

BEFORE THE HON. JUSTICE CATO

Counsel: Ms. T. Kafa-Vainikolo for the Prosecution
Accused – Self represented

VERDICT

- [1] The accused, 'Alifeleti Katoa, stood trial on one count of possession of methamphetamine under section 4(a) of the Illicit Drugs Act.
- [2] The Crown was able to prove that small amounts of methamphetamine in two small sachets were located outside premises in which Mr Katoa resided on the 10th August 2017. Subsequently the substance inside the sachets were taken to ESR in Auckland where it was analysed and found to be methamphetamine. The weight was found to be .467 grams substantially less than weighed by police in Nuku'alofa where the weight was found to be 0.75. Mr Katoa did not contest this aspect of the case, so the prosecution was able to present this aspect of the evidence quickly. In other cases, presentation on this aspect of the case that is identity of the drug continuity and weight has proven to be time consuming.
- [3] In this case, Mr Katoa simply asserted that the methamphetamine located on the ground in the vicinity of the upstairs window of his bedroom of the unit he was renting did not belong to him. Police had searched his premises and a neighbouring property pursuant to a search warrant early on the 10th August 2017. Methamphetamine had been located in a car outside the adjacent property and some drug paraphernalia inside. This property was separated from the accused's property

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by a fence. There was no evidence to suggest that any persons arrested in the adjacent property had been responsible for the sachets located in the property tenanted by the accused. There were, however other occupants present when police arrived at the property and effected a search pursuant to warrant of the accused's residence. In a room that I am satisfied was the bedroom occupied by Mr Katoa some cannabis seeds were located. Mr Katoa pleaded guilty to possession of what was a small amount of cannabis. There were about four other occupants of these premises, two of whom were young women who were sitting outside on a verandah when police arrived at about 7am to search. Evidence was given that there was at least one Fijian male also present in the residence, possibly two.

[4] Police gave evidence that after they had knocked on the door, Mr Katoa had appeared and seemed surprised, if not concerned, to see them. The police searched his bedroom and located seeds and straws some of which had been shortened. Police asserted that these were capable of being used in association with methamphetamine although no evidence was given of any methamphetamine being located on these straws or in the bedroom. A corner window of the bedroom which was situated above a car park area of the building had part of the insect screen on the lower window pulled away. A search of the surrounds subsequently revealed, a photograph shows, at a distance of about four feet from the edge of the building the two sachets which as I have said were located below the window in question in the accused's bedroom. The accused had been taken to see the sample and had said to police it seems jocularly that perhaps they had come from the sky. A police officer gave evidence that the samples were dry whereas the grass surrounds were moistened by dew. Evidence was also given that suggested there could have been other occupants using that building as accommodation. The pathway near where the sachets were located I am satisfied could have been used by any of the occupants living at that building which was a rental building of quite large size.

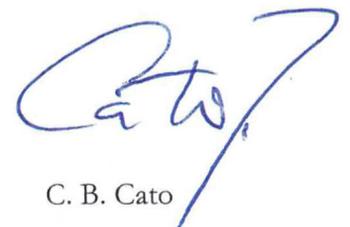
[5] The sachets were not the subject of any fingerprint examination, which was I found surprising and this was not explained. There was no evidence to suggest that the accused being forewarned of the arrival of the police had taken steps to get rid of the methamphetamine by throwing it out of the window. There was no evidence from any of the other occupants of the premises implicating the accused with involvement with methamphetamine. I am satisfied that the accused made no admissions to police and, contrary to the submission of Ms Kafa, I view the remarks the accused made

concerning the drug coming from the sky amounted to no more than a facetious denial of involvement and not an admission.

[6] I am not satisfied that the sachets that were located came from the accused's bedroom. I am sceptical about police observations that they were dry. This would seem to be the first occasion in over two years since the search that evidence of this kind was advanced. Ms Kafa rightly, in my view, did not press this evidence in her closing address. There is no evidence to this effect in the police diary entries exhibited in evidence concerning the location of the drug. The path and area could have been used by any of the occupants of the building or visitors to the building and I cannot reject the possibility that the sachets could have been lying on the ground for some time before they were located by Police. They were found a few feet away from the building as I have said and not immediately adjacent to the building where I would have expected them to fall if jettisoned through a gap in the insect screen at the bottom of the window.

[7] In my view, the case was not, as Ms Kafa put it, a strong circumstantial evidence case that the sachets had been thrown by the accused out of his bedroom window. The evidence raised no more than suspicion that Mr Katoa had possession of the sachets. I do not find the evidence established beyond a reasonable doubt that Mr Katoa had custody and control of those sachets of methamphetamine and, accordingly, I acquit him of the charge of possession of methamphetamine.




C. B. Cato
J U D G E

NUKU'ALOFA: 01 October 2019