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

CR 14 of 2020

REX

-V-

SIUTA NGAHE

BEFORE HON. JUSTICE NIU

Counsel : **Mr. J. Fifita for the Crown.
Ms. L. Tonga, for the accused.**

Hearing : **By submissions.**
by Mr. Fifita on 24 March 2020.
by Ms. Tonga on 25 March 2020.

Sentencing : **28 April 2020**

SENTENCING

- [1] Siuta Ngahe, you have pleaded guilty to possession of 44 bullets for a .22 rifle without licence in breach of S. 4 (1) and (2) (b) of the Arms and Ammunitions Act. Such offence carries a maximum penalty of 5 years imprisonment because of the danger and risk of injury or death from the use of guns and their bullets.
- [2] The submissions of your counsel, Ms. Tonga is that you came to have the possession of those bullets inadvertently. She says that in March 2018, you sold two pigs from your pig pen at your home at

Tokomololo. The purchaser brought a police officer with him who had a .22 rifle, no doubt duly licensed to use the same, and to have bullets for it, to kill the 2 pigs so that the purchaser could take them away. It was late in the day that day.

- [3] The officer had with him a little box in which he had the bullets. He placed the little box on top of one of the posts of the pen and after he had killed the two pigs, he forgot to take the little box with him. You did not know he left it there.
- [4] The next morning, when you went to feed the remainder of your pigs, you found the little box of bullets on top of the pen post and you took it inside your house to await the call or return of the police officer to collect his bullets. But the police officer never called or came to get them and sometimes later, you had to move house, that is, you moved with your family and all your belongings from the house you were in to your own new house. In doing that, you put the little box of bullets together with various other stuff into a white bin for cartage to your new house. Those stuff, and the little box of bullets, were still in that white bin when the police came and searched your house and found the bullets in March 2019.
- [5] If that is what happened, I would say that where you went wrong was, you treated these bullets, when you found them on top of the pen post, as if they were any ordinary property of the police officer such as his hat or his bush knife or his coat. But these are bullets and bullets are strictly regulated by law and the law says that you must not have them in your possession unless you have a licence to have them. What you should have done was to inform the police immediately as soon as you found the bullets on top of the fence post to come and get them from on top of the pen post. You ought not to have taken them into your house because you thereby had them in your possession without a licence already. And worse still, not only did you take it into your house, you did not tell the police, or even the police officer who owned them, that you had them. You thereby possessed them unlawfully in breach of the said law.

- [6] Ms. Tonga says that you are 44 years of age, married and have 5 children. You are a self-employed builder and you have worked in New Zealand where you have acquired your skill for your work. You are hardworking and responsible and have now been able to build and own your own dwelling house into which you moved last year.
- [7] Mr. Fifita for the Crown says that you have previous convictions, for possession of intoxicating liquor in 1997, and for offences in the riot of 2006. But as they are of a different nature from your present offence and more importantly you have had no conviction since then, I would properly disregard them for the purpose of sentencing you for this offence.
- [8] Your counsel, Ms. Tonga, has submitted that you be placed on probation of good behavior because of the circumstances of your offence and in view of your present stable and responsible situation.
- [9] Mr. Fifita for the Crown on the other has submitted that you be fined \$300 and that the bullets be forfeited to the Crown, in view of the fines imposed in other cases he referred to. In *R v Katoa* (CR 157/2018), that accused had 51 bullets of various calibre and was fined \$200 to be paid in 14 days or one month imprisonment in default. And in *R v Pisima'ake* (CR87/2018), that accused was found in possession of a handgun and 7 bullets and he was fined \$2,000 in respect of the handgun and \$500 in respect of the 7 bullets.
- [10] Your case is more in line with the Katoa Case who was in possession of 51 bullets and was fined \$200, and I am not aware of any case of possession of bullets without licence where the accused was sentenced to be only of good behavior, such as Ms. Tonga has submitted.
- [11] In any event, I am not convinced that you had come by to be in possession of the 44 bullets as your counsel has stated and which I have related above. That is because the answer you had given to the police when they found the bullets in the white bin in your house was that you did not know whose bullets they were. I can't believe that

you had forgotten that they belonged to the police officer who had shot the 2 pigs – if in fact what you have told your counsel was true. If what you have told her was true, you would have readily informed the police how you had come by them and the police would have checked out your story with that police officer, and you might not have been charged at all, but you did not tell them that.

[12] Instead, when you were charged with the offence of unlawful possession of the 44 bullets without licence, as recorded in writing on 28 August 2019, you answered: "Yes, true". And in your written statement concerning the offence recorded on 24 March 2019 (some 5 months earlier) you stated: "I feel really repentant".

[13] I am therefore reluctant to accept that you had come by the possession of the 44 bullets as innocently and inadvertently as you have informed your counsel, and I therefore am not persuaded that a simple order that you be of good behavior for a period would be appropriate.

[14] I agree with Mr. Fifita that a fine be imposed upon you such as was done in the Katoa Case. He also submits that the 44 bullets be forfeited to the Crown under S.37 of the Act. I agree with that submission.

[15] Accordingly, I sentence you, Siuta Ngahe, as follows:

- (a) You are to pay a fine of \$200.00 within 14 days from today in default of which you will serve 3 months imprisonment.
- (b) The 44 .22 bullets in respect of which this offence has been committed shall be forfeited to the Crown forthwith.



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J U D G E

NUKU'ALOFA: 28 April 2020.