

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

CR 73 of 2019

REX

-v-

'ILEANA SULIANA TAULUA

REASONS FOR VERDICT

BEFORE: LORD CHIEF JUSTICE WHITTEN
Counsel: ✓ Mr J. Lutui DPP with Mr T. 'Aho for the
Prosecution
Mr W.C. Edwards Snr SC for the Accused
Date of trial: 1, 9, 10 and 11 June 2020
Date of verdict: 11 June 2020

The charges

1. The Accused, Mrs. 'Ileana Suliana Taulua, pleaded not guilty in this proceeding to five counts of making a false declaration for the purpose of obtaining a passport contrary to Section 21(1)(a) of the Passport Act and one count of possession of an unlawfully issued passport contrary to Section 21(1)(f) of that Act.
2. At the end of closing submissions, I delivered an ex tempore verdict. These are the reasons for the verdict from the transcript.
3. The Crown led no evidence in relation to Count 6 and accordingly it is dismissed.
4. On the remaining five counts, s.21(1)(a) of the Passport Act provides that any person who for the purpose of obtaining for himself or for any other

15 JUN 2020
[Signature]

person any passport or certificate of identity or other advantage under this Act with intent to deceive makes or causes to be made any declaration, return or statement which he knows or has reasonable cause to believe to be false or misleading shall be guilty of an offence under the Act.

5. I proceed at the outset by identifying, that as with all criminal cases:
 - (a) the Accused is presumed innocent until proven guilty;
 - (b) the Crown bears the onus of proving each element of the offences beyond reasonable doubt;
 - (c) the Accused is under no obligation to give or call any evidence at her trial. In this case, the Accused elected to give evidence.
6. The elements of the charge as agreed between the parties, and of which the Crown must satisfy the court beyond reasonable doubt are:
 - (a) that the Accused;
 - (b) for the purpose of obtaining for another person a passport;
 - (c) with intent to deceive;
 - (d) made a declaration; and
 - (e) which she had reasonable cause to believe was misleading.
7. The only elements in contention in this case are (c) and (d), which, for reasons I will develop in due course, are inter-related.

Summary of agreed facts

8. This case was the subject of an agreed summary or statement of the following facts:
 - (a) the Accused, who resides at Ngele' ia, Tongatapu, is a retired police officer who was employed by the Tonga Police Force from 1972 until 2005;

- (b) the Accused was in the immigration division of the police and in 1996 she was transferred to the ministerial wing at the police headquarters as second in charge of the special passport and naturalization unit where she had access to the issue of Tonga National Passports and Tonga Protected Persons Passports;
- (c) in or about early October 2012, one 'Isapela Satua Tu' akoi ("Tu'akoi") saw the Accused at her home and asked her to complete an affidavit in support of a passport application for one Shawei Hu. The Accused agreed and completed an affidavit and handled it to Tu'akoi;
- (d) in or about January 2013, Tu' akoi again saw the Accused and asked her to complete affidavits in support of passport applications for Singkei Lou and Shanoi Kam. Those affidavits were sworn on 11 January 2013 and were given to Tu' akoi;
- (e) in or about April 2013, Tu' akoi again approached the Accused at her home and asked her to complete an affidavit in support of a passport application for Orlandoni Wong. That affidavit was sworn on 18 April 2014 and handed to Tu' akoi;
- (f) in or about August 2013, Tu' akoi again approached the Accused and asked her to complete an affidavit in support of a passport application for one Guang Chang Xiao. That affidavit was sworn on 18 August 2013 and handed to Tu' akoi;
- (g) a search of the passport registers in the possession of the Ministry of Foreign Affairs by date of issue and passport number on the copies of previous passport failed to identify any passport issued for any of Shawei Hu, Singkei Lou, Shanoi Kam, Orlandoni Wong or Guang Chang Xiao. The Accused maintains that there are other registers besides the registers not in the possession of the Tonga Police. I pause here to note that that was not the evidence given during the trial nor were any submissions to that effect made. For the reasons which will become clear, nothing turns on that issue.

- (h) the five passport applications attaching the affidavits sworn by the Accused were lodged with the Immigration Division of the Ministry of Foreign Affairs. All five applications were approved and the five applicants were issued Tongan passports in the names set out above;
- (i) the passport applications and the supporting affidavits by the Accused that were submitted to the Immigration Division of the Ministry of Foreign Affairs for the five applicants were sent to New Zealand to be examined by a handwriting expert;
- (j) specimens of the Accused' s handwriting were also sent to the handwriting expert to assist in his analysis, which included:
 - (i) eight cancelled Tongan passports in the Accused' s handwriting;
 - (ii) seven passenger arrival cards in the Accused' s name;
 - (iii) pages from the passport registers in the Accused' s handwriting;
 - (iv) two diaries belonging to the Accused for the years 2001 and 2005;
 - (v) four ANZ bank deposit forms in the name of the Accused; and
 - (vi) twelve various personal documents of the Accused;
- (k) upon receiving those documents and conducting his analyses, the expert, Mr. David Boot of New Zealand Police, submitted a report dated 1 June 2017.

9. That summary of agreed facts makes unnecessary any lengthy recitation of the Crown evidence given in this trial. Three witnesses were called.

The police evidence

10. Hulita Takau and Selosia Satini are both officers in the police force. Suffice to say that the relevant nett effect of their evidence is that after

responsibility for the issuing of the Tongan passports was transferred from the Ministry of Police to the Ministry of Foreign Affairs in around 2001, all materials from the Immigration Division within the police offices including registers of passports and all associated materials were delivered and transferred to Foreign Affairs. Searches conducted of all the registers that have been identified as having been transferred to Foreign Affairs which included for the relevant time frame some 28 registers in total and one labelled "Headquarters Register" , did not reveal any record of the five previous passports which are the subject of these charges. None of that evidence was challenged and certainly not contradicted by way of any evidence which might have pointed to some other types of registers which have not been searched and in which the five previous passport ought to have been found. I accept the evidence of those police officers.

The expert evidence

11. The third witness, Mr. David Boot, is an expert document examiner in New Zealand Police Force. His report was tendered and marked as exhibit P3. In the body of the report, Mr Boot set out in summary his findings and opinions based on his expert examination of the various documents with which he was provided. A schedule to his report sets out in respect of each of some 67 passport applications his findings and opinions about the handwriting in each and physical evidence associated with each of those applications. The five passports which are the subject of the charges appear as documents 39, 47, 53, 64 and 65 in that schedule. Mr. Boot' s evidence was also explained by reference to other annexures to his report including a table of handwriting which is described as 'questioned' specimens as compared to confirmed specimens of the Accused' s handwriting. The similarities, as explained by Mr. Boot, were obvious.
12. Similarly, in relation to the physical evidence, Mr. Boot provided a sample of comparisons between common handwriting details showing various markings around words. He also demonstrated that with legitimate

passports, a stamp over the bottom right quarter of the holder's photograph will leave a gap in the stamp caused by the increased height of the profile on that page by the photographic paper. He also provided examples of what he termed 'common' or 'trash' marks found on the various specimens.

13. In relation to the five relevant previous passports, Mr. Boot's evidence can be summarized as follows:
 - (a) certain of the handwriting of the Accused in certain locations was identical on a number of the passports which was consistent with those pieces of handwriting having been copied from another source of the Accused's handwriting, and pasted, such that they were not genuine as shown on the photocopies;
 - (b) he was not able to come to any concluded views about other signatures on the photocopy passports, although it was common ground that initials within each of the stamps over the photographs did belong to the Accused; and
 - (c) the physical characteristics on each of the five relevant copied passports including the lack of breaks in the stamps over photographs and other trash marks indicated that a number of the documents had been produced by the same photocopier.
14. For those and the other reasons expressed in his report, Mr Boot opined that the five relevant alleged previous passports were fake. As discussed with Mr. Lutui during closing submissions the Crown case is that each of the photocopies of previous passports had either been tampered with or reconstructed through the various means described by Mr. Boot in his report to produce what appeared to be photocopies of pages for each passport.
15. Mr. Boot's opinion evidence was not challenged, nor was it contradicted by any opposite expert opinion evidence. I accept that in full.

16. In cross-examination, Mr. Edwards did make one point with Mr. Boot and that point turns out to be determinative. Mr. Boot agreed that a lay person, without any of his expertise or equipment or comparative specimens of handwriting, would not be expected to be able to identify that the photocopied passports were fake.

Documentary evidence

17. The documentary exhibits tendered by consent were:
- (a) exhibit P1 - the copies of the five applications with photocopies of purported previous passport;
 - (b) exhibit P2 - the bundle of the other applications for passports given to Mr. Boot for his comparison;
 - (c) exhibit P3 – Mr Boot' s report; and
 - (d) exhibit 4 – four genuine passports and photocopies thereof showing the breaks in stamps over photographs.

The no case submission

18. At the conclusion of his written opening remarks, Mr Edwards intimated that there was no case to answer. After confirming that he did wish to make that application, and notwithstanding that by then he had already opened the evidence he proposed to call from the Accused, I heard submissions and then refused the application.

The Accused's evidence

19. In her evidence, the Accused explained how she has been approached by Tu' akoi from as early as 2010. She was approached at a time and in circumstances where she said she had been given a letter by the then CEO for Foreign Affairs, the late Ms Susana Faletau, the effect of which was requesting the Accused, a long time retired serving officer of the police force and immigration division, to assist in confirming previous passports that had been issued during the time she was working in the division and which she had actually prepared. The Accused said that she

was given a similar letter by Tu' akoi. The Accused therefore considered she was being requested by Foreign Affairs to assist in this manner.

20. The assistance required of her was to provide affidavits which were almost identical in form in respect of the five passports. In her affidavits, the Accused deposed at paragraph five that during the particular months of issue, the passports of each of the five Chinese applicants were renewed under a police command direction. The photocopy of the pages from the purported previous passports were annexed to her affidavits. At paragraph six of each of the affidavits, she deposed to the effect that at the completion of the issue of each of the passports, they were submitted with their file to the police commander who checked the entitlement of the applicants for the Tongan passport. After that, each passport was signed by the then Minister of Police, whom for a number of them, was Mr. Edwards. At paragraph seven, she confirmed that the handwriting of the details in each of the passports was her handwriting.
21. Each of the affidavits was prepared by the Accused herself. She said that after she completed them, they were taken to be sworn before a lawyer. In each case, the completed affidavits were given to Tu' akoi.
22. Importantly, the Accused said that each of the photocopies of previous passports was given to her by Tu' akoi. There was no evidence that the Accused created any of those photocopies. There was no evidence that the Accused ever tampered with any parts of genuine previous passports to concoct the fake photocopied passports. More importantly, those allegations were never put to the Accused in cross-examination. The Crown's case therefore relies on an inference to be drawn from the physical state of the photocopies but without any opportunity for the Accused to answer any of the allegations which were only made in closing submissions.
23. I should add, as is obvious, that Tu' akoi was not called. She is currently the subject of charges awaiting trial. Those charges are related in a certain sense with the current charges. Therefore, there is no evidence at all to rebut or even challenge the Accused's evidence about the

circumstances in which she was approached by Tu' akoi, given the photocopies of passports by Tu' akoi and asked to provide affidavits simply confirming what appeared to the Accused as her handwriting on those passports which otherwise appeared to her to be genuine.

24. When she was asked about whether she ever questioned the approaches by Tu' akoi, the Accused answered, firstly, that she believed she had been requested by Foreign Affairs to assist in this way through the two letters to which she referred. When she mentioned the letters, and that at least one of them had been seized by police during a search of her residence, after discussing the matter with counsel, I directed that a search be undertaken to identify one or both of the letters. On the morning of the last day of trial, Mr Lutui presented what he said was the only letter from the Ministry of Foreign Affairs. It was dated 18 January 2010 but was from Ms Faletau to Mr. Edwards. Suffice to say that nothing in that letter seemed to accord with the Accused' s evidence about letters she received.
25. However, I take into account the Accused' s long service history with the police force and in particular working within the immigration passport division. I also take into account Mr. Edwards' s submission about some of the cultural considerations in Tonga where senior retired persons who have previously served in positions within the government and other important roles are often asked to assist in the manner seen in this case. None of that was contradicted by the Crown.
26. Similarly, there was no challenge to the Accused' s evidence that she did not receive anything from Tu' akoi for her assistance with these affidavits whether by way of payment or any other reward. That itself begs an important question about any motive the Accused might have had to act dishonestly.
27. As to the anomalous markings on some of the photocopied passports which Mr. Boot was able to identify through the use of magnifying equipment and overlay technology, including correcting fluid appearing besides certain of the words which the Accused agreed was her

handwriting and the other trash marks referred to, the Accused simply answered that she noticed them but didn't suspect anything about them because she assumed they were just left by the photocopier. In my view, having regard to Mr. Boot's evidence conceding that a lay person, without expert knowledge or equipment, would be unable or unlikely to be able to identify those markings as indicia of forgery or fraudulently constructed documents, the Accused's evidence was a perfectly reasonable explanation.

28. The Crown also pointed to the some 67 applications, in total, representing the number of occasions on which the Accused agreed to provide affidavits in this way. Apart from the five the subject of the indictment, I did not go through each of the others. However, from what I observed, particularly during the course Mr. Boot's evidence and the schedule to his report, they all appeared to be Chinese applicants. That observation appears consistent with an era within this country starting from a Royal prerogative to grant passports to non-Tongan nationals upon payment of considerable sums of money. That era unfolded into one in which renewals of those passports has caused significant concerns. This case, like that of *R v Lord Tu'ivakano*, appears to be now be part of (and perhaps at the tail end) the investigations into those concerns. In light of Mr. Boot's evidence about the five reported previous passports here being fakes or forgeries, those concerns were well founded. However, the investigation into those who are considered responsible for any criminal or dishonest actions requires very clear and careful consideration. This case is an example.
29. In relation to exhibit P4, the Accused did not accept the suggestion (and closing submission) that because the photocopies presented to her did not have any gaps in the stamp over photographs, she ought to have identified them as fakes. From her experience creating passports during her time in the force, she said it depended on how careful the operator was with the stamp. Although, as I have said, I accepted Mr. Boot's evidence about that, the overarching observation about all of those

discrepancies and anomalies he identified in the photocopies, was that they were not likely to be recognized by a lay person.

30. In that regard, the Accused also said in evidence that during her service, she was never trained in techniques for identifying fake passports. That evidence was not contradicted.

Submissions

31. Mr. Edwards' closing submissions may be reduced to one fundamental proposition: that there was no evidence that the Accused had any reasonable cause to believe that the passports were fake or false or misleading. I emphasize the word 'believe' in that submission because earlier in the case there were references to the test being whether the Accused had grounds or reasonable cause to 'suspect' the photocopies were fake. That is not the test provided by the statute. It is well settled that a suspicion carries a lower threshold than a belief: *Seven Seas Publishing Proprietary United v Sullivan and others* [1968] NZLR 663, at 666-667.
32. Mr. Lutui for the prosecution provided a written outline of closing submission which included a series of rhetorical questions, laced with incredulity about the Accused' s evidence, aimed at persuading the court to infer from the available physical evidence that the Accused had reasonable cause to believe that the relevant passports were misleading.
33. The first was whether the court should believe that the Accused was approached by Tu' akoi to provide at least 67 separate affidavits in support of passport applications, including, the five relevant affidavits. My answer to that is that the Accused not only said that she had assisted with those, but that other various 'agents' as she described them had approached her requesting similar assistance and that she assisted all of them in the same way. The important aspect of assessing her assisting in that way is the 'believability' of the photocopies of previous passports presented to her. So, in answer to the first proposition or question on behalf of the Crown, yes, the court does accept that the Accused was

approached by Tu' akoi on all the occasions, including, for the five affidavits the subject to these charges.

34. Secondly, the Crown asked whether the court should believe that the Accused knew that Tu' akoi was not working for immigration. That was the Accused evidence. It was not challenged. I accept it.
35. Next the Crown asked whether the court should believe that Tu' akoi was the one that gave the Accused the photocopies. There was no evidence as to any other provenance or even likely provenance of the photocopies. The only evidence was that of the Accused. There was also no related evidence about where the Accused could have got the various components of handwriting, stamps or forms seen in the photocopies of previous passports which Mr. Boot said, in terms, have all been put together as it were to create the fake photocopies. There was no evidence that the Accused left her service in the force with copies of passports. There was no evidence nor even suggestion that she was given legitimate passports by some other person or went and obtained them herself and, with those legitimate passports, pieced together these fakes. Accordingly, I accept the Accused' s evidence that Tu' akoi gave her the relevant copies.
36. The next question was whether the court should believe that the Accused had questions concerning the photocopies because she did not have the registers on hand to check whether the passports had in fact been issued. As recounted above, the Accused agreed that she had questions initially about the requests for assistance. She questioned why she was being asked to assist when Immigration should have had all the information. That was obviously not the case. And, coupled with her evidence about having received letters from Foreign Affairs asking for her assistance, I accept her evidence that those questions did not cause her to have any suspicion, and certainly no belief, that the photocopied passports were fakes.
37. The next question posited by the Crown that whether the court should believe that despite the Accused having legitimate questions, she

brushed aside those 'internal questions' and acceded to Tu' akoi' s repeated requests. For the reasons I have already outlined, I accept the Accused' s explanations in that regard. I should emphasize that the Accused' s evidence about her willingness to repeatedly assist in this way hinged on her evidence that when she looked at the photocopies, she identified her handwriting and her initials in the stamps and she was familiar with the Minister' s signatures. In other words, on a plain lay inspection of those documents, they appeared to be what they were represented to be. Therefore, it was reasonable for a person in the Accused' s position to provide affidavits simply confirming her handwriting on those copies and based on what was shown on the copies as to dates of issue, names, etc., that they were passports which appeared to have been issued during her time in the service.

38. The next question raised by the Crown is whether the court should believe that the handwriting on the photocopies the Accused pointed to in court was in fact her own. The Accused' s evidence about that was never challenged. Mr. Boot in fact confirmed the handwriting specimens of a particular group of words on the third page of the bottom left corner of each of the photocopies as being the Accused' s handwriting. He was able to identify that those samples of handwriting had been cut, copied and pasted from one source to create fake copies of passports. That was not something which was ever put to the Accused as having being done by her. The Crown pointed to Mr. Boot' s evidence in relation to the back page of each of the photocopied passports, under the section "Observations" , where an explanation was handwritten in for why each passport was issued in replacement of a previous passport. The passport numbers in each began with the letter "A" . Mr Boot described the letter A in each as being 'original ink' , meaning that the numbers that followed were not part of the original handwriting. Whilst I accept Mr. Boot' s evidence about that discrepancy, the fact that that here the Accused was presented with black and white photocopies and that she identified the letter A as being her handwriting, cannot be determinative of her knowledge therefore that the copies were fake.

39. The Crown's next submission was that if the court were to accept that the Accused received the photocopies from Tu' akoi, it must follow that the Accused 'made material alterations'. The Crown pointed to the applications by Shanoi Kam and Singkei Lou as clear "illustrations of consciousness" that the previous passport copies were fake and must have appeared fake. Those applications were different from the others in that the vertical wavy lines on the bottom right quarter of each of the photocopies was much fainter than in the others. In my view, that evidence did not support a finding of the kind submitted. In her evidence, the Accused put that difference down to the poor quality of those photocopies. More importantly, as I have already noted, the gravamen of that submission was never put to the Accused. Moreover, there was no evidence that the Accused had any of the knowledge or abilities required to create these documents as discussed by Mr. Boot, such as the use of software such as PDF products where pieces of texts can be copied and pasted and otherwise manipulated including using different layering. There was no evidence that the Accused had any knowledge of those things. Given the period of time since she has retired, it is an unlikely proposition.
40. Another question in the Crown's submissions was whether the court believed that the five relevant applicants received passports during the Accused's time in the immigration division of the police, because if they did, they should have appeared in the register labelled 'Headquarters Register' from Longolongo spanning 1996 to 2000. But as the Crown rightly pointed out, the evidence was that they did not appear in that register. In my view the submission misstates the Accused's evidence in that regard. She did not positively aver to a belief that the five relevant passports were registered. Rather, she questioned whether all registers had been searched by police. For the reasons I have already identified, from the evidence which was given by the two police officers and particularly that of Officer Satini, I am satisfied that those particular five passport numbers and dates of issues were never found in any of the registers searched. Even if I were to accept that the five passports are

contained in a register somewhere, that would not advance the issue for the Crown in this case. I have accepted on the evidence that the five photocopies of purported passports were fakes. That is consistent with the evidence that their numbers and names have not been found in any registers searched and that those are the totality of registers transferred from police to Foreign Affairs for the relevant time frame. The issue is whether the Accused had reasonable grounds for believing the photocopies were fakes.

41. The Crown's next submission was that by, in effect, gathering together all the various discrepancies in the five relevant passport photocopies and the circumstances in which the Accused was asked by Tu' akoi to provide her affidavits, the Accused should have realized the situation was "irregular bordering on suspicious" . As I have already indicated, the test here is not whether there were reasonable grounds for the Accused to be suspicious, but whether she had reasonable cause to believe the photocopies were fake.
42. The Crown then logically asked whether in the 'face of the clear red flags' what would a reasonable person in the Accused's position do. It submitted that a reasonable person would have at the very least asked questions and that what the Accused did in this case was unreasonable. It submitted that the 'obvious signs' were the lack of breaks or gaps in the stamps on the photocopies. I have already addressed this aspect of the case. I am satisfied that a reasonable person in the Accused's position, when provided with the photocopies of each of the five passports, could, as Mr. Boot agreed, not be expected to realize that they were, or even may have been, fakes.
43. Therefore, on that element of the charges, I am not satisfied beyond reasonable doubt that there was reasonable cause for the Accused to believe that her affidavits deposing to and exhibiting the five photocopies of purported previous passport was false or misleading. With that finding, the element of intent to deceive falls away.

Result

44. Accordingly, on each of the five counts of making a false declaration for the purpose of obtaining a passport contrary to s.21(1)(a) of the Passport Act, I find the Accused not guilty. Mrs. Taulua is free to go.

NUKU' ALOFA

Issued: 15 June 2020



A handwritten signature in black ink, appearing to read "M.H. Whitten", is written over the right side of the court seal.

M.H. Whitten QC
LORD CHIEF JUSTICE