

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 168 of 2020

BETWEEN : REX

- **Prosecution**

AND : TEVITA VALIKOULA

- **Accused**

BEFORE HON. JUSTICE NIU

Counsel : Ms. 'A. 'Aholelei for the Crown

**Tevita Valikoula for himself, accused, during the trial
and Sunia Fili for the accused for submissions.**

Trial : 8, 9 and 10 July 2020

Submissions: by 'Aholelei on 24 July 2020

by Fili on 7 August 2020

Hearing : 31 July 2020

Ruling : 20 August 2020

RULING (VERDICT)

[1] In 2016, Aloha Likio (Aloha) planted in excess of 1000 kava plants on his tax allotment, Hu'akava, at Manuka. He maintained them well but Cyclone Gita destroyed some 700 plants in 2018 and he only had 300 plants left

which he continued to maintain and which continued to grow well. He aimed to grow them until they were 8 years old so that they would attain full maturity in size and weight and strength. He employed village youths to weed them from time to time.

- [2] But on the morning of 23 May 2019, he was shocked to find that some 85 plants had been uprooted and stolen just the night of 22 May 2019. He immediately complained to the police in the Mu'a police station.
- [3] On the evening of 25 May 2019, Aloha spoke with a Navutoka youth, Sione Tonata Tupou (Tonata) and Aloha telephoned Police Officer Kaati Taufu of the Mu'a Police station to whom he had complained. Officer Taufu then went and spoke with Tonata, as a result of which he organised two search parties and then on 28 May 2019 sought and was granted a search warrant to search the town allotment and tax allotment of the accused, Tevita Valikoula, at Matangiake, for the kava (of Aloha) and any other property in connection with an offence.
- [4] The party which searched the town allotment found nothing except that they found the accused there. The party which searched the tax allotment found kava which had been cut into small pieces which were laid out on sheets of corrugated iron laid over tall bush grass amongst the bush grass to dry in the sun. They were placed there to keep them out of sight. Also found were cut up stalks (stems) of kava plants bundled but left open in a plastic sheet under a fallen tree trunk amongst a taro patch.
- [5] At the tax allotment were the accused's son, Tupou Valikoula, and his partner, Sisi Va'enuku, and Sione Mafi Lolohea (Lolohea), who all lived on the tax allotment. The accused was brought over from the town allotment to the tax allotment, which is only about half a kilometer away. In a tent there, there was found stolen Tongan ta'ovala and fine mats.
- [6] The accused, his son, and Lolohea were arrested and charged with theft and abetting of theft of the kava and of the Tongan stuff and they and all

the properties were taken to the police station at Mu'a. The next day, Aloha was informed and he came and looked at the kava. He identified it as his kava because there were still bits of "tou'one" soil on some of the pieces of kava with roots on them which Aloha identified as identical to the tou'one soil of his tax allotment. Officer Taufa then released all the kava to him.

- [7] On arraignment of Lolohea for theft of the kava and of the accused for abetting the theft of the kava, Lolohea pleaded guilty and the accused pleaded not guilty.

The charge

- [8] The accused is charged that on or about 21 May 2019, at Manuka, he indirectly encouraged Sione Mafi Lolohea to steal 85 kava plants of Aloha Likio which were valued at \$17,000 by telling Sione Mafi Lolohea to go and take the kava plants.

Main witnesses for the Crown

- [9] The main witness for the Crown was **Sione Tonata Tupou (Tonata)**. He, 26 years of age, of Navutoka, a farmer and fisherman, said that one night last year, the accused and Lolohea came in a rental vehicle which had been hired from Lapaha, to Navutoka and picked him up from his home and the three of them went along the beach road and stopped at the waterfront past the next village of Manuka and that they smoked some ice there. He said that after that, the accused told Lolohea to go with the phone as a torch and find where Aloha's kava patch was in the tax allotment across the road from where they were parked.
- [10] He said that Lolohea went and after a while he returned and said that he could not find it. He said that the accused then told him to go again and to go right to the back of the tax allotment. He said that Lolohea again went and that when he returned he said that he had found it. He said that the accused then told them to come and uproot and bring that kava, and that

he and Lolohea both said yes, and they then returned and dropped him off at his home and they left.

[11] He said that the next day he decided not to join the theft of the kava and that when the accused telephoned him repeatedly that day, he just did not answer his call.

[12] He was cross-examined by the accused and he said that it was the accused who told them about Aloha's kava, because he said the accused said that he had had drinks with Aloha and that Aloha told him of it.

[13] **Police Officer Kaati Taufu** said that it was Tonata who had told Aloha and then told him that it was the accused and Lolohea who had stolen Aloha's kava and that was why he had the search done on the accused's tax and town allotments.

[14] The other relevant witness for the Crown was **Sisi Va'enuku**, the partner of Tupou Valikoula. She, 21 years of age, said that in May last year she was living with Tupou in the tent in the tax allotment and that just at day break one morning, the accused and Lolohea arrived in the accused's car, the car that he normally used. She said that they came with sacks of kava – maybe six sacks. She said that Lolohea then cut the kava into small pieces for drying while the accused just sat and talked to him. She said she was in the tent herself.

[15] She said that after the kava was cut, the pieces were spread over several corrugated iron sheets in a saafa bush area in the sun to dry, about 50 meters away from the tent. She said that may be 4 days later, the police came and took all the kava and arrested the accused and Lolohea.

[16] She said that there was no kava plant planted in the tax allotment at all.

The Defence evidence

[17] The accused did not give evidence but he called Lolohea and Lolohea gave evidence. He, 34 years of age, of Popua, but serving prison sentence at

Hu'atolitoi Prison, said that he was living at the tax allotment of the accused at Matangiake with Tonata. He said one evening, Tonata said he wanted to return to his home at Navutoka and so he drove the accused's vehicle and took him there. He said that before he took him to his home they went along the beach road past Manuka and stopped on the beach front and smoked some drug. He said that Tonata then told him that there was a kava patch in the tax allotment across the road. They then went into allotment and Tonata showed him the kava plants there. He said he told Tonata to leave it and that he would come the following day and take them himself.

[18] He said may be 2 days later he went to his brother in Popua and borrowed his Voxy van and went and picked up Tonata at Navutoka at about midnight and they went and uprooted the kava plants, enough to fill 14 sacks. They then carried them to the van. He said he then dropped off Tonata at his home in Navutoka and went to the tax allotment of the accused where he lived. He said he drove on to the allotment through the adjoining tax allotment and drove to the back of the accused's tax allotment where he unloaded the 14 sacks and then drove back out the same way and then drove into the accused's tax allotment from the road in the normal drive way. It was daybreak then.

[19] He said that Tupou and his partner were sleeping in the tent and he woke them up and after they talked, he drove the Voxy van to Popua and got his brother to drop him back. He said that when he got back, Tupou and his partner were not there. He said that he got a knife and corrugated iron sheets and went and cut up the kava into small pieces for drying and he spread them on the sheets. He said he also cut up the stalks (stems) of the kava for planting and put them on a sheet of plastic which he put in the taro patch not far from the tent.

[20] He said that the police came may be 2 or 3 days after that day.

[21] He said that the accused did not know anything about the kava, and that the accused only knew of it when the police came and found it in his tax allotment.

Submissions and consideration

Defence Submissions

[22] **The accused instructed** Mr. Fili to represent him and to make his submissions for him. Mr. Fili has made several allegations of "evidence" which were not given at this trial at all, as follows:

(a) The accused did not know anything about the theft of the kava by Lolohea.

The accused did not give evidence of that at all. He did not give evidence that he did not know that Lolohea had stolen the kava. Therefore I cannot consider his submission as evidence.

(b) Sione Tonata Tupou lied that it was the accused who told Lolohea to go and locate the kava patch, because the tax allotment was highly fenced and that the accused could not climb such high fence.

The accused did not give such evidence.

(c) The accused was only a taxi driver for Lolohea and Tonata when they went to locate the kava patch, and besides there was no theft of the kava on that trip.

The accused did not give evidence that that was all he was doing. Besides, he is charged with abetting the theft and is not charged with the theft.

(d) The accused did not know of the theft.

The accused did not give evidence that he did not know.

- (e) The accused denies the evidence of Sisi Va'enuku that he was there talking to Lolohea while Lolohea was cutting up the kava for drying.

The accused did not give evidence that he was not there and was not talking to Lolohea when Lolohea was doing that.

- (f) The accused beat up Tonata and sent him away from his tax allotment and that is why Tonata has made up this story about the accused.

The accused did not give evidence of any such beating or of sending Tonata off like he says.

- (g) Aloha Likio is a brother of the accused and he has agreed to withdraw his complaint because he has got his kava back.

Aloha Likio did not give any such evidence.

- (h) The car of the accused was broken down at the time that this theft took place and the accused was not involved in the theft at all.

The accused did not give evidence of any such break down of his car or that he was not involved.

- (i) The accused only knew of the theft when the police came.

The accused did not give any such evidence.

[23] That is the totality of the submissions of Mr. Fili for the accused. The most that I can make of it is that the burden of proving that the accused did abet the theft of the kava still rests upon the prosecution, to prove beyond reasonable doubt that the accused did indirectly command, incite, encourage or procure Lolohea to steal the kava.

Crown submissions

[24] Mrs 'Aholelei for the Crown has submitted that the Crown has proved all the elements of the offence with which the accused is charged beyond

reasonable doubt because Tonata has given evidence that the accused was the one who drove the 3 of them to the tax allotment and who had got Lolohea to go and locate the kava and who told Lolohea and Tonata to go the next day and take the kava. Because Tonata backed out the next day, Lolohea went with the accused and got the kava.

[25] She points to the evidence of Sisi Va'enuku who said that at day break one morning, the accused and Lolohea came to the tax allotment with several sacks of kava, about 6 sacks. Sisi said that Lolohea then cut up the kava while the accused just sat and talked with him, and that about 4 days later the police came.

[26] She points out that the accused did not challenge the evidence of Sisi at all.

Consideration

[27] I agree with Ms. 'Aholelei. The evidence of Sisi Va'enuku is consistent with the evidence of Tonata in that Tonata was not there because he had backed out and the theft was only carried out by Lolohea and the accused. It is also supported by the fact that it was Tonata who had informed Aloha that it was Lolohea and the accused who had stolen his kava, and Aloha then informed the officer, Kaati Taufu, who then went and spoke to Tonata, as a result of which the search warrant and search parties were arranged.

[28] Tonata may be an accomplice of the theft, at the most, although he did back out and so I have to consider whether his evidence is corroborated by any other evidence of a witness who was not an accomplice. I am satisfied that Sisi Va'enuku was and is such a witness. She was not involved in any way with the theft or of receiving of the kava. Her evidence supports the evidence of Tonata. Furthermore, the evidence of Aloha himself corroborates Tonata's evidence because Aloha confirmed that the soil found on the kava pieces found on the accused tax allotment was the same soil from his kava patch because of the uniqueness of the type of soil of his tax allotment.

[29] I also consider it relevant that neither the accused nor Lolohea claim that the kava found on the accused's tax allotment belonged to someone else. Furthermore, Lolohea has confessed and admitted by his guilty plea, that it was Aloha's kava that he had stolen the 85 kava plants from – just as Tonata has told in his evidence – that Lolohea and the accused had planned to steal.

Conclusion

[30] I am therefore satisfied beyond reasonable doubt that the accused, Tevita Valikoula, did encourage Sione Mafi Lolohea to steal 85 kava plants of Aloha Likio, valued at \$17,000, by telling him to go and steal them from his kava patch on his tax allotment at Manuka in May 2019.

[31] Accordingly, I find him guilty and I convict him as charged.

NUKU'ALOFA: 20 August 2020.



[Handwritten Signature]
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