

Sean and H6.

**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION**

NUKU'ALOFA REGISTRY

CR 59 of 2019

BETWEEN : REX

- **Prosecution**

AND : 'EPUEFI HOLIDAY LAIMANI

- **Accused**

BEFORE HON. JUSTICE NIU

**Counsel : Mr. T. 'Aho for the Crown as applicant.
Mr Epuefi Laimani, accused, for himself as
respondent.**

Hearing : 3 December 2019

Ruling : 16 September 2020

RULING

[1] In pursuance of a search warrant, the police searched a hut in which the accused was living on the morning of 1 August 2028. In the presence of and while the accused was watching, the police found the following inside the hut:

(a) crumbled cannabis wrapped in a tissue in a gap in the brick wall;

- (b) 10 large plastic packs of methamphetamine, 3 small plastic packs of methamphetamine in a closed small plastic bowl and 11 small plastic packs of methamphetamine, all of which were in a small bag attached to a pair of red trousers hanging in the hut;
- (c) \$770.00 in cash in the front left pocket of the red trousers;
- (d) \$549 in cash in a wallet in the back pocket of the red trousers;
- (e) driver's licence, ANZ Bank card, MBf Bank book of the accused were found in the wallet as well;
- (f) a laptop and charger on the floor;
- (g) a weighing scale and empty plastic packs on the floor;
- (h) a submersible water pump on the floor;
- (i) 1 McCulloch chain saw, 1 Ozito chain saw on the floor;
- (j) 1 spot light torch, 1 box containing a skill saw and 1 ta'ovala and 2 kie Tonga under the bedding;
- (k) \$970 in cash bundled, \$1,000 in cash bundled, and \$1,000 in cash bundled in 3 gaps in the brick wall;
- (l) \$50 in cash in an empty Ajax bottle, \$300 in cash in another empty Ajax bottle, and \$1,000 in cash in an empty brake fluid bottle, on the floor.

[2] The total of the cash came to \$5,639.

[3] The accused was charged with possession of a class A illicit drug, namely, methamphetamine without lawful excuse contrary to S.4 (a) of the Illicit Drugs Control Act, and after a contested trial, he was found guilty and was convicted of the charge, on 12 June 2019, by the Lord Chief Justice Paulsen. On 31 July 2019, he was sentenced by the Lord Chief Justice to 2 years 9 months imprisonment, to commence from his date of remand in custody, 10 October 2018, and that the final 6 months be suspended for 2 years on specified conditions.

Application

[4] On 9 July 2019, the Attorney General filed an application that this Court orders that the said cash of \$5,639 (but incorrectly stated in the application to be \$5,539) be confiscated, in accordance with the provisions of S.34 of the Money Laundering and Proceeds of Crime Act.

[5] S.34 of that Act provides as follows:

"34. Confiscation order on conviction

- (1) Where, upon application by the Attorney General, the Supreme Court is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, the Supreme Court may order that property be confiscated.
- (2) Repealed by Act 32 of 2010.
- (3) Where the Supreme Court orders that property, other than money, be confiscated, the Supreme Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.
- (4) In considering whether a confiscation order should be made under subsection (1) the Supreme Court shall have regard to -
 - (a) the rights and interests, of any person in the property;
 - (b) the gravity of the offence concerned;
 - (c) any undue hardship that may reasonably be expected to be caused to any person by the operation of the order; and
 - (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Supreme Court makes a confiscation order, the Supreme Court may give such directions as are necessary or convenient for giving effect to the order.

[6] Copy of the application was provided to the accused and the hearing was held before me where evidence were given by witnesses for the Attorney General and by the accused himself. The hearing was delayed for some time because of the absence of a witness for the Attorney General.

The evidence

[7] In support of the application is an affidavit by Mr. 'Inoke Finau who was the prosecuting counsel in the trial of the accused for possession of the methamphetamine found in the search. He refers to the finding by the Lord Chief Justice of facts which he stated in paragraph 29 of his verdict of 12 June 2019. Sub paragraphs (e) to (g) are as follows:

- "(e) During the search, the Police found 24 plastic packets of methamphetamine in a black bag attached to red shorts belonging to Mr. Laimani. They also found, at various locations within the hut, sizeable sums of cash (some of which was hidden) as well as empty plastic packets, similar to those that contained the methamphetamine and, weighing scales.
- (f) Mr Laimani was present when the drugs were found and acknowledged that the drugs were found in his hut by signing the diary of action.
- (g) The packets of methamphetamine were in the possession of Mr Laimani. He had physical control of them and actual knowledge that the packets contained an illicit drug. Such knowledge is to be inferred from the facts that they were found in his shorts, there is no credible evidence that anyone else had access to Mr Laimani's hut at any relevant time, Mr Laimani lied in his evidence as to the provenance of the drugs, the methamphetamine was contained in individual packets

and, there were large sums of hidden cash and other paraphernalia (such as further empty plastic packets and a weighing scale) found in the hut, consistent with Mr Laimani being involved in the distribution of illicit drugs.

- [8] Mr. Finau stated that in his opinion the money which was seized by the police from the accused was linked to the distribution of drugs, and that the accused should not be allowed to profit from his offending.
- [9] The accused gave sworn evidence during the hearing that whereas he had no objection to the rest of the money being confiscated, he objected to the confiscation of the sum of \$2,000 which he had obtained from the sale of 10 of his pigs in just that week that the police searched his hut. He said that he had the \$2,000 in two separate bundles of \$1,000 each which he had hidden separately, from the other monies in gaps in the brick wall right up near the top of the wall above his bed. He said that he told the police of that money and that was where the \$2,000 was found, and that he gave evidence of that at his trial.
- [10] The police officer, Kalosi Tapueluelu, gave sworn evidence that he was in the search of the hut and that it was him who found the cash hidden in the gaps in the brick wall. He said that the 3 bundles of cash (of \$1,000 per bundle) were all found in 3 gaps right beside the bed of the accused, not up by the roof or top of the wall. He said that the accused did not show or tell him where any money was hidden and that he never said anything about any part of the money found having been obtained from the sale of pigs of his. He said they searched the whole allotment and he did not see any sign of pigs presence or of raising of any pigs there.
- [11] He said that the packs of meth were being sold at \$50 and at \$100 per pack, the large ones being \$100 per pack, and of the 3 \$1,000 bundles, there were 27 \$50 notes and only 3 \$100 notes. He said that to him, because they found the meths packs as well (in large and small packs), the

money was tied to the sale of the packs of meth. He said that there were 13 large packs and 11 small packs of meth.

- [12] I asked him and he said that if the accused had said that \$2,000 was received from the sale of his pigs, the officer keeping the diary of action would have recorded such statement by him but there is no such statement by him recorded in the diary of action.

The law

- [13] The law governing this matter is contained in S.34 which I have quoted above. It says:

“Where, upon application by the Attorney General, the Supreme Court is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, the Supreme Court may order that property be confiscated.”

- [14] “Property” is defined in S.2 of the same Act as:

“property” means cash and all real or personal property of every description, whether situated in Tonga or elsewhere and whether tangible or intangible, and includes an interest in any such property including any legal document or instrument, including electronic or digital, evidencing title to, or interest in such assets.”

- [15] “Tainted property” is defined in S.2 as well as:

“tainted property” in relation to a serious offence, means –

- (a) Property used in or in connection with or intended for use or in connection with the commission of the offence, if it was in the person’s possession at the time of, or immediately after the commission of the offence;
- (b) Property derived, obtained or realised as a result of or in connection with the commission of an offence if it was

acquired by the person before, during or within a reasonable time after the period of the commission of the offence of which the person is about to be charged, charged or convicted; or

- (c) That the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property; and
- (d) Tainted property includes property of a corresponding value to property defined in (a), (b) and (c) above."

Finding

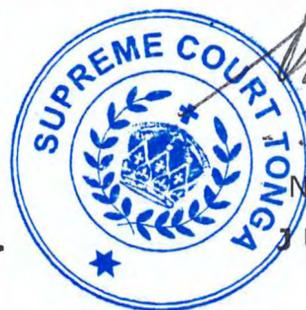
- [16] I am satisfied that the cash of \$5,639 which was found in hut of the accused was in the possession and control of the accused and that he had obtained that cash from the sale of methamphetamine, the remainder of which were in the 24 packs also found in his possession and control. That cash is "property" within the meaning of S.34 (1).
- [17] I am also satisfied that that property is "tainted property in respect of a serious offence of which a person has been convicted", namely the accused, who has been convicted of the serious offence of possession of that remainder of methamphetamine. That is because the cash was "derived in connection with the commission of" the offence of which the accused has been convicted. The offence of which the accused has been convicted is the possession of the 24 packs of methamphetamine, the remainder of X number of packs of methamphetamine which he had had, out of which he had sold Y numbers of packs from which he received the \$5,639. The cash was accordingly **"derived in connection" with the packs of methamphetamine which he still had left, the offence of which he has been convicted.**
- [18] The accused does not dispute the confiscation of the \$3,639 which he had because he knows and accepts that it is tainted property. He only disputes the sum of \$2,000 which he says was from the sale of 10 pigs which he had

raised. I however do not believe his evidence because there was no evidence that he made such a claim when the money was found and there was no evidence that he raised pigs at the time.

Orders

[19] Accordingly, I grant the orders sought by the Attorney General and I make the following orders:

- (a) The cash of T\$5,639 that was seized by the police from the accused, 'Epuefi Holiday Laimani is declared tainted property under S.2 (1) and S.34 of the Money Laundering and Proceeds of Crime Act 2000, in respect of a serious offence of which the said accused has been convicted on 12 June 2019 in the Supreme Court of Tonga.
- (b) The tainted property is ordered to be confiscated to the Crown to be deposited into the Tonga Confiscated and Forfeited Assets Fund established in the public accounts of the Crown under section 48A of the Money Laundering and Proceeds of Crime Act 2000, and that such funds be managed and utilised in accordance with the relevant statutory provisions governing that Fund.



[Handwritten signature]

Niu J
J U D G E

NUKU'ALOFA: 16 September 2020.