

Sean + Fika

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

CR 39 & 168/2020

REX

-V-

TEVITA VALIKOULA

BEFORE HON. JUSTICE NIU

Counsel : **Ms. 'E. Lui for the Crown in CR39/2020.**
Ms. 'A. 'Aholelei, for the Crown in CR168/2020.
Mr. S. Fili for the Accused

Probation Report: **by 'Ema To'ia filed on 15 September 2020.**

Submissions : **by 'Aunofa 'Aholelei filed on 24 September 2020 (CR39/2020)**
: **By 'Elisiva Lui filed 25 September 2020 (CR168/2020).**

Sentencing : **13 October 2020**

SENTENCING

[1] Tevita Lolohea, you now appear before me to be sentenced for 2 offences of which, after their separate trials, I have found you guilty, namely,

(a) CR 39/2020, in that, in May 2019 at Matangiake, you received from Sione Mafi Lolohea 11 fuatanga toka 10, 2 lokeha, 39 kie tonga, 2 ta'ovala, 2 falafihu and 1 fala vala of 'Ilaisaane

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rec'd 13/10/20
JH

Kailahi, altogether valued at \$19,400, believing the same to have been stolen, and

- (b) CR 168/2020, in that, in May 2019 at Navutoka, you indirectly encouraged Sione Mafi Lolohea to steal 85 kava plants of 'Aloha Likio valued at \$17,000 by telling him to steal them.

The first offence

2. Sione Mafi Lolohea pleaded guilty to both thefts and he has already been sentenced for both offences. You denied committing the first offence and pleaded not guilty to it. The Crown called and its witnesses gave evidence in this Court, one of whom was Sione Tonata Tupou, who said that he was with you in your taxi car when you dropped off Sione Mafi Lolohea at Ha'ateiho late in the evening and you and the witness went and waited for his telephone call at the Vaiola Hospital taxi stand. Upon receiving the call you then went and dropped the witness off at Veitongo to look for his telephone there and then you went to pick up Sione Mafi Lolohea. He said he walked back to your tax allotment at Matangiake where he and Sione Mafi Lolohea and your son and his partner were living. After a while, he said, Sione Mafi Lolohea arrived back on foot. And then you arrived in your car with the stolen things in the boot of your car wrapped in a bed sheet.
- [3] He said that he and Sione Mafi Lolohea then folded up the items and put them in two big black plastic bags. He said that the name of 'Ilaisaane Kailahi was written on some of the items which they folded up. The two plastic bags were then put on the back seat of your car and you and Sione Mafi Lolohea left in the car. After a while you both returned, and the witness asked that you drop him off at his home at Navutoka and you did. He said that the two plastic bags were still on the back seat of your car and that they were still there when you left Navutoka after dropping him off.
- [4] Your son also gave evidence. He said that he and his partner were away for a few days and that on their return he saw the two plastic

bags in the tent in which they were living. He said that you were aware of the presence of the things in the bags in the tent because you told Sione Mafi Lolohea to get rid of them if they were stolen items in case you would all be caught with them there. His evidence corroborated Sione Tonata Tupou's evidence, that you knew of the items being in the tent.

The second offence

- [5] In respect of the second offence, to which you also pleaded not guilty, Sione Tonata Tupou said that you and Sione Mafi Lolohea came to Navutoka at night and picked him up from his home at Navutoka in a rental vehicle and you went and parked at the water front past Manuka and you sent Sione Mafi Lolohea to go into 'Aloha Likio's tax allotment across the road from where you parked to locate 'Aloha's kava plantation there. When he came back and said that he had found it, you told him and the witness to come and steal the kava the following day. The witness said that he changed his mind the following day and refused to answer your several calls to him that day. When he heard that Aloha's kava had been stolen, he contacted and told the police. The police came and searched the tent and found the two plastic bags of the items in the tent. They also found the stolen kava already cut up and spread on corrugated iron sheets to dry. Your son's partner said in her evidence that you and Sione Mafi Lolohea came at daybreak one morning with 6 bags of green kava and that Sione Mafi Lolohea cut them up with a knife while you sat and watched and talked with him. That evidence corroborated Sione Tonata Tupou's evidence that you knew about the theft of the kava.

Probation Report

- [6] You however told the Probation Officer that you had had nothing to do with either offence, that you did not know anything about either theft and that you are completely innocent of them. However, you did not tell me that in Court at all. You were given the opportunity to give evidence and you chose not to give evidence. You called Sione

Mafi Lolohea to give evidence instead, and he gave evidence that you had nothing to do with the kava or with the receiving of 'Ilaisaane's items but I did not believe his evidence. I believed Sione Tonata Tupou's evidence because they were corroborated by your son's evidence and by your son's partner's evidence.

- [7] You have told the Probation Officer that you are married and that you have 9 children, and that in 2000 you and your family migrated to Hawaii, and that in 2019 your father passed away and you had to come back for his funeral. And whilst you were here, you had an affair with another woman and your wife and children found out about it and they do not want to have anything to do with you anymore.
- [8] She says that your parents had 7 children and you are the 3rd oldest and that you attended Liahona High School and attained form 5. You earn your living by driving a taxi. You are 58 years old and you have health problems. You have diabetes (Type II), high blood pressure and cardiac pathology. The doctor says that you frequently attend at the Vaiola Hospital emergency unit. No doubt you have medications for your ailments which allow you to continue your occupation of taxi driving.
- [9] She says that you were born and raised, with your siblings by your parents at Ha'akame and that you married your wife who is from Lapaha and that you lived at Navutoka and then came and lived at Matangiake. The town officer of Navutoka however says that you were born and raised in Navutoka but that when you married you lived mainly in Lapaha at your wife's parent's home. He says he knows you well but he has nothing to say in support of any mitigation in your favour. The town officer of Matangiake says you are a new comer to Matangiake and he does not know you well except that since you moved there, various crimes occurred there.
- [10] The LDS church bishop at Navutoka, Loniseni 'Okusi, says that you are a member of his ward and that he has seen a big change and big repentance in your life at the moment and he asks that you continue

to remain in his care to ensure that the change in you continue and be permanent. He however gives no detail or example of such big change or big repentance.

[11] The probation officer is of the opinion that the appropriate and inevitable sentence for you is imprisonment.

Crown Submissions

[12] The Crown agrees with that opinion, and in accordance with sentences in theft cases similar to yours, the appropriate sentence for you is three and a half years imprisonment with no suspension.

Those are the cases of:

- (a) **Malafu** (CR 133/2016) where he was sentenced to 3 years 6 months imprisonment for the housebreaking and 2 years imprisonment for the theft, which were to be served concurrently and that the last 6 months to be suspended.
- (b) **Maile** (CR 133/2019) where he was sentenced to 2 years and 6 months imprisonment for the housebreaking.
- (c) **Sione Mafi Lolohea** (Cr 38/2020) who is the same Sione Mafi Lolohea who had pleaded guilty to breaking into 'Ilaisaane Kailahi's house and to stealing her properties which I have found you guilty of receiving, and of the kava. Because of his repeated offending from 1997 up to now, a total of 37 criminal offences had been committed, of which there were 21 occasions of both housebreaking and theft, I sentenced him to 7 years 6 months for the serious housebreaking and to 5 years 3 months for the theft of 'Ilaisaane's properties.
- (d) **'Ealelei** (CR 162/2018) who pleaded guilty to housebreaking and theft of goods (mainly Tongan koloa) valued at \$34,000, of which only about \$12,800 worth were recovered. He was sentenced to 4 years for the housebreaking and 2½ years for the theft, but to be served concurrently. Because of his young age, his last 6 months of imprisonment was suspended.

[13] Crown counsel says that you have 2 previous convictions, namely (1) for incest and indecent assault for which you were sentenced to a total of 8 years imprisonment but with the last 2 years being suspended in CR159/2011 and (2) for disorderly behavior for which you were fined \$100 in CR421/2014 (Magistrate's Court), and that you still have an outstanding charge (CR205/2020) where you and others are charged with possession of illicit drugs.

[14] She says that despite having been sentenced for long period of imprisonment you have not changed and have not rehabilitated yourself because you have appeared to be a leader for persons like Sione Mafi Lolohea and Sione Tonata Tupou, and others to commit offences. She therefore recommends that you be given no suspension of your sentence of 3 years 6 months imprisonment, which she recommends is in accordance with the cases to which she has referred.

Your counsel submissions

[15] Mr. Fili has submitted on your behalf that some leniency be given to you in view of your age and of your physical ailments as described by the doctor. Your counsel says that your physical condition has affected your mind to the extent that you believe that you never had anything to do with these two offences and that you never knew about the stolen items until the police showed them to you in the search they carried out.

[16] He says that you have promised to change your life and to be religious and to be more caring for your family so that you become a better member of the society. He asks that you be given a suspended sentence.

Consideration

No credibility

[17] However, he has no psychiatric report, or evidence of any psychiatrist, that you are mentally so affected by your physical ailments. On the contrary, I have observed you during the several

days of these two trials and I have seen nothing in your conduct of your defence to indicate any such tendency. If you were indeed suffering mentally as your counsel has suggested, that you honestly believed that you had had nothing to do with these two offences, you would have readily taken the oath and give evidence that you had had nothing to do with these two offences. But you did not. You knowingly chose not to give such evidence instead.

[18] I also consider that you have deliberately lied to the probation officer that you and your family had migrated to Hawaii in 2000 and that you had only had to return to Tonga in 2019 because your father had passed away and that you had to come for his funeral. You told her that whilst you were here for that, you then had an affair with another woman and that when your wife and children found out about it, they no longer wanted to have anything to do with you anymore.

[19] You knew that that was a lie because you were in Tonga from 2005 to 2010 because you committed 4 acts of indecent assault and 1 act of sexual intercourse on your youngest daughter during those 5 years, for which you were sentenced to 4 years imprisonment for each of the 4 acts of indecent assault and 8 years for incest in respect of the act of sexual intercourse, but all sentences to be served concurrently, and that the last 2 years were to be suspended. You began serving those sentences at the Hu'atolitoli Prison on 30 April 2012 and you were released on 10 September 2016. You were never in Hawaii during that time at all because you were in Hu'atolitoli instead.

[20] I therefore find that I cannot rely on anything that you have said to the probation officer or to the bishop or to your counsel because I find you have no credibility at all.

Exploitation

[21] I also find that you have deliberately exploited Sione Mafi Lolohea to your own advantage. You no doubt made his acquaintance at the

prison and you offered him a place to stay when he was released from prison, your tax allotment at Matangiake, because he had no home. You knew he made his living by housebreaking and theft. You dropped him off at Ha'ateiho to break into 'Ilaisaane Kailahi's house and steal her Tongan koloa. You also had him go and steal Aloha Likio's kava at Manuka.

- [22] Instead of helping him to change his life by having a proper job to earn a living and be law abiding, you used him to go and steal for you instead. That is despicable.

The law

- [23] By right, you should be punished as he has been punished, because he would not have committed the housebreaking and the thefts if you had not directed and helped him to do it. The law says that. Section 8 of the Criminal Offences Act provides that every person who directly or indirectly encourages another person to commit an offence and the person commits the offence shall be liable to the same punishment as if he himself had actually committed the offence. And S.148 (1) of the same Act provides that any person who receives any property believing it to have been stolen shall be liable to the same punishment as if he had committed the theft himself.
- [24] In respect of the thefts, the maximum sentence is 7 years imprisonment, and I have sentenced Sione Mafi Lolohea for stealing 'Ilaisaane Kailahi's Tongan koloa to 5 years 3 months imprisonment for the theft of 'Ilaisaane's properties. I do not see any reason why you should not be sentenced to the same period of imprisonment. In fact I see every reason to sentence you to the same period because you knew his history of housebreaking and thefts. That was why you used him.
- [25] I agree with Crown Counsel that your ailments do not affect your job of taxi driving and as I have said you have your medications as needed. You can equally keep to those medications outside as well you can inside prison, and no doubt the wardens would allocate work

for you as befitting your conditions and as may be directed by the doctor. No medical evidence has been shown to me that your condition is new or is in any worse state than it was whilst you were serving your previous imprisonment sentence.

[26] As to suspension of your sentence or of any part of it, I do not consider that you have shown any prospect of rehabilitating your life. Both the town officers do not say anything, or more correctly, do not know of anything good that you have done that shows any improvement in your life since you came out of prison in 2016. Instead one town officer says that ever since you came to his village then various crimes happened. And the bishop who appears to support you gives no detail or any specific thing which you have done to support or prove his comment. On the contrary, you have shown no remorse at all for what you have done. You have not even admitted that you have done anything wrong, just like you have not admitted to the probation officer that you were imprisoned for incest with your daughter.

Sentence

[27] Accordingly, I sentence you to 5 years 3 months on each of the two offences of which I have convicted you but they be served concurrently.



A handwritten signature in blue ink, appearing to be "Niu J", is written over the seal.

Niu J
J U D G E

NUKU'ALOFA: 13 October 2020.