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

CR 46 of 2021

REX

-v-

'Ana Toe'umu LATU

SENTENCING REMARKS

BEFORE: HON. JUSTICE COOPER

Counsel: ✓ Ms. 'E. Lui for the Prosecution

Ms. Latu was unrepresented

Date of sentence: 29th April 2021

1. This case relates to two counts of obtaining by false pretences.
2. In a nutshell the defendant advertised a car for sale, sold it to one person and then pretended it was still hers to sell and induced two other people to pay for the car she no longer was in possession of.
3. All in all about \$20,000 was falsely taken by her.
4. She pleaded guilty on arraignment.
5. The background is that about February 2020 Miss Latu advertised a 2007 Toyota Corolla Rumion for sale on a Facebook page that has the name "Tonga Garage Sale".
6. The stated price was \$9,800.00. A deposit was to be paid because this vehicle was to be imported from Yokohama, Japan. That price to cover freight and customs' duty.
7. Miss Musie Funaki bought the car. She first paid the deposit, that money transferred to Japan, then paid the balance and the car arrived in Tonga late May, early June 2020.

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8. Simply put, she then advertised the car again on the Facebook page and this time actually showed the vehicle two other people. It was at Queen Salote Wharf.
9. So, a Miss Malaea Tonga'uiha was induced to part with \$9,800.00.
10. Then a Miss Litiola Lutui \$11,426.66.
11. It should be noted that both losers were induced to part with their money in tranches. They were told part was for a deposit, part was customs and then a figure for the balance.
12. I say that because the first victim had her money taken from her thus over the course of June 2020, the second throughout July 2020.
13. It was sustained and planned and given a professional appearance so as to deceive.
14. Both for the car that had already been sold to Miss Funaki.
15. On 15th August 2020 Miss Lutui and her partner went to see the car. The car had gone. They found out that Miss Funaki had it and that they had been conned.
16. Both losers reported her to the police.
17. She was arrested and admitted the offending in police interview.
18. Miss Latu was of hitherto good character. I take into account what she told probation about falling victim to a fraud herself and her money problems that arose from that.
19. I also note that she cares for her mother in law who is very poorly and wheel chair bound
20. I have considered a number of cases in relation to fraud, value and sentence tariff.
 - i. *R v Salupe*, 47 2020 where a late guilty plea almost at the conclusion of trial for a like fraud involving cars but a value of some \$59,950 attracted a sentence of 3 years
 - ii. *R v Latu* CR 5/13 embezzlement, falsification of accounts and theft with a total value of \$15,141.69 attracted a sentence 2 years' imprisonment the last 12 months suspended for 12 months.
 - iii. *R v Kolomalu* CR115/11a guilty plea to taking \$21,051.20, there she co-operated with the police, pleaded early and was of hitherto good character; 18 months fully suspended for 2 years.

- iv. *R v Anasitasisi To'a* Cr 7/13 embezzlement, falsification of accounts and theft with a total value of \$25,208.03 sentenced to 2 years' imprisonment, the last 9 months suspended for 12 months.

21. The aggravating features in this case are

- i. The number of victims
- ii. Length of time sustained for
- iii. Degree of planning involved
- iv. Hall marks of professionalism in using the establish Facebook page

22. Set against those points she :

- i. Admitted it in police interview and co-operated with the police
- ii. Has never been in trouble before
- iii. Pleaded guilty in a timely fashion

23. I have considered very carefully that fraud is a cynical crime; it takes people's hard earn money easily from them and humiliates and causing financial hardship in turn to others who were trusting.

24. I have considered *Mo'unga v R* [1998] TLR 154 in terms of suspension.

25. Given that she cooperated with police and admitted her criminality in interview but what is especially important is that she pleaded guilty early.

26. In this case it has just made the difference.

27. I find that this is so serious that only a custodial sentence suitable.

28. My starting point is one of 24 months imprisonment, I reduce that by 30% to 17 months.

29. Because of her cooperation and lack of previous convictions I am just persuaded that her remorse is true because of her guilty plea and so I suspend her sentence.

30. Her sentence is one of 17 months' imprisonment, suspended for 24 months.

31. If during that time she commits any offence punishable by imprisonment she stands to be sentenced for this offence as well as the new offence.

32. She must also serve 180 hours community service to be completed at the direction of her probation officer.

NUKU'ALOFA
29 April 2021

