

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

ATTORNEY GENERAL'S OFFICE	
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CR 16 of 2021

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-v-

'ANA LENILISI TAUVAKA

BEFORE HON. JUSTICE NIU

Counsel : Mrs. 'A. 'Aholelei for the Crown.
: Mr. S. Tu'utafaiva for the accused.

Plea : Not guilty but convicted on 1 September 2021.

Report : by Probation Officer, Kelela Fetu'u, filed on 29 September 2021.

Submissions : by the Crown and by Mr Tu'utafaiva on 27 October 2021.

Sentencing : 10 November 2021.

SENTENCING

Offence

[1] 'Ana Tauvaka, you have committed the offence of receiving stolen property in that you received from Kisione Tauvaka washing machines, stoves, freezers and other properties believing the same to have been stolen at 'Utulau in or about June 2020, contrary to S.148 (1) of the Criminal Offences Act.

- [2] Your son, Kisione Tauvaka, was working for the business Adiloa in Nuku'alofa and he took the key to the warehouse of the business at Haveluloto without permission or knowledge of the owner of the business and stole stoves and freezers from the warehouse on or about 16 June 2020. He brought those goods on a truck to the home of Fatu Taulanga at 'Utulau where you and Kisione were living at the time. You helped Kisione unload those goods into Fatu's house.
- [3] On 18 June 2020, that is, 2 days later, Kisione did the same thing and brought a truckload of washing machines, stoves, bicycles, freezers and lamps and again you helped unload them into Fatu's house.
- [4] You and Kisione subsequently moved the goods from Fatu's house and hid them in the bush at the back of the property. The reason why you did that was so that Fatu would not be implicated or involved if the police were to find them in his house.
- [5] You and/or Kisione then took some of the goods to the homes of Lieta Fonohema at Sia'atoutai and of Manu Lalakai at 'Utulau.
- [6] On 23 June 2020, the police came with a search warrant and searched those 3 homes and recovered some of the goods stolen from Adiloa.
- [7] According to the evidence, the total value of the goods stolen and received on both the 16th and 18th June 2020, was \$14,714.50, and that the total value of the goods which were found and recovered in the searches carried out was \$13,425.50.
- [8] I had stated in paragraph 42 of my verdict in this matter how I had arrived at the figure of \$14,714.50. In the same way, I have come to the figure of \$13,425.50, according to the goods found in each home as listed in paragraph 9 of my verdict:

Fatu Taulanga: Mr. Tu'utafaiva, counsel for the accused, had calculated the total value of the goods found there to be \$6,255.50.

Lieta Fonohema:	2 w/machines 15 kg	\$1,060.00	
	7 2 burner stoves	945.00	
	3 cast iron stoves	992.00	
	10 Chinese mats	765.00	
	1 sewing machine	320.00	<u>\$ 4,080</u>
Manu Lalakai:	1 freezer 320 l	965.00	
	1 5 burner & oven stove	1,595.00	
	1 w/machine 15 kg	530.00	<u>\$ 3,090</u>
	Total		<u>\$13,425.50</u>

[9] When the police notified you in writing that you would be charged with receiving the goods which were found in Fatu Taulanga's home, you told them that it was true that you did receive them, and you told them that you were repentant for what you did.

[10] You however pleaded not guilty and the witnesses were called and they confirmed the facts which I have related above but you did not give evidence to deny any of it. Your defence was only on points of law which provided no defence at all and so I convicted you of the offence of receiving these stolen properties.

No previous conviction

[11] I accept that you have had no previous conviction, and that this is your first conviction for a criminal offence.

Pre-sentence report

[12] The probation officer, Kelela Fetu'u, has provided a report on your circumstances after she had spoken with you and the town officer of 'Utulau, Sateki Tupou, and she attached a letter from the Free Wesleyan Church Ministe of 'Utulau, Heneli Paea.

- [13] The officer says that you are 42 years of age and that you were married but that your husband has just died in March this year leaving you with your 8 children with him, many of whom are still dependent, to raise on your own.
- [14] She says that your husband was a Church Minister of the Free Wesleyan Church and that you married him when you were 19 and that you and your husband, and the children, had continually moved from place to place in the Kingdom to which your husband was assigned. Consequently, you and your husband never had a home of your own and that now that he has died, you and your children have no home and that you now live at your brother's home, not only to be housed but also provided for by your brother.
- [15] She says that you are adept in weaving mats because you were born and raised in Niuatoputapu and that you had learnt and carried on the trade of mat weaving when you finished primary school there, the only formal education you ever had.
- [16] She says that you are remorseful and that you feel extremely shameful for having been convicted of a crime and which has ruined your and your family's reputation. She says that you ask for the Court's mercy so that you can continue to take care of your young children who are still dependent on you.
- [17] She says you have good prospect of rehabilitating yourself to avoid further offending. She therefore recommends that you be placed on probation and that you be ordered to take the life skills course as directed by the probation officer.

Crown submissions

- [18] Ms Lui for the Crown refers to the case of **Valikoula v R** (AC 9/20) where the accused was sentenced to 5 years 3 months for receiving stolen property but which the Court of Appeal reduced to 3 years and to your son's case, **R v Kisione Tauvaka** (CR 15/21), in respect of these same goods which you received where he was sentenced to 2 years for the theft of those goods and to 3 years 6 months for the housebreaking offences, which sentences were

to be concurrent, but which sentences were to be fully suspended. The Crown is appealing that sentence.

- [19] Counsel recommends that in line with those cases, you begin with 2 years 6 months and that 6 months be deducted in view of your previous good record, leaving a sentence of 2 years imprisonment. She then recommends that that sentence be fully suspended in view of your cooperation with the police during the searches carried out and in view of the real likelihood you will rehabilitate yourself. She recommends that your suspension be for 2 years and that it be on the condition that you serve 40 hours community and other normal conditions.

Your counsel submissions

- [20] Your counsel agrees with those submissions by the Crown and recommends that your sentence be as the Crown has recommended.

Consideration

- [21] I am pleased to say that I also agree with the recommendations of Crown counsel. From the probation report and from your answers to my questions to you in Court, I am satisfied that you have truly put yourself to the task of rehabilitating your life by devoting your time and energy into weaving mats and such like for the maintenance of your family, now that your husband has passed away earlier this year. I am mindful that of the total value of goods which you received of \$14,714.50, some \$13,425.50 worth of those goods were recovered, because you cooperated with the police to recover them. I consider that you will make proper use of the opportunity granted by a fully suspended sentence to rehabilitate your life and that you would not reoffend.
- [22] As to the community service, I agree that you need to serve some service to the community for the offence which you have committed and I consider that you should serve at least the minimum number of hours which the law requires for such service.

Sentence

[23] Accordingly, I sentence you to 2 years imprisonment but which is to be fully suspended for 2 years from today, upon the following conditions:

- (a) you will serve 40 hours community service as directed by the probation officer,
- (b) you will not commit an offence punishable by imprisonment within the said period of suspension.

[24] You will report to the office of the probation officer within 24 hours together with a copy of this sentencing.

Nuku'alofa: 10 November 2021.



The image shows a blue circular seal of the Supreme Court of Tonga. The seal features the text "SUPREME COURT TONGA" around the perimeter and a central emblem with a star. A handwritten signature in blue ink is written over the seal. To the right of the seal, the name "Niu J" and the title "JUDGE" are printed in blue.

Niu J
J U D G E