

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

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REX

-v-

'AMELIA AFU HA'APAI HALAPUA

BEFORE THE HON. JUSTICE SHUSTER

**HAVING HEARD FROM** - Crown counsel, defence counsel Mr. Kaufusi and from the defendant in person.

**The defendant appears for sentencing** - having pleaded guilty on re-arraignment on 02<sup>nd</sup> April 2012 to an indictment, filed in the Supreme Court on 09<sup>th</sup> December 2009 - alleging 12 [twelve] counts of:-

- Obtaining money by False Pretences,
- Forgery and
- Knowingly Dealing with a False Instrument

<b>THE BRIEF FACTS</b>
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According to the Crown these offences occurred whilst the defendant was employed as a teller working at the Tonga Development Bank as a loans officer. At the time of committing the offences the defendant had worked for the Tonga Development Bank for five years.

Over a period of time it is alleged that the defendant forged documents and she knowingly dealt with those forged documents to request the suspension of loan payments from various TDB customers accounts. From the proceeds of suspended loan payments, the defendant obtained money which she diverted and which she placed into her own account.

According to the Crown on different occasions between June 2007 and March 2008, the accused misappropriated the sum of \$15,917.67 from the Tonga Development Bank by her acts of dishonesty.

At a point in time a complaint was made by a bank customer who came into the bank to pay off her loan in full. The customer discovered the amount owing was higher than anticipated, so she complained. The bank carried out an investigation into the complaint and as a result of their findings, the defendant was implicated. She was suspended and later dismissed from the bank's service.

When the defendant was arrested she fully admitted her involvement in misappropriating approximately \$16,000.00 she described how she committed the crimes in her police record of interview. The defendant was subsequently charged with 31 offences later reduced to - 12 counts shown on the "amended indictment."

According to court records the defendant pleaded not guilty on first arraignment and elected trial by a judge and a jury before Ford CJ. This case has been delayed, on her change of lawyer at a PTC before me on 02<sup>nd</sup> April 2012 the defendant indicated she wanted to change her plea.

In open court on 02<sup>nd</sup> April 2012 the defendant pleaded guilty to twelve counts on the Amended Indictment filed before Ford CJ in 09<sup>th</sup> June 2009 and to which no plea had been taken.

<b>COMMENT</b>
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These are serious offences which are alleged to have been committed whilst the defendant was employed by the Tonga Development Bank and they constitute a clear breach of trust by a "long term employee" working in a responsible position in the TDBank's loans department.

On first arraignment on 10<sup>th</sup> June 2009 the defendant pleaded NOT GUILTY to 31 charges on the indictment and she elected trial by a Judge and Jury. On a subsequent date at a PTC the defendant indicated she wished to change her pleas to guilty. The defendant was asked if she had been placed under any pressure to change her plea she said she had not.

The defendant was re-arraignment and on entering guilty pleas she was convicted. The facts were opened and agreed.

On 02<sup>nd</sup> April 2012 the defendant was told she would be given credit for her change of plea, and the matter was adjourned for the preparation of a PSR; the defendant was released on conditional bail and ordered to co-operate with the preparation of those reports.

On the adjournment date the Court was told the defendant had not attended the probation service to complete the report, so the case was reluctantly adjourned for one week for the PSR the defendant was warned of the consequences of not complying with a court order.

## ANALYSIS

Having considered the facts – more particularly the fact that the defendant pleaded guilty and, the fact she fully co-operated with the police and more recently with this court and, having heard from the defendant, and her counsel by way of mitigation and noting the defendant is a first time offender.

I told the defendant, had she maintained her not guilty plea and had she been found guilty, after trial - for this type of offence [which involves a clear breach of trust by a long serving bank employee] then the court would have imposed an immediate custodial sentence of between 48-60 months imprisonment based on - maintaining a Not Guilty plea.

I take into account the defendants change of plea, and her counsels plea of mitigation, I take into account the fact that the defendant is now 31 years of age, with a mother to support; **but**, with the increasing number of cases coming before the court where bank or post office employees allegedly steal from their employer – then this type of offending requires the imposition of "deterrent sentences" for obvious reasons

However in relation to this particular defendant I take into account the fact that the defendant HAS FULLY repaid the sum of \$16,000.00 which she had misappropriated to the Bank, and the court notes that repayment was facilitated early in 2009 and that repayment was confirmed byTDB.

I also take into account and I give the defendant credit for her previous unblemished record. I also take into account the various references supplied to the court on her behalf I take note of her words to this court, "that she was sorry." The court also notes the defendant has now gained employment as a teacher of – economics and that must also go to her credit.

**Accordingly the defendant is sentenced as follows:-**

- **Count 1** – The defendant is sentenced to **THREE YEARS AND ONE MONTH in prison**
- **Count 2** – The defendant is sentenced to **TWOYEARS in prison**
- **Count 3** – The defendant is sentenced to **ONE YEAR in prison**
- **Count 4** – The defendant is sentenced to **TWOYEARS in prison**
- **Count 5** – The defendant is sentenced to **TWOYEARS in prison**
- **Count 6** – The defendant is sentenced to **ONE YEAR in prison**
- **Count 7** – The defendant is sentenced to **THREE YEARS AND ONE MONTH in prison**
- **Count 8** – The defendant is sentenced to **TWOYEARS in prison**
- **Count 9** – The defendant is sentenced to **ONE YEAR in prison**
- **Count 10** – The defendant is sentenced to **TWOYEARS in prison**
- **Count 11** – The defendant is sentenced to **TWOYEARS in prison**
- **Count 12** – The defendant is sentenced to **THREE YEARS AND ONE MONTH in prison** **NB All sentences are concurrent.**

The Court has decided to suspend **THREE YEARS** of the sentence of imprisonment just passed; conditional on the defendant keeping the peace and being of good behaviour and committing no further offences, during the period of suspension. This is to be a deterrent sentence, applying the principles enunciated in the **Crown –v- Cunningham**.

**A Copy of this Order is to be served on the defendant and the Prison Service**

**DATE: 26 April 2012**

**J U D G E**