

IN THE SUPREME COURT OF TONGA

CR 17,18,19,20,21,22, 23,24 & 25 of 2012

CRIMINIAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-V-

FOLAU 'AHO

MALAKAI TONGA

PAEA LIU

MAFUA LATU

SONI TEISINA

SIONE LOLOA

FATUI FINAU

'ILAI TONGA

SIONE SAMANI

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD – From Crown Counsel, Mr. T Fifita and from the defendants in person.

Each of the defendants appear for sentencing - having plead guilty on arraignment on 2nd March 2012 to an indictment alleging - a single count of Possession of Prohibited Fishing Gear for the purpose of Fishing - which is an offence contrary to section 18 [c] of the Fisheries Management Act 2002 and Regulation 6 [1] [2] of the Fisheries Management [Conservation] Regulations 2008.

The brief circumstances are as follows - the defendants were seen by Fisheries Officers about to go fishing for sea cucumbers the Fishery Officers had received information the defendant were using gas bottles for the harvesting of sea cucumbers.

The Fisheries Officers called the police and a search of the boat revealed gas bottles. The defendants were arrested and interviewed they each admitted their involvement to the police.

On first arraignment on 2nd March 2012 the defendants pleaded guilty and were each convicted of the offence.

Each defendant was told he would be given full credit for his guilty plea and, because they were First Time Offenders - with family and children to support I could see no necessity for adjourning the case for the preparation of a PSR.

I told the defendants the offence carried a maximum fine of \$100,000.00 TOP and is a serious case. The cases were adjourned for sentence to the 16th March 2012 @ 14.00 - for sentence.

Having considered all the facts of the case, considering the fact that the defendants pleaded guilty and, the fact the defendants fully co-operated with the police and with this court and, having heard from the defendants in person – in my view the most appropriate way of dealing with this case is by way of a fine, NOT – by the confiscation of the boat or equipment the defendants used, because the Crown has not served the defendants with a NOTICE stating their intention to apply to the Court for an order asking for the confiscation of that property.

In future in - like cases, the Crown or the Fisheries Department or the investigating police officers at the time a defendants is charged with this type of offence – **MUST** serve a notice of their intention to apply to the Court to confiscate that item [type] of property which they claim was directly involved in the commission of a crime to secure such an order.

The issuance of a notice by the relevant authorities - to that effect applying for an order for confiscation of property of perhaps great monetary value -

is in my view - only - just right and equitable. Without such a notice being served on a defendant any claim for forfeiture / confiscation should in my view - fail.

Considering all the facts – each defendants is sentenced as follows:-

Count 1 – Each defendant is fined **500.00 TOP** in default of payment he will serve **EIGHT** months in prison

The defendants were unable to pay the \$500.00 fine immediately, so they are ordered to pay the sum of \$20.00 each week into Court.

Each payment of \$20.00 is to be made to the Supreme Court Registry by 12.00 on Friday of each week. Their first payment of \$20.00TOP is due on Friday 23rd March 2012 by 12.00.

The defendants have been told they can pay more than \$20.00 each week but they cannot pay less than \$20.00 and their payments must be regular.

I have warned the defendants about committing any further offences of a like nature and of the consequences of them failing to pay their fines.

This is to be a deterrent sentence, applying the principles enunciated in the case of the - **Crown –v- Cunningham**

A copy of this order is to be served on each of the defendants as a fine notice

NB - IN THE CASE OF FILE CR 25-0F 2012 - R v SIONE SAMANI -THE FINE OF FIVE HUNDRED \$500TOP - IS TRANSFERRED FOR COLLECTION TO THE COURT IN VAVAU BECAUSE THE DEFENDANT RESIDES IN VAVAU.

DATE: 16 MARCH 2012

J U D G E