

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 98 of 2007 & CR19, 65 of 2009

R E X

-V-

MAKELETA KULA

BEFORE THE HON. JUSTICE ANDREW

**Counsel : Ms. Lavekei'aho for the Crown
and Mr. Pouono for the accused**

Dates of hearing : 24 August 2009

Date of judgment : 24 August 2009

J U D G M E N T

The accused has pleaded guilty to 3 separate charges of offences and all have been dealt with together.

1. The first offence is CR150 in which she pleaded guilty to one count of theft contrary to S.143 and S.145(b) of the Criminal Offences Act.

The particular of that offence are as follows:

Makeleta Kula of Talafo'ou, on an unknown date in June 2007 at Tofoa, you did dishonestly take without any colour of right from 'Anova Briest, Tongan goods valued at \$5500 with intent to deprive her permanently of those goods, and with the intention of converting those goods for your own use.

An undisputed Summary of facts is as follows and I quote.

"on an unknown date or dates in June 2007, the accused Makeleta Kula was working as a house girl for the complainant at Tofoa, took the following goods from the complainants home

- | | |
|------------------------|---------|
| - 2 Fala Tahanima | \$1,000 |
| - 2 Fala Tahaua | \$1,000 |
| - 1 Taovala Kie Fau | \$500 |
| - 3 Fola'osi | \$1,500 |
| - 1 Kie Tonga (10") | \$1,000 |
| - 1 Kie Tonga si'isi'i | \$500 |

Totaling \$5,500. At one time the accused told the complainant 90 year old mother that she would take some mats to be used at the church conference and asked the complainants mother not to tell the complainant. The accused sold some of the goods for money and used the rest as security for loans from small financing businesses.

The accused has previous convictions"

2. CR65/09

The accused pleaded guilty to the offence of obtaining goods by false pretences, contrary to S.164 of the Criminal Offences Act.

The particulars of the offence were:

Makeleta Kula of Makaunga, on or about 7th February 2009 at Fanga, you did obtain goods by false pretences and that you obtained 1 x 15 foot mat belonging to Temaleti Filipe under the pretence that you will pay her but you in fact ran away without paying her for the mat.

An undisputed Summary of Facts is as follows and I quote:

"on or about 7th February 2009 the accused Makeleta Kula was riding on a bus from Makaunga heading towards town. When the bus reached Fanga, she noticed a 15' foot mat in front of the complainant's shop which was being advertised for sale. She later returned to Fanga and asked the complainant Temaleti Filipe if she could take the mat and show it to her mother. The complainant and the accused then got into the taxi and headed to Vaiola bus stop. When they arrived, two girls by the name of Semu and Loisi were waiting for them and they got into the taxi. The accused then told the driver to go to 'Anana and when they reached the small Industrial compound she stopped the taxi and the two girls got out of the car with the mat. The accused then told the complainant and the driver to drive back to town so she could withdraw some money from the bank to pay for the mat. On their way, the accused asked the driver to stop at the TALAMAHU Market so she could buy some tomatoes before heading to the bank. She got out of the car while the driver and the complainant waited for her inside the taxi. The accused fled and never returned back to the waiting car."

When the police interviewed the accused, she admitted to the offence. The accused has previous convictions.

3. CR19/2009

The accused charged her pleas to ones of guilty to the following offences:

- Count 1- Housebreaking, contrary to S.173(1) of the Criminal Offences Act
- Count 2- Theft, contrary to Ss 143 & 145(b) of the Criminal Offences Act
- Count 3- Abetment to housebreaking contrary to Ss 8 & 173(1) of the Criminal offences Act.
- Count 4- Abetment of theft contrary to S.8 & 143 & 145(b) of the Criminal offences Act.

Particulars of these offences are:

Count 1 – on or about 27 April 2008 at Pelehake you did enter the residence of Tevita Siale as a trespasser and committed a crime therein

Count 2 – on or about 27 April 2008 at Pelehake you did dishonestly take without any colour of right from Tevita Siale, the following goods:

- 1 launima valued at \$2000
- 4 Fuatanga tapa valued at \$2000
- 1 paper fuatanga valued at \$400
- 1 Fihu mat valued at \$1000
- 3 white mats valued at \$240

and the total value of the goods is \$5,640 and you took these goods with intention to deprive Tevita Siale permanently of those goods. You also intended to convert those goods for the use of others without the consent of Tevita Siale.

Count 3 - on or about 29 November 2008 at 'Alakifonua you did abet Susitina Matangi to enter the residence of Salome Manufekai as a trespasser by encouraging her to go inside the home while you waited for her outside.

Count 4 – on or about 29 November 2008 at 'Alakifonua you did abet Susitina Matangi to commit theft by encouraging her to take the following goods from the residence of Susitina Matangi.

- 2 ngatu fuatanga valued at \$500
- 1 fihu valued at \$1500

and the total value of those goods is \$2,000.

A summary of the facts is as follows and I quote:

“On or about Sunday 27 April 2008, the first complainant, Tevita Siale went with his family to Makaunga to spend the day with his relatives. He had locked the front door before he and his family left.

On the same evening, the accused who is the sister of complainant's wife, came to the house in a rental car. She used an iron rod to break the lock and went inside the house. She took all the goods listed on count 2 of the indictment sold some of them and used the rest as security for small loans.

On or about 29 November 2008, the accused went in a rental car to pick up a friend by the name of Susitina Matangi at Kapeta. She was going to drop Susitina to Ha'asini and pick her children from Makaunga and bring them back to Ma'ufanga. However, when they reached Nualei her cell phone rang and it was Susitina's sister, Mele Matangi who called to ask the accused to go back to town and pick her up too.

The accused and Susitina then returned to town and picked up Mele Matangi and another girl by the name of `Oh and they again headed for Makaunga to pick up her children and drop Susitina Matangi at Ha'asini.

When they arrived at `Alaki at around midday, they passed the house of the second complainant, Salome Manufekai and the accused saw that the front door was open and Tongan goods were lying strewn on a couch inside the house. The complainant's husband was asleep inside the house.

The accused then told Susitina to look at the Tongan goods inside Salomes house and that she should go inside and take them. Susitina then told her to stop the car and when the accused stopped the car Susitina and the other two girls got out of the car while the accused drove further ahead to turn the car around.

After a short while she received a phone call from Mele Matangi telling her to come back to the front of the complainant's house. The accused then came and stopped the car in front of the complainant's house and opened the boot of the car for the girls to put the goods inside. They sold the two tapa cloths for \$300 to a woman at Nualei and used the fihu mat as security for a loan of \$250 at a finance company at Vaini.

The accused admitted the offending to the police and she has previous convictions."

Additionally by the commission of these offences the accused is in breach of suspended sentences imposed upon her on the 13 July 2007. She was sentenced to (1) 18 months imprisonment for housebreaking (2) 12 months imprisonment for theft and (3) 12 months imprisonment for obtaining false pretences. Those sentences were all concurrent and were suspended for 3 years from 13/7/07. Those matters were dealt with in CR215/06. That sentence of 3 is now triggered by the commission of these offences.

What all of this offending shows is that the accused is a repeat offender approaching the level of an habitual criminal.

There are prior offences dating back to 2004 (CR414/03) when she was convicted for Housebreaking and Theft. She was then sentenced to 6 months imprisonment which was suspended for 1 year. Then, as mentioned, she was sentenced for housebreaking, theft and obtaining goods by false pretences [CR215/06] and sentenced on the 13 July 2007 to 18 months, 12 months & 12 months respectively which was suspended for 3 years. She has thus been dealt with leniently in the past and given every chance to repent but has ignored this and continued on her way of re offending. The probation report shows that she has a poor response to community service orders imposed upon her and failed to complete those orders. The totality of all of this criminal activity means that the time for leniency and the suspension of sentences of imprisonment has past.

However I take into account the subjective circumstances of the accused. She is aged 34. She was married but reported to be separated and has 3 young children aged 10, 7 & 10 months. The probation report describes her employment as housebreaking and theft but does indicate that she most likely committed these offences to support her family and mother and for everyday living. It is not shown that she offended in order to provide for some extravagant lifestyle. The Probation report describes her as a friendly person but has doubt as to how remorseful she really is. She herself says that she is remorseful. Importantly she has pleaded guilty to all offences and has made a clean breast of everything. I take those pleas of guilty as a sign of remorse and I think that they are deserving of a reduction in sentence in the range of 25%.

The accused is the mother of 3 young children aged 10, 7 & 10 months and I am concerned that any sentence of imprisonment is going to impose hardship upon them. But the sheer number of the offences and the continuous re-offending means that reluctantly I must impose sentences of imprisonment. The hardship to the family is taken into account on sentence and what I propose to do is unusual in that this would normally attract cumulative sentences. However as she pleaded guilty to all charges and in all the circumstances I am going to pass concurrent sentences so that she may deal with all the sentences at the one time and then be re-united with her family.

1. In the matter of CR150/2007 and upon the charge of theft the accused is sentenced to 3 years imprisonment.
2. In the matter of CR15/2009 upon the charge of theft she is sentenced to 2 years imprisonment.
3. In the matter of CR19/2009 upon count 1, the charge of entry, she is sentenced to 2 years imprisonment.

On count 2, the charge of theft of goods valued at \$5,640 she is sentenced to 3 years imprisonment.

On count 3, the charge of abetment to Housebreaking she is sentenced to 2 years imprisonment.

Upon the offence of breaching the suspended sentence imposed in CR215/06 the suspended sentence of 3 years is now imposed. Sentenced to 3 years imprisonment.

All sentences are to served concurrently.

NUKU'ALOFA: 8 August 2009



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JUDGE