

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

NO. CR 40 of 2007

R E X

-V-

TONU FINAU

BEFORE THE HON. JUSTICE ANDREW

**Counsel : Mr Little for the Crown and ✓
Mr Tu'utafaiva for the accused**

Dates of Hearing : 24 April 2008.

Date of judgment : 30 April 2008.

JUDGMENT

The accused has been found guilty following his trial upon two charges

1. Operating a fish processing establishment without a licence contrary to S.33 Fisheries Management Act and
2. Attempting to export fish product without a fish export licence.

Both offences carry penalties of a fine up to \$500,000 and the 1st Count also has an alternative penalty of imprisonment not exceeding 1 year or both.

The facts disclosed that the accused who is a Tongan, resident in New Zealand came to Vava'u on 18th September 2006 with a view to operating a business processing and exporting from Tonga, sea cucumber or bechedemer. He did not have a licence. This was held to be an offence of strict liability. The accused had commenced operating in Vava'u and had purchased sea cucumber from local residents and commenced to process it prior to exporting it. After being in operation for about 5 days the police stopped his operation and he was then charged. He had collected some 9,000 sea cucumber. He had apparently gathered some funds from his family in New Zealand with the intention of setting up this business. He apparently spent about \$6,000 on the operation. Money which he has now lost.

I do accept that the accused made some enquiry of the Department of Labour and Fisheries as to the exporting of fish from Tonga and may have got some confused advice but that fell short of proper enquiry, in my view, because he did not specifically obtain information about the export of sea cucumber but went ahead regardless.

Cabinet had placed a moratorium in the harvesting and exporting of sea cucumber in February 2003 – which reaffirmed its decision of 9th September 1997 which banned such activity for 10 years from 31st December 1997.

Subsistence farming was allowed to continue.

I suppose it can be said that the accused was operating at close to the finish of the ban (in 2007) and I understand that harvesting and export licences have now been granted as the 10 years has passed. To the extent that he was operating at near the end of that period probably means that his activities were less harmful than they might otherwise have been.

I do not consider that the accused was a commercial operator who blatantly set out to plunder a scarce resource but rather he appears as an amateur operator who was a bit naive in doing what he did.

He appears as an otherwise decent person. He is aged 62 and appears not to be in good health. He is married with 2 children and appears to have led a useful and industrious life. He has never been in trouble before.

Nevertheless the offences are serious and in balancing all of the objective and subjective circumstances I propose to pass a fine of \$1,000 on each of the two counts.

Penalty. You are fined and ordered to pay \$1,000 on Count 1 and \$1,000 as well on Count 2 making a total fine of \$2,000 to be paid within 28 days from today.

NUKU'ALOFA: 30 April 2008.

