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

**NO. CR.270-1 of 2005**

**R E X**

**-V-**

- 1. MAFUA KATOA**
- 2. FOLAU TAFOLO**

**BEFORE THE HON. JUSTICE ANDREW**

**Counsel : Mr Kengike for the second accused and  
Mafua Katoa in person.  
Mr Sisifa for the Crown**

**Dates of Hearing : 3<sup>rd</sup>, 4<sup>th</sup> October 2007.**

**Date of judgment : 6<sup>th</sup> November 2007.**

**J U D G M E N T**

The accused are charged with being in possession of an illicit drug, contrary to S.4(a) of the Illicit Drugs Control Act.

The particulars of the offence are that on or about the 3<sup>rd</sup> November 2005 at ANANA they did knowingly have in their possession 1 plastic bag containing cannabis.

Both accused have pleaded not guilty to the charge.

The facts are really quite short. On the 2<sup>nd</sup> November 2005, the police were in possession of certain information regarding both accused and they obtained a search warrant to enable them to search the home where

both resided. On the 3<sup>rd</sup> November 2005 the police executed the warrant when they raided the accused's house in the early hours of the morning. The accused were both asleep in the house at the time. In the course of the search of the house a bag was located hanging on a wall and inside was found a small quantity of cannabis seed and leaves. The weight of that material was approx 0.01 grams. Also found were a number of unused plastic resealable bags and some drink cans which it is said are adopted for the smoking of cannabis.

Both accused, who have given sworn evidence, maintain that they had no knowledge that the cannabis was in the bag and that it did not belong to them and that they were, accordingly, not in possession of the cannabis.

There is no dispute that the material found was delivered to the analyst and that that material was in fact cannabis.

The only issue is whether or not the accused were in possession of the cannabis.

### **ACCUSED FOLAU TAFOLO**

In a Record of Interview dated the 5<sup>th</sup> November 2005 the accused said that the small packs found in the bag were for packing of marijuana. There had also been found a tweezer in the bag and the accused said that his co-accused Mafua Katoa had put it there. That suggests some knowledge of the bag which was kept in the house. In a written statement of charges form, and in a so called confession statement he acknowledged that the marijuana was found in his home.

There is therefore strong circumstantial evidence. The accused were the only men residing at the premises. They knew the bag was there. They had been using the bag in the sense that things were put in and taken out. He knew what that type of can was used for ie the smoking of marijuana. He knew what the small resealable bags are used for. There was only the one room in the house – apart from a bathroom and that was where their belongings were. He admitted in evidence that he had lied to the police about who owned the marijuana. I accept that the accused willingly gave his answers in the Record of Interview. He said the bag had been on the wall for some 5 days. He agreed that just the two of them occupied this house. He said he did not know who owned the bag but why then is he handling it and putting things into the bag?

The elements of possession are:

- 1) Physical control and custody of an illicit drug.
- 2) Without lawful excuse proof of which lies on the defendant.
- 3) Knowledge that it was an illicit drug.

In my view the only inference which can be drawn from all of the circumstantial evidence and the only rational inference in the circumstances is that the accused was in possession of this cannabis.

I am satisfied beyond reasonable doubt that he had physical control and custody of the cannabis and no lawful excuse has been shown for so being in possession. I am satisfied beyond reasonable doubt that he had knowledge that it was an illicit drug.

The accused is found guilty and he is convicted.

#### **THE ACCUSED MAFUA KATOA**

In a Record of Interview conducted on the 6<sup>th</sup> November 2005 he said that the bag which was found was hanging the wall but he did not know who had put it there or whose it was. He said he had not taken anything from the bag.

The same strong circumstantial evidence exists in the case of MAFUA KATOA. He well knew of the bag in their house. He had occupied the house for 2 weeks with FOLAU. They were the only occupants. The bag was in the one small room of the house.

For the same reasons as the case of FOLAU, this is a strong circumstantial case. Again, in my view, the only rational inference which can be drawn from all of this evidence is that the accused was in possession of the marijuana and all the elements of possession already outlined have been established beyond reasonable doubt.

I find the accused guilty of the offence and he is convicted accordingly.

**NUKU'ALOFI: 6 November 2007.**



*[Handwritten Signature]*  
**JUDGE**