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

NO. CR.184 of 2005

R E X

-V-

PAIONIA LEUA

BEFORE THE HON. JUSTICE ANDREW

**Counsel : Mr Kefu for the Crown and
Mr Kaufusi for the Accused.**

Dates of Hearing : 4 October 2007.

Date of sentencing : 9 October 2007.

SENTENCING

The accused has pleaded guilty to a charge of possession of illicit drugs contrary to S.4(a) of the Illicit Drugs Control Act.

The particulars alleged were that : "on or about 31st May 2005 at KOLOFO'OU you did knowingly without lawful excuse have in your possession 1 large plastic bag containing cannabis, 26 small plastic bags containing cannabis and 466 cannabis seeds.

An uncontested summary of facts is as follows and I quote:

"On or about the month of May 2005, the accused had returned to Tonga after completing a two (2) months engineering course in Fiji. The accused had brought with him cannabis.

Upon arriving in Tonga, the accused took out the cannabis seeds and packed them into 4 small plastic bags, he then packed the cannabis fragments into small plastic bags intending to sell in order to get some money. The accused then packed the plastic bags containing cannabis seeds and fragments into a small hand bag (black in colour with white and gold stripes on the sides).

On or about the evening of the 31 May 2005, the accused went in the vehicle registration plate no.L6223 and picked up two of his friends. The small hand bag containing the cannabis was kept under his driver's seat. The accused together with his friends then went to the yellow pier wharf and consumed alcohol. Later on the same night, the accused came from the wharf and parked the vehicle on the roadside along the Fatafehi road.

The Central Police Station received a complaint from the residences in the Fatafehi road area where the accused's vehicle was parked. The complaint was in respect of loud music played from the accused vehicle. Police Officers from the Central Police Station then attended to complaint.

Upon arrival at the scene, the officers noticed that the accused's vehicle was still on, whilst parking on the roadside. The accused at the time had passed out on the driver's seat, and loud music was still playing from his vehicle. The officers then woke up the accused, and he was taken together with his vehicle to the Central Police Station. The accused was put into the cell for the night, and his vehicle was secured and parked in the Station.

Early on the morning of the 1 June 2005, the Police upon suspicion were ready to search the vehicle in the presence of the accused for illicit drugs. During the search, the Officers found the small hand bag under the driver's seat. When opened, inside was a clear plastic bag inside were 26 small plastic bags containing suspected materials to be cannabis (Exhibit 2(b)), a brown paper bag was also found inside the small hand bag that contained 4 clear plastic bags containing 466 seeds in total (Exhibit 2(c)). A large clear plastic bag was also found inside the small hand bag containing suspected materials (Exhibit 2(d)).

The accused was then cautioned when the suspected materials were found inside the small hand bag. The exhibits were then handed over to the officers from the Drugs Division for further action.

He concluded in his report that the evidence obtained in his analysis suggested that all suspected items were cannabis in origin.

The accused in his record of interview admitted that he had intended to sell the cannabis, and intended to plant and cultivate the cannabis seeds."

In a Record of the Interview conducted on the 4th June 2006 the accused admitted that he had obtained the marijuana in Fiji and that he had intended to cultivate it and to sell it as well as for his personal use – although he had not sold it as yet.

The total quantity involved appears to be 19.34 grams. On these facts the accused appears fortunate that he was not charged with importation of these drugs.

This is a serious offence. The accused is now aged 28. Whilst he is a first offender it cannot be said that he is a young 1st offender who possessed a small quantity of marijuana for his personal use. On his own admission he possessed the drugs so he could cultivate them and ~~make~~ profits by selling them and disseminating the drugs into the community. A young first offender who is found in possession of a small quantity of Marijuana might expect to receive a suspended sentence in the interests of rehabilitation. But the supply of the drug and any active role in the spread of harm to others or commercialization or growing in a very different thing and a strong deterrent message is called for : see *UAISELE v POLICE* [2001] Tonga L.R. 39 and Press Release [2001] Tonga L.R. at 333.

The accused is, as stated, 28 years of age. He is one of a family of 9 and his father is deceased. He has supported his family and is the breadwinner. He has always worked and is currently a cement tank worker earning \$200 per week. He had travelled to Fiji as part of his employment and in order to import cement. He was the construction foreman and his employers have testified to the fact that he was a hard working, valued and excellent worker and employee. It is apparent that he commenced drinking and that this seems to have influenced him and led into this offence but I do take into account that since this offence in 2005 he appears to have rehabilitated himself and has ceased drinking and drugs. I accept that he is remorseful and genuinely contrite and that he appears to have learned his lesson. The regretful thing about this case is that the accused is an intelligent and promising person who has marred his life by being involved in drugs. As I have said he appears to have rehabilitated himself. He pleaded guilty to the charge which I think is deserving of a reduction in sentence of 25%. I think that these strong subjective circumstances call for leniency in sentencing but that the seriousness of the evidence and the need for deterrence in such cases involving a not insubstantial amount of the drug means that a sentence of imprisonment as warranted.

Would you stand up please.

For this offence you would have received a sentence of 2 years imprisonment. Due to your plea of guilty that is reduced to a period of 18 months. You are sentenced to imprisonment for a period of 18 months.

After the accused has served half of that, ie 9 months, the remaining 9 months is suspended for a period of 2 years upon condition that the accused be of good behaviour.

DATED: 9 October 2007.

