

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR 471/2002

POLICE

v

HUATA RARERE

Mr Elikana for Police

Mr Little for Defendant

Date of sentencing: 29 November 2002

DECISION OF GREIG CJ

Huata Rarere, you are here for sentence on uttering a forged document and I am to give my reasons now for the decision that I am going to come to because I am going to be lenient to you. You are not going to go to prison, in fact you are not going to have any conviction against your name at all.

You are a builder of some standing and experience in Rarotonga. In the year 2000 you were working on your own account as a builder. You had successfully and satisfactorily completed a job for Diane Scott and she asked you to carry on with some further building work. I am bound to say that at least at this time you seem to have been unbusinesslike in the accounting and finance department.

Diane Scott knew perfectly well that you had no capital for doing the work that she wanted you to do and so she understood that she would be advancing money and paying you so that you could buy the materials and pay yourself for the labour. And over the period after you began this work, she

wrote out a number of cheques, large ones and small ones for material and so on as you required. She trusted you. She did not seem to take any particular account of how things were going. She knew that there was a lump sum contract and that was sufficient for her.

On this particular day in September 2000 you went to her for a cheque for the supply of concrete material. Unlike all the other cheques which had been made out to you or bearer, she wrote out this cheque in the name of the Concrete Supplier and crossed it generally. That meant that the cheque could not be cashed, it had to be paid into a bank.

You went round to the concrete supplier, they told you that you were owing them a little over a \$1000, the cheque was worth \$3000.00. They would not give you change, naturally enough on a crossed cheque. You then went around to the bank. It would not cash the cheque but you were told that if the cheque was endorsed and opened by Diane Scott it could be cashed. You went back to the bank with an endorsement on the cheque which purported to open it and you obtained cash for it. The endorsement on it was not signed by Diane Scott. It was forged. You are not charged with forgery but you were charged with uttering; namely using a forged document knowingly. At the end of the Crown case you pleaded guilty.

With the money you went and paid the concrete supply what was owing there. You went on with the building and a number of further cheques were paid to you in the original way by Diane Scott. In or about November 2000, you stopped that building and it seems that you abandoned the work. Just over a year later in 2001 Diane Scott having got somebody else to complete the building, she went to the concrete supplier for some more concrete material. She was told that she would not be supplied that because there was a sum owing. I am not quite sure on what basis the concrete supplier thought that Diane Scott was liable when the builder was the person who was the customer of the concrete supplier on its face. Moreover there is no

suggestion that the concrete supplier had ever sent any account over this year's long period to the Diane Scott asking her to pay. It seemed in any event that she did pay up, got another person to complete the building and that cost her a good bit more.

Now what you did was clearly wrong. It was clearly the offence of uttering the forged document in that you used that cheque knowing that it was not Diane Scott's signature and getting the cash for it.

It is not clear because there has never been an accounting, at least in evidence before me, which would reconcile the work that you did, the money that she paid and the supplies that were given for the job. The fact that it cost Diane Scott a considerable sum more to complete the building is nothing to do with this forgery or this uttering. That arises out of your abandonment but that has nothing to do with that charge. It is not obvious to me that in fact you obtained fraudulently or dishonestly any money out of this. It may well be that the balance of the money was owing to you. What does appear is that there was still some money owing to the concrete supplier but I do not know precisely what that was.

Now you have been working here for many years: you have a very good reputation: you have many people who have supported you and told me about your good reputation: you have never appeared before the Courts before so I have concluded that in all the circumstances, although you are guilty and have accepted that you are guilty of this offence, that it is appropriate that you should be treated in a way that will not provide a conviction against your name. In this case therefore I am going to discharge you without conviction but on the condition that you will pay the sum of \$1000 into the Court. That is to be paid for Court costs and towards the costs of the prosecution. In accordance with what your counsel says, you will have 28 days to make that payment into Court.


CHIEF JUSTICE