

IN THE HIGH COURT OF THE COOK ISLANDS CR NO: 13/2016
HELD AT RAROTONGA
(CRIMINAL DIVISION)

POLICE

v

LEFOU ENOKA JACK

Date: 16 March 2016
Counsel: Ms R Koteka for the Police
 Mr M Short for Defendant

**SENTENCING NOTES OF THE HONOURABLE JUSTICE DAME JUDITH
POTTER**

[1] Lefou Enoka Jack, you are before the Court for sentence on one charge of evading payment for duty on goods namely one carton of John Brandon cigarettes and one carton of Horizon blue brand cigarettes, on the 22nd of November 2014 at Rarotonga International Airport. The offence is charged under Section 270 of the Customs Revenue and Border Protection Act 2012.

[2] Briefly stated, the facts are that Customs had been receiving information about suspected abuse of authority at the Airport constituting breaches of the Customs Revenue and Border Protection Act. Warning letters were issued and a verbal warning was also issued by the VIP Protocol supervisor to his staff. You were employed as a VIP Protocol Officer by the Ministry of Foreign Affairs and Immigration on the night of Saturday the 22nd of November 2014, two VIP passengers arrived on board flight NZ18 from Auckland. They were escorted by you to the airport VIP lounge. The guests remained in the VIP lounge while their arrival documents were processed and their personal luggage was uplifted by you. You entered the

SAVA Duty Free outlet and using the boarding passes for the VIP guests, you purchased two cartons of cigarettes as described in the charge, using the arrival documents of the VIP guests you then left the terminal with the luggage belonging to the VIP guests and with the duty free goods. You were observed leaving the airport terminal with the duty free goods, namely the cigarettes. You then returned to the VIP lounge and you exited with a shoulder strap bag noticed to be bulky. It contained the cartons of cigarettes which you had acquired on a duty free basis. The duty owed is \$295.00.

[3] I have read the Probation report, Mr Jack. You are obviously a person of fine reputation, from a good family, with a good education and good employment. Mr Short has confirmed this on your behalf, providing references from the Minister of Internal Affairs and the Minister of Health and Justice. There is also a letter from the Ministry of Foreign Affairs and Immigration dated the 15 March 2016 which is supportive of you. I am informed that you were suspended from your employment for six months following the events that lead to this charge and I am told that it was somewhat of a surprise that the charge then followed. You should not be surprised Mr Jack. You acted in clear breach of the law and importantly you acted in breach of the trust which you carry as an employee and an officer within the Customs service. You have held many positions requiring honesty and integrity and the surprise I would have thought, rather than at the charge, is concerning your conduct which involved a breach of trust and was a clear breach of the law.

[4] Nevertheless, I accept your excellent record and that this is your first offence; you have no previous convictions. I am required to sentence you recognising the need to make you accountable for the harm you have done to the community; to promote in you a sense of responsibility, to denounce your conduct and to deter you and any others from committing similar offences in the future. I need to provide reparation for the harm done by your offending, but at the same time I must look to impose the least restrictive sentence that is appropriate in the circumstances.

[5] The elements of denunciation and deterrence are important in this sentencing. You, as a person in a position of trust must set an example, and it has to be clear that any offending of this nature will be met by a serious charge under the law.

[6] Taking all those matters into account Mr Jack and bearing in mind your early guilty plea to the charge once it was laid against you, and that you are a first offender, I fine you the minimum fine that is available under the relevant legislation \$198.00. This is three times the value of the goods in issue. I order that you pay Reparation of \$295.00 and \$30.00 Court costs.

[7] It is a regrettable situation Mr Jack, I am confident there will be no reoccurrence.

[8] You may stand down.



Judith Potter, J