

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

CR NO. 692/18

POLICE

v

NGAMAU O RONGO WICHMAN TOU

Date: 18 September 2019

Appearances: Snr Sgt F Tararo for prosecution
Mr M Short for defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[10:36.44]

[1] Ngamau Tou, you appear for sentence for a single offence: obtaining money by a false pretence between 4 – 20 April 2018, \$5,520, from a New Zealand netball couples group for accommodation.

[2] The false pretence to which you have admitted by your plea is representing to those couples that you had accommodation in villas for them during September 2018 when they were to be in Rarotonga for a netball tournament.

Offence

[3] According to the statement of facts which you do not dispute, this possibility first arose in September 2017. They made contact with you through a relative. You and your husband hoped in September 2015 to have four villas available on land in which you have an interest.

[4] On 9 April 2018, they paid you \$2,500 and the balance, \$2,000, on 11 April 2018. You gave them a group receipt. On 22 August 2018 however, you advised them that the villas would not be ready. Your counsel has told me that there was a construction delay. A burial site on your land complicates completion and that is still the case.

[5] You advised them that during the time they were to be at the tournament, 8 – 14 September 2018, you had checked them into Club Raro but that each couple would have to pay a further \$258.

[6] When they checked out on 14 September 2018 however, they were told that no payment had been made, and that they had to meet the full cost. Their credit cards were debited.

[7] On 16 October 2018, when that remained their predicament, they complained to the Cook Islands Police. You were interviewed and admitted the facts as I have outlined them. You explained that you had been caught up, trying to complete the project, and that your mother had fallen sick. You apologised.

[8] On 16 November 2018, you paid \$5,520 to your counsel to deposit in the group's joint bank account. You also paid a further \$500, which the group accepted because according to an email in reply, you had charged them \$480 for transport, to and from the airport. They assumed you had reimbursed them that too.

[9] You were charged with the offence for which you appear for sentence on 21 November 2018 after they had received that payment.

Pre-sentence report

[10] Your pre-sentence report explains that you were born and raised in New Zealand but that your parents are from the Cook Islands and you have spent increasing periods in Rarotonga and now live here. Your four children remain in New Zealand.

[11] Your report says that, on your own account, you have been involved with New Zealand universities and polytechnics, working with Pacific island students. You have

also worked here in the Cook Islands. You returned to Rarotonga when you obtained work here.

[12] You explained that you and your husband are now self-employed, managing your rental property. Your counsel though, as I have said, has explained that the villa project is still not complete and that, instead, you are setting up a bakery.

[13] You accounted for your offence, your report says, by explaining that everything had happened at that same time. You were preparing accommodation for the team. Your mother had a minor stroke. You had to go to New Zealand to be with her.

[14] You had hoped to be able to provide accommodation but you could not do so. You regretted not contacting the team and telling them. You reimbursed their money. Your focus, according to your report was on your mother and attempting to accommodate everything else at the same time.

[15] Your report acknowledges that this is your first offence, your remorse and apology, and your early plea. But it says you must be held accountable and a deterrent sentence imposed. It recommends you be sentenced to 12 months' probation supervision with an order that the first 3 months be served on community service.

Police submission

[16] The police submission supports that recommendation. Aggravating your offence, as it says, is that you abused a position of trust. Mitigating it is that you entered an early guilty plea, you have no prior convictions and the money has been reimbursed.

[17] The police submit that you must be sentenced to a deterrent sentence, which denounces your offence, despite all that is able to be said in your favour.

Defence submission

[18] Your counsel has supplied me with impressive character references, one from within the Cook Islands and number from New Zealand and further afield. These

portray you as someone who has contributed to the community, in particular to young people, both in New Zealand and here in a highly impressive way.

[19] As he submits, they suggest that this offence is entirely out of character. He emphasises, as is explained in the pre-sentence report, why you committed this offence: the fact that the accommodation was not ready, your mother's complicating and distressing stroke in New Zealand, and your regret and remorse.

[20] You reimbursed the New Zealand couples he said, within a very short space of time after he first took instructions from you. You were embarrassed and regretful. You accept complete responsibility. You have no issue with the sentence recommended.

Conclusion

[21] In sentencing you I accept that this offence was completely out of character taking into account what is set out in the references. It is, nevertheless I have to say, a troubling offence.

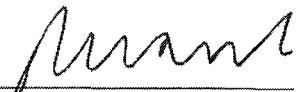
[22] You may have received in good faith in April 2018 the sum to accommodate the nine New Zealand couples in September 2018. The villas may then have been on track to be complete. By August however, you were not be able to accommodate them. You should have told them and refunded them.

[23] Instead you retained their payment. You held out to them that they were to stay instead at Club Raro and that their only further charge would be \$258 per couple. In fact you had not paid Club Raro what they had paid you. You had retained it and they had to meet the full brunt when they came to leave.

[24] As at 14 September 2018 they had paid twice what they had originally agreed and you retained their April payment. That remained so when they complained to the police in October 2018. It is very fortunate that in November 2018 you were able to reimburse them, and repay them the transport charge.

[25] In the round, however, your offence is serious in the senses described in your pre-sentence report and by the police. While your regret is real, and it is highly unlikely you will offend in this way again, the sentence recommended in the pre-sentence report is proper.

[26] You will be convicted of this offence. You will be sentenced to 12 months' probation supervision, with an order that the first 3 months be served on community service.



Patrick Keane, J