

**IN THE MAGISTRATE'S COURT AT SAVUSAVU**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 576 of 2017*

**STATE**

v

**NICO KUYT**

Appearance : **SGT Rinesh** for the Prosecution  
**Mr Kohli. A** for the Accused

Sentence : **3 December 2018**

**SENTENCE**

1. *Nico Kuyt*, today is for sentencing for the following offences:-

Count 1 - *Possession of Arms and Ammunition without Licence, contrary to section 4 of the Arms and Ammunition Act.*

Count 2 - *Import of Arms and Ammunition without Licence, contrary to section 16(1) of the Arms and Ammunition Act.*

Count 3 - *Failure to Declare Arms and Ammunition on Importation, contrary to section 21(3) of the Arms and Ammunition Act.*

2. On 13 August 2018, you pleaded guilty to all the above charges in the presence of your counsel. I find your plea to be unequivocal as it was given on your own free will.
3. The brief summary of facts are;-

*"On 25 December 2017, a team of police officers visited the house of the accused at Savusavu, after receiving information that the accused has illegal possession of arms and ammunition at his residence. Through verbal conversation with the police officers, the accused voluntarily surrendered a centre fire cartridges containing 30 x 9mm live ammunitions, a Beretta USA pistol model M.O.D 92D-CAL 9mm parabellum brand hand gun, and a Pistol Cleaning Rod. The accused brought these arms and ammunitions on his arrival in Fiji in 2009. The accused was interviewed under caution where he admitted to the allegations."*
4. You admitted to the above summary of facts on 13 August 2018, and convicted as charged for all the counts.
5. The maximum penalty for *Possession of Arms and Ammunition without Licence* is \$50,000.00 fine or 5 years imprisonment. The maximum penalty for *Import of Arms and Ammunition without Licence* is \$100,000.00 fine or 10 years imprisonment. The maximum penalty for *Failure to Declare Arms and Ammunition on Importation* is \$50,000.00 fine or 5 years imprisonment. There is no set tariff for all these offences.
6. The aggravating factor is the period of about 8 years you have offending that is from 2003 to 2007.
7. The compelling mitigating factors are;-
  - a. *First offender and previous good character as you are 68 years old.*
  - b. *Remorseful and co-operated with the police.*
  - c. *Promise not to re-offend.*
8. In your mitigation it was submitted that the last time you used the ammunitions was 35 years ago and you had forgotten about it until 2013 when you unpacked your goods. From 2013 to 2017 when the police came to investigate this case you take no action to regularise the wrongs you have done. Your counsel submitted in mitigation that

because the ammunition was not used in Fiji and you spent 2 days in police custody, you are requesting for a suspended sentence.

9. In this sentence, I have considered *section 4* of the *Sentence and Penalties Act*. I also considered the principle of rehabilitation and deterrent.
10. Considering the facts and all the circumstances of the case, the appropriate sentence to be imposed is the payment of fine. On 28 November 2018, your counsel submitted in your presence that you can pay fine as you still have your overseas bond of \$10,000.00 at the court registry. With that I am satisfied that you have the means to pay fine.
11. In considering the fine, I have take note of the maximum fine prescribed for each offence and the fact that there are no set tariff on fine. The maximum fine is quite substantial and it shows the seriousness of these offences.
12. For your sentence, you are to pay the following fines;-
  - a. Count 1     *Possession of Arms and Ammunition without Licence*     Fine of \$1,000.00
  - b. Count 2     *Import of Arms and Ammunition without Licence*     Fine of \$2,000.00
  - c. Count 3     *Failure to Declare Arms and Ammunition on Importation*     Fine of \$1,000.00
  - d. Total fines of \$4,000.00 to be paid within 28 days, in default 6 weeks imprisonment.

- e. If the Accused cash bond of \$10,000.00 is still with the Savusavu Court Registry, the fine of \$4,000.00 to be deducted from that cash bond and the balance of \$6,000.00 to be refunded back to the accused within reasonable time.

28 days to appeal.



C. M. Tuberi  
RESIDENT MAGISTRATE