

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-v-

'ISILELI PULU

BEFORE THE HON. CHIEF JUSTICE WARD

Counsel: *Mr Cauchi for Prosecution*
Mr Tu'utafaiva for Accused

Date of hearing: 20th & 21st July, 1999.

Date of judgment: 27th July, 1999.

Judgment

The accused is charged with defamation of His Majesty the King contrary to section 3 of the Defamation Act, Cap 33. The particulars of the offence set out the prosecution allegation and are that the accused:

“... on or about 5th November 1997 did write a letter (which was subsequently published in the Taimi 'o Tonga newspaper...) in which you published the words;

“He neongo e nofo pe 'a e Pule puaka he ve'e 'a puaka, ka 'oku tu'o 2 pe'ene 'ahia 'a e fanga puaka he ta'u.”

Which translated is:

“Even though the Chief pig lives next to the pig sty, he only visits the pigs twice a year.”

Taken in the context of the letter it is alleged that those words carry the imputation that:-

- (i) the King is a pig; and
- (ii) the King is indifferent to the proceedings of the Legislative Assembly."

During the course of the its case, the prosecution sought to add an alternative meaning for the expression "Pule puaka" so that the first imputation reads that the "King is a pig or is a carer of pigs". I allowed the amendment subject to the right of the accused further to cross-examine the witnesses already heard - a right he chose not to exercise.

At the outset, counsel for the accused disputed the meaning of the words "Pule puaka" and I must decide the meaning on the evidence. I can say immediately that I accept that the literal meaning of those words is a carer or a keeper of pigs and does not translate to Chief pig. The prosecution still asks the court to consider that the words carry the imputation that he is the Chief pig and I shall return to that aspect of the case.

There is no dispute that the letter to which the prosecution take objection was written by the accused and delivered to the Taimi 'o Tonga. It was published in the Letters to the Editor section on page 4 of the 5 November edition of the newspaper.

I do not set it out in full but it carried the heading "The way of Life within a pigsty" and started:

"Sir,

We are all well acquainted with the way of life of pigs that are kept in a pigsty. Even though the sty and its fence are beautiful they will still behave like pigs.

At a pigsty in the centre of Nuku'alofa, its nature is different and exceptional from any other pigsty in Tonga, the Pacific and even the world. And though the carer of pigs lives next door to the pigsty, he only visits the pigs twice a year. That is those who dig up and muddy themselves. There are 12 attractive boars, 9 large pigs (who just grunt and lie down), and 9 piglets.

It is only natural for the larger pigs to feel a common bond for each other, as they have been selected and crossbred from a customary dynasty of pigs. And they are very close in body and blood ties, different from the piglets, as they have only been recently adopted."

The remainder of the letter continues in a similar vein.

The prosecution case is that this is an allegorical reference to the King, "the carer of pigs" and the Legislative Assembly, "the pigsty in the centre of Nuku'alofa". The reference to the twice yearly visits are to the opening and

closing of Parliament and the numbers of 12, 9 and 9 refer to the Members of the Cabinet, the Nobles' representatives and the Peoples' representatives.

Following the publication of the letter, the police interviewed the accused under caution. He agreed he often wrote to the Letters to the Editor column of the paper and agreed that these letters were often critical of what he saw as wrong or improper conduct of various government and commercial organisations or individuals. The letters had, more than once, been critical of various Cabinet Ministers.

He was asked about the letter in the 5 November edition and said he was describing the common behaviour of pigs and compared that with the behaviour of humans. He said there was no pigsty in the centre of Nuku'alofa and generally explained the letter as a description of pigs.

He was asked specifically about the suggested reference to the King:

“Q - I take it that you mean by the pig's boss lives nearby, that the boss means the King who visits the Parliament of Tonga only for its opening and closing ceremonies?

A - That is your interpretation of it. We all have different interpretations. If I meant the King, I would have written “King”.

Q - Why did you not use any other figures but 12, 9, 9?

A - I answered that question in 26 but I would like to add, the numbers pertaining to Parliament, are they forbidden to be used for any other purpose? If these numbers are numbers of pigs in a pigsty, will we call that pigsty, parliament?”

Later in the same interview he was asked:

“Q - What did you mean by saying that it is possible for men to have a nature that is a mixture of both godliness and pig's nature?

A - I mean that some of the natures of the pigs are sometimes manifested in human lives, like the tyranny, oppression and irritation shown by the pigs.

Q - In your letter about the pigsty, the reality of the letter is that you were talking about humans?

A - No. I was not talking about humans. I was talking about the possibility of pig's nature to be manifested by humans.

Q - Did you have any other meaning in mind about the title “way of life in a pigsty”?

A - No, but I'll just say that it's a pun.”

The accused was further interviewed in January 1998. He was reminded of the letter and asked:

“Q - What implication did you make?

A - Well, the letter was written out of my freedom to expound my opinion. That freedom did not affect the 3 issues prohibited by the Constitution. It did not form the basis for defamation. Section 7 of the Constitution gives the individuals the privilege to expound his/her opinions. I have given my reasons at the conclusion of the letter and I emphasised the second part of my conclusion in the Taimi 'o Tonga 12.11.97 edition where I expressed my entire logic about “typical lifestyle in a pigsty”.

Q - Were you aware that the public will have access to reading your letter. Was your letter an implication about the King, Nobles, Ministers and the Peoples reps?

A - The readers have the privilege (not forced) to make their own interpretation. As I emphasized in my letter of 12.11.97 that we are naturally different in interpreting things. Some interpret things on the positive side while some on the negative side.

Q - It is alleged that your letter will leave an impression on the readers that you were referring to the King and the Legislative Assembly.

A - My interpretation of my letters will prevail. However it is an absolute privilege of the readers of Taimi 'o Tonga to make their own interpretation whether it be for the positive or the negative side. I did not use the words sodomy or sexual intercourse, as I wanted to be respectful so I just simply used the word cross-bred. Not everyone has the right interpretation. I would be glad to take legal action against those with erroneous interpretation.”

The prosecution called the Deputy Editor of the newspaper. He expressed the view that, when he first read the letter, he considered it referred only to pigs. He told the court that the accused had frequently written to the paper criticising people and institutions and airing his views about government and political matters. He could not recall him having ever written previously about pigs.

Three other witnesses were called about the effect of the letter. One clearly stated he had never read the article and I discount his evidence. The other two were clear that the letter referred to the Legislative Assembly and the King. It was significant in the context of this case to see that one of the witnesses was extremely reluctant to give his opinion because he found it difficult to repeat something as disrespectful as this in Court.

The accused elected not to give evidence himself or to call any witnesses. The contents of the further letter of 12 November, referred to by the accused in his interview, have not been put in evidence.

Defamation is defined in section 2(1) of the Defamation Act;

“2. (1) Defamation of character consists in speaking or in writing, printing or otherwise putting into visible form any matter damaging the reputation of another or exposing another to hatred, contempt or ridicule or causing him to be shunned.”

By section 3 it is an offence to defame the character of the King.

The Act includes a number of defences but the accused does not rely on any statutory defence. Counsel for the accused does not deny that the accused had the letter published in the newspaper and that he intended those words to be so published. He states his defence as being that there is insufficient evidence upon which the prosecution has proved that the words had the meaning suggested or that calling the King a keeper of pigs damages his reputation or exposes him to ridicule or that the letter shows he is indifferent to the proceedings of the Legislative Assembly.

The burden in this case lies on the prosecution to prove the words set out in the indictment and that they were published in writing, printing or otherwise in a visible form. It must prove that the words complained of refer to the King and it must prove the innuendo it claims to make that reference. It is a matter for the court, whether or not there is a jury, to decide whether the words are capable of bearing the meaning alleged and, where there is a jury, it is a matter for the jury to decide whether they do.

The accused has elected to be tried by judge alone and so I must first decide if the words are capable of bearing the meaning alleged and, if so, whether they do bear that meaning. If I am satisfied of that, I must then consider whether it is proved that the meaning they bear damages the reputation of the King or exposes him to hatred, contempt or ridicule or causes him to be shunned. As this is a criminal charge each of these matters must be proved beyond reasonable doubt.

As I have stated, there is no dispute that the accused wrote the letter and caused it to be published in the newspaper. That it was published was further supported by the prosecution witnesses who had read it and one of whom spoke of how it was the subject of much discussion at the time.

The test to be applied regarding the meaning of the words is an objective one namely the meaning an ordinary reasonable minded member of the public would take from the words.

I have no hesitation in finding that the letter as a whole is capable of bearing the meaning claimed by the prosecution but I do not accept that the words used can suggest the meaning that the King is Chief pig. I am satisfied beyond

any doubt that the use of the words 'Pule puaka' convey a meaning beyond that of simply a carer of pigs and implies that the King is the boss or person in charge of the pigs.

I have no doubt whatsoever that the reference to the pigsty is a reference to the Legislative Assembly, the pigs are the Members of the Assembly and the keeper of pigs is a reference to the King. I am equally satisfied beyond any doubt that the words were intended to bear and did bear that meaning.

Passing to the effect of the words, I am satisfied beyond any doubt that the description of the King as a keeper of pigs is, in itself, a matter that exposes him to ridicule. The suggestion of the letter as a whole is that the members of the Legislative Assembly behave in the way described and for the King to be indifferent to that is a suggestion that clearly damages his reputation and further exposes him to ridicule. In addition, the description of the King as the boss of the pigs that are alleged to behave in the manner described in the letter adds significantly to the defamatory meaning of the reference to the King in the letter.

I am satisfied beyond any doubt that the accused has defamed the character of the King and he is convicted as charged.



U. W. W. W.

NUKU'ALOFA: 26th July, 1999.

CHIEF JUSTICE