

IN THE SUPREME COURT OF SAMOA

HELD AT MULINUU

BETWEEN: **P O L I C E**

Prosecution

A N D:

TOLUONO FETI

TOLUONO, *male of Vaitele-
uta and Vailoa Palauli*

Defendant

Presiding Judge: Justice Slicer

Counsel: P Chang and E Niumata for the prosecution
 T S Toailoa for the defendant

Hearing: 12 – 16 December 2011, 18 January and 22 March 2012

Sentence: 19 April 2012

Charges: False Pretence, Forgery, Fraud and Uttering False Documents

SENTENCE

1. The defendant has been found guilty of the crimes of false pretence, forgery and uttering forged documents either as a principal, instigator or abettor. The circumstances giving rise to those findings are stated in the Reasons for Judgment on 22 March 2012 and require no repetition.

2. There were two transactions namely, that of the Stowers land committed between 23 December 2004 and 17 February 2005 and of the Burke land committed between 10 August 2007 and 20 October 2010.
3. The first involved five acts of dishonesty and the second, ten. In each case the registered owner of the land was deprived of property and involved duplicity to financial institutions.
4. Two sentences will be imposed, each representing a composite of the particular acts. They will be cumulative given the times elapsed between the two events and the variety of the unlawful acts.

Preliminary Basis

5. Counsel argued by analogy that since the maximum penalty for forgery was 5 years, uttering 5 years and false pretence 3 years, the commencing point for each transaction could only amount to a maximum of 10 years and that the combined commencing point of 8.5 years was close to the permitted 10 year sentence. He argued that such was tantamount to an equivalence with sentences imposed for cases such as manslaughter, grievous bodily harm and the like, and such would be unjust. The contention is rejected. Here each charge alone carried its own penalty and if a penalty was imposed on each, the sum would far exceed 20 years. Here the principle of totality imposed and a composite penalty imposed with respect to each of the two identified transactions. Counsel further argued that the

commencing point for the sentence imposed on the co-offender amounted to one-fifth (1/5) and, by analogy, that a similar commencing point should be chosen here. That contention is rejected for the reasons stated above. He further claimed that the commencing point requested by the prosecution amounted to approximately 90% of the permitted maximum. That contention is likewise rejected given the number of charges. There is nothing untoward in the commencing points suggested.

6. The Court will not follow the approach taken in *Police v Samau* [2010] WSSC 163 and impose separate sentences for each component. Here the course of conduct as presented by the prosecution and defence was all or nothing whereas in the case above each transaction was separate and the method chosen to assist any appellate court.

Parity

7. The co-offender Vaselisa Stowers (“Vaselisa”) was sentenced on two charges of forgery to 1 year imprisonment for each made cumulative and resulting in a term of 2 years imprisonment. Here there are 15 acts of dishonesty. Here there is no basis of parity. Each played different roles, committed different acts over differing periods of time. Toluono Feti Toluono (“Toluono”) received most of the proceeds of the criminal conduct and, as appears in the primary judgment and that of the Chief Justice, it was this defendant who planned and was the primary offender. Vaselisa had the benefit of a plea of guilty. The Chief Justice found her

to be remorseful and in a position of vulnerability. The starting point for each offence in her case was 3.5 years and the Court accepted that vulnerability entitled the Court to exercise mercy. Here the status, qualification and experience of the defendant far exceeded those of Vaselisa.

8. There is no basis for parity.

Commencing Point

9. As the Chief Justice observed in *Police v Stowers* [2011] WSSC 23, the nature of this case through the use of forgery is without precedent in Samoa. As His Honour stated at paragraph 22:

“This is the first time criminal charges have been laid by the police which involve the forgeries of deeds of conveyance to deprive the owners of their lands. It is the type of criminal conduct which will be strongly condemned in any civilized society. It was not one deed of conveyance that was forged by the accused depriving an owner of her lands but two deeds of conveyance depriving two owners of their lands.”

10. It is thus difficult for the prosecution to refer to comparable Samoan cases and the prosecution made use of the New Zealand case of *R v McKelvy* [2006] NZHC 785 referred to by the Court in *Stowers* (supra).
11. Considerable harm was caused to both victims. Stowers has regained her land through a principled decision taken by a financial institution although she had

clearly suffered distress in the process. The Burke land is irretrievably lost since it was sold to a bona fide purchaser for value. She has commenced civil proceedings presumably contested by the defendant.

12. The defendant has shown no remorse.
13. The Court accepts the suggested commencing points submitted by the prosecution and the aggravating features referred to in its written submissions. It accepts in relation to the Stowers matter:

“...a starting point of four years imprisonment for the overall offending involving this transaction, taking into account the aggravating factors.”

and for the Burke matter:

“...a starting point of four and half (4 ½) years imprisonment is appropriate for this offending involving this transaction considering the aggravating factors previously cited.”

Mitigation

14. Toluono is aged 66 and is married with adult children. He is highly educated and experienced. He became the Chief Executive Officer for the Electric Power Corporation for 13 years. He served as a Member of the Legislative Assembly from 2006 until 2010. He has been a good provider for his family, and others who are respected by Christian, medical and political leaders speak highly of him.

ORDERS OF THE COURT

- (1) Toluono Feti Toluono is convicted of the crimes of forgery, false pretence and uttering.

- (2) Toluono Feti Toluono is sentenced to a term of imprisonment for a period of 5 years and 6 months to commence as and from 16 April 2012.



JUSTICE SLICER