

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

**CR NOS: 495/21 & ORS
463/2022 & ORS,**

K

v

NGATOKOTORU PUNA

Hearing: 22 March 2023

Appearances: P Wicks KC, K Hogan and J Crawford for the Crown
L Rokoika and T Vakalalabure for N Puna

Sentence: 22 March 2024

SENTENCING NOTES OF PJ KEANE, CJ

[1] Ngatokotoru Puna, you appear for sentence for 27 offences between 9 September 2019–24 March 2021: 20 cheque frauds and a conspiracy to defraud; five forgeries and uttering a forged document once.

[2] The first of your offences was the conspiracy to defraud between 9 September–11 October 2019, in which you joined with your wife and Mr Tapaitau to pass off your family's Edgewater weekend, two months earlier, as a management retreat.

[3] Second, I list your 20 cheque frauds, largely in the order of the charge list, without attempting to summarise why I found you fraudulent in my extensive decision:

- (a) On 15 November 2019, you procured or used a \$5,000 NES cheque, to pay an instalment due on your student loan;
- (b) On 22 November 2019, you procured or used a \$2,500 NES cheque, supported by a forged car rental invoice, for use of your own truck;

- (c) On 19 December 2019, you procured or used a \$5,100 cash cheque for accommodation and a daily allowance for a trip to Aitutaki, misappropriating \$4,500;
- (d) On 23 December 2019, you procured or used a \$3,400 NES cheque, dated 19 December 2019, to meet the accommodation cost of Crown counsel, misappropriating \$2,200;
- (e) On 13 January 2020, together with your wife, you procured or used a \$5,000 NES cheque to buy a motorbike for her adoptive mother;
- (f) On 19 March 2020, you procured or used a \$1,273.50 NES cheque to Air Rarotonga to pay for your children's airfares to Aitutaki;
- (g) On 20 March 2020, you procured or used a \$1,080 NES cheque to pay your wife a daily cash allowance while on Aitutaki;
- (h) On 16 April 2020, you procured or used a \$5,000 NES cheque, supported later by forged invoice, to pay for Aitutaki accommodation;
- (i) On 14 May 2020, you procured or used a \$5,000 NES cheque, supported by a second forged car rental invoice, for use of your own truck;
- (j) On 18 June 2020, you procured or used a \$5,000 NES cheque, supported by a forged cleaning company invoice, for cleaning your own truck;
- (k) On 18 June 2020, you procured or used a \$5,000 NES cheque, supported by a third forged car rental invoice, for use of your own truck;
- (l) On 29 June 2020, you procured or used a \$5,000 NES cheque, claiming it to be a performance bonus payment;
- (m) On 1 September 2020, you procured or used four Aitutaki related NES cheques – \$2,800 for accommodation, \$1,560 for a daily allowance, \$1,500 for catering, \$2,264 for flights;

- (n) On 2 September 2020, you procured or used a \$736 NES cheque for rental vehicles on Aitutaki;
- (o) On 14 December 2020, you procured or used a \$1,260 NES cheque for Edgewater accommodation;
- (p) On 16 December 2020, you procured or used a \$968 NES cheque for Edgewater food and beverages; and
- (q) On 23 February 2021, you procured or used a \$1,000 NES cheque for a second bereavement payment.

[4] As a result of these 20 offences, between 15 November 2019– 23 February 2021, you fraudulently obtained from NES, the agency of which you were Director, \$58,642.

[5] Third, I list your five forgery offences to support five of your cheque frauds:

- (a) the three Avauta Rentals invoices, dated 21 November 2019, 12 May 2020, and 18 June 2020;
- (b) the Tuitara Lodge invoice, dated 23 June 2020; and
- (c) the Minister’s letter, dated 24 March 2021, endorsing your performance bonus payment.

[6] Fourth, and finally, I refer to your uttering offence on 18 June 2020, using the forged Manea Cleaning Services invoice, as if it were genuine.

Pre-sentence report

[7] Your pre-sentence report sets your offending against the very positive aspects of your public, community and family life.

[8] It recounts your many contributions to your community, and this country, as a schoolteacher and public servant. It says you are a highly experienced and versatile professional with a diverse range of skills.

[9] You have contributed to environmental services, policy development, government affairs, education and project management; and you have been seen, your report says, to be strongly committed to public service, well able to take on challenges.

[10] Your report says you maintain your innocence. You say you were denied the opportunity to present your defence at trial. You had, and have, a complete answer. You say that I misunderstood fundamentally acceptable public sector accounting principles and practices in the Cook Islands. You are aggrieved your accomplishments at NES were unrecognised.

[11] Your report says that you must be sentenced, nevertheless, on the basis of my decision, which holds you accountable for systematic fraud, in breach of trust, eroding the integrity of the public accounts, and the public service. It recommends imprisonment.

Sentencing principles

[12] I sentence you on the same principles as I sentenced Mr Tapaitau and I need not repeat those principles, except to say this.

[13] First, like your co-offenders, you stand convicted of cheque fraud and conspiracy to defraud, attracting maximum terms of imprisonment of 5 years. In contrast to them, you also stand convicted of forgery and uttering, which attract maximum terms of 10 years.

[14] Second, I must give first place to your abuse of office as NES Director. High office carries high authority and high accountability, as the Court of Appeal so recently said a case very close to yours, *K v Kamana*¹.

[15] Third, in sentencing you for your lead offences, the cheque frauds, I apply, as I must, the statement of principle made by the Court of Appeal in *Kamana*, and I fix your related starting point, as I must, by reference to the starting point that Court affirmed on the appeal.

[16] Fourth, I must, as that Court held, first fix a global starting point reflecting all the aggravating and mitigating features of your offending; then adjust that starting point, equally globally, to reflect all such factors personal to you.

¹ *R v Kamana* [2022] CKCA 2.

Offences

[17] In your case also, the first and fundamental issue is what starting point I must take in sentencing you; and, as to that, the Crown and your counsel differ to a significant degree.

Crown submission

[18] The Crown contends for a global starting point synthesising starting points of 4 years for the cheque frauds, and 2 years, 6 months, for the conspiracy and quite distinctly for the forgeries and uttering.

[19] On sentence, as at trial, the Crown contends what makes your offending so serious is, first of all, that you systematically abstracted fraudulently from NES over a period of some 14 months a very significant sum of money.

[20] Just as significantly, the Crown contends, you abused your high public office as NES director in gross breach of trust and authority. And you supported and concealed your cheque fraud by resort to forgery and uttering.

[21] Furthermore, the Crown points out, your offending began with your active part in the conspiracy to conceal your wife's own initial offence, your shared Edgewater weekend in July 2019.

[22] Against that context, the Crown contends, a global 6 year starting point is proportionate to your total offending.

Defence submission

[23] Your counsel contends, by contrast, for a global starting point of 4 years, 3 months', imprisonment,

[24] First, she submits, the Crown's 4 year starting point for the cheque frauds, founded on *Kamana*, is misplaced because her offending differed; and proposes by reference to other cases an 18 month starting point.

[25] Mrs Kamana, herself, your counsel submits, authorised, co-signed, and deposited NES cheques to her personal bank account for herself and her family. She compounded that by making false statements to the Police.

[26] You, she submits, never deposited NES cheques to your personal account, except to repay your student loan. Nor did you make false statements to the Police. You were open about what you did, maintaining you were entitled to do it.

[27] Secondly, like the Crown, she contends for a starting point of 2 years, 6 months for the conspiracy; but, in contrast to the Crown, a 3 month starting point for the forgeries and uttering.

[28] Any starting point exceeding 4 years, 3 months, she submits, would offend the totality principle and be disproportionate to your offending.

Conclusion

[29] In fixing my starting point I begin, as I did my decision, with the very first reason why we are here today.

[30] In July 2020, the Financial Secretary advised all government departments and state agencies that MFEM was to carry out a whole of government review, by internal audit, of cash receipting and banking for the 12 months ending March 2021.

[31] On 24 March 2021, your NES internal audit resulted in a preliminary report, which said, 'There is clear evidence of improper use of public funds and public resources and at this point in time, it seems deliberate'.

[32] The internal auditor recommended that NES bank accounts be frozen, and that the investigation be referred to PERCA, and the Solicitor General. It is against that background the Financial Secretary made his formal complaint to the Police.

[33] The Crown's case against you at trial encompassed a significant number of transactions, but was in essence simple. It was that, to obtain funding from NES to meet your needs and those of your family, you authorised the issue of and co-signed NES cheques for fictitious purposes.

[34] You created those fictions, the Crown's case was, either by seeing to the completion of the NES forms foreshadowing and justifying cheque expenditure, to comply with the standard rules governing NES expenditure.

[35] Or, the Crown's case was, you saw to the funding first and had those forms completed afterwards to withstand audit scrutiny. It was that latter practice which looks to have attracted the adverse audit comment, which led to your prosecution.

[36] At trial the Crown demonstrated that you offended systematically in this way for 14 months, right up to a time close to the internal audit. That is a significant time and the amount you abstracted was equally significant, \$58,642.

[37] You were able to offend in this way, the Crown demonstrated equally, only because you were NES director. You not merely created the fictions justifying the expenditure; you bypassed the rules and procedures controlling expenditure.

[38] Your offending, the Crown demonstrated equally, was not confined to your cheque frauds. By entering the conspiracy, and by your forgeries, and the uttering offence, you buttressed both those frauds and an earlier fraud.

[39] Especially noteworthy, although not the subject of any charge, was the way in which you serially rewrote your employment contract to give yourself entitlements justifying a number of the cheque frauds. That was all of a piece with the forgeries and uttering.

[40] Finally, it is striking that you and Mrs Kamana first offended so close together in time. Your first two cheque frauds were on 15 and 22 November 2019. Hers was on 25 November 2019. That could well be a graphic example of how the integrity of the public service comes to be eroded.

[41] For these reasons I take as my starting point of your sentence that submitted by the Crown, imprisonment for 6 years.

Character and contributions

[42] I accept fully the tenor of your character references. You are highly regarded, and trusted. You have made large contributions to your community on Aitutaki and nationally here on Rarotonga.

[43] What I find so hard to understand, and so very regrettable in your case too, is how a man of your obvious talent, energy, and decency, so trusted and admired, could commit the offences for which you are for sentence.

[44] As the Crown says, dishonest offenders, who are trusted and admired, are able to take advantage of that trust, and often do. But, as the Crown accepts, it is open to me to reduce your sentence by a credit, conventionally within the range 10–15%.

[45] Your contributions to society have been so real and positive, I consider, that I should allow you a 15% credit, which I round up to 12 months, resulting in a 5 year term, which I will impose on you by cumulative as well as concurrent sentences.

Conclusion

[46] I confirm I have already convicted you of your 27 offences; and I now sentence you for those offences in two phases:

- (a) first by sentencing you for the cheque frauds to concurrent 4 year terms; and
- (b) second, and cumulatively, for the conspiracy, the forgeries and the uttering to a concurrent 1 year term.

[47] On that basis, I sentence you to a total term of imprisonment of 5 years.



P J Keane, CJ