

**IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY**

**CR 193 of 2009**

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**R E X**

**-v-**

**MELE MULI**

**Ms. Atiola for the Crown**

**Mr. Kaufusi for the Accused**

**SENTENCE**

- [1] Mele Muli you have been found guilty, after trial by a judge and jury of 3 counts of fraudulent conversion. The maximum penalty for each of these offenses is 7 years imprisonment.
- [2] The facts as found proved are that you were employed by EM Jones in the accounts department at Koloua. One of your important duties was to receive and check the daily proceeds of sale and other incoming monies and to deposit them in the bank, if possible the following day.
- [3] In January 2008 you received three cheques totaling in value TOP \$17554.25. These cheques were supposed to be paid directly into the account named on the payment vouchers. Instead, however, of paying in these cheques as authorized, you kept them to one side, for future use.
- [4] On 28 April you paid one of the cheques for \$6323.00 into another of EM Jones accounts disguised as part of the daily sales of 26 April.

On 30 May you paid in TOP\$6545.00 disguised as part of the daily sales of 29 May. You admitted to the police in interview that you had similarly dealt with the first cheque for TOP\$4635.00 in the previous January.

- [5] When interviewed about the matter you admitted using some of the money from the days takings which was replaced by the cheques for your own use but claimed that you had not taken the whole amount. You attempted to blame your colleagues for the missing cash but declined to name them. Even after conviction by the jury you instructed your counsel that the money went missing when your back was turned when you went into the bulk store. You chose however, as was your right, not to offer this explanation to the jury on oath and allow yourself to be cross-examined.
- [6] The evidence of the Crown was that you had never complained to any of your colleagues about any shortfall in the amounts handed to you for payment into the bank. You offered no explanation for the amount of the alleged shortfall precisely equally the amount of the cheques paid in by you as part of the daily takings.
- [7] The jury found you guilty of dishonestly handling these cheques and their fraudulent conversion. This was quite plainly a carefully planned and executed course of criminal conduct but it is evident to me that you are unable, even at this late stage, to accept the fact of your guilt, although you instructed your counsel to apologize for what you did.
- [8] You are a 27 year old single woman, a first offender, living with your aunt. As your counsel says, your conduct has ruined your prospects of finding another job. In these circumstances Mr. Kaufusi urges me to impose a suspended sentence of imprisonment.
- [9] In 'Eukaliti v Police [1994] To.L.R 80 the then Chief Justice Mr. Justice Ward said as follows:

“In broad terms when sentencing a first offender who has committed an offence solely against property, the court should consider a sentence that would not immediately result in imprisonment.... However there are many exceptions to the proposition. The nature of the offence itself and any

aggravating circumstances in the manner in which it was committed, the overall harm to the victim and the attitude of the defendant subsequently should all be reflected in the sentence. Some property offences are almost certain to result in imprisonment if committed by an adult offender”.

[10] In Wall v R [2001] TO.L.R 238, a case of embezzlement, the Court of Appeal said:

“For the commercial community to function effectively employers must be able to trust their employees. This is particularly so when the employee is in a senior responsible position”.

and later:

“We have considered the aggravating...factors to which we have referred and the deterrent element that is important in sentencing for offending of this kind. We accept the submission that the thefts carried out by persons in positions of trust can be difficult to detect. When they are detected a sentence calculated to discourage others from behaving in a like manner should be imposed.”

[11] In that case, involving a commercial manager who had pleaded guilty to stealing \$181, 000 the court imposed a sentence of 4 years imprisonment with the last year suspended.

[12] In all the circumstances of the present case, I impose a concurrent sentence of 20 months imprisonment. The last 8 months will be suspended for 2 years. You will therefore serve a term of 12 months.

**DATED: 16 December 2011**

**CHIEF JUSTICE**

E. Takataka  
16. December 2011