

IN THE SUPREME COURT OF SAMOA

HELD AT MULINUU

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

Informant

AND: **MULIAGATELE RAPI**
TEVAGA *male of Alafua*
and Malifa

Defendant

Presiding Judge: Justice Slicer

Counsel: L Taimalelagi and E Niumata for prosecution
 A Roma for defendant

Hearing: 6 – 9, 20 – 23 March 2012

Sentencing Hearing: 7 May 2012

Sentence: 16 May 2012

Charges: Theft As A Servant

SENTENCE

1. Muliagatele Rapi Tevaga has been found guilty of 30 acts of theft as a servant contrary to the Crimes Ordinance sections 85, 86. He was acquitted of 19 charges of a like nature.
2. The offender was employed by the Samoa Airport Authority as its Chief Finance Manager and operated at the third tier of management. The acts of dishonesty

occurred over the period October 2006 until August 2008. Consistent with the findings of the Court published on 23 March it is likely that he colluded with another senior officer who has not yet been brought to trial in many acts of dishonesty. A number of sophisticated methods, as stated in the primary reasons for judgment dated 23 April, which were difficult to detect were employed at regular intervals. The Court found that the defendant stole at least \$24,658. His part in the criminal activity was only discovered after an initial internal audit verified by an external firm of auditors.

3. The audits showed a culture of dishonesty resulting in evidence of direct misappropriation of \$164,548 together with irregularities of a further amount of \$129,944 which the Court found to be a result of inadequate management and/or represent criminal conducts by others. The result represents a loss to the Authority of \$294,542. The defendant sought to blame others and claimed to have been responsible only for negligent supervision or betrayal by others. In both cases he was responsible for a significant loss to a reputable institution and service provider to Samoa.
4. As is often the case a culture of dishonesty of a large corporation often commences at the top and permeates and poisons the institution. The sentence to be imposed is intended to operate as both a general deterrence and one specific to others employed by the Authority.
5. Sophisticated fraud is difficult to detect and the legal process complicated and expensive. Deterrence is often the only vehicle which will affect an industry or

institution.

6. The defendant held a high office, was trusted by his supervisor and his duties were essential to the operation of a service provider. Persons in such positions ought be aware that they will held accountable by the courts for their acts of fraud and dishonesty and ought receive little sympathy because of their previous reputation or status. Here he has stolen public money. Here the conduct was sophisticated and prolonged. That others were involved is not a mitigating matter, although the defendant will be punished only for those matters proven at trial.
7. The defendant has shown no remorse and can not receive the benefit of either a plea or cooperation with investigating officers. The maximum penalty for a single act of theft as servant is that of 7 years imprisonment. For each act of dishonesty involving a sum of or exceeding \$1,000 the appropriate commencing point will be 7 years to be served concurrently. For each act involving less than \$1,000 he will be sentenced on the basis of 12 months imprisonment each sentence to be served concurrently with each other but cumulative to the former.
8. The prosecution suggests a starting point of 'at least 4 years', and cites comparable sentencing decisions in support of its submissions (*Police v Samu* [2008] WSSC 2, *Police v Amani* [2008] WSSC 26, *Police v Uale* (19 July 2010) and *Police v Enoka* (19 July 2010)). Only one of the cases involved the theft of public money (*Police v Alafea* (19 July 2010)) which involved the theft of \$22,809, taken in small amounts. The sentence imposed was one of 3 years and 4 months, but 12 months was ordered to be served concurrently.

9. The Court does not accept a commencing point of 4 years to be discounted through mitigation. The defendant held high office and his methods were sophisticated. The fees for the external audit alone cost some \$48,000.

10. Given the prevalence of the offence within the community, the culture within an institution and the misuse of public money a higher commencing point is warranted as a general and specific deterrent. Government has invested US\$62,000,000 in the Samoa Airport Authority between 2006 and 2010. The effect of the conduct by the defendant and others has harmed the confidence in that investment. In its submissions to the Court the Ministry of Finance as the primary victim of the misconduct of the head of the finance department states:

“The vision of the Samoa Airport Authority is as follows:

‘To be the most efficient, safe and secure small Island State Airport in Airport Operations.’

And their missions is:

‘To comply with all applicable standards and practices to maintain and enhance effective service delivery.’

The visions and the mission of SAA coupled with their function to make profit for Government’s US\$62 million investment, this type of offending by the defendant Mr. Tevaga would not achieve certain aspects of this framework. Because of the offending by the defendant in this matter, there are certain activities within SAA that could not be accomplished, which would, in turn, cause failure to certain parts of the vision and mission of SAA, as well as Government’s intended return of 7% of their profits.

Given that certain parts of the mission and vision of SAA cannot be

accomplished because of this type of offending, this would also, in turn, have a negative impact on the entire purpose for which (sic) the Strategy for the Development of Samoa. The Strategy for the Development of Samoa is a national policy which guides the develop of Samoa and (sic). The existing SDS 2008 – 2012 is guided by the theme of ‘ensuring sustainable economic and social progress’ and is aimed at achieving a national vision of an ‘An improved quality of life for all’ and the Government of Samoa realizes that this can be realized through the successful implementation of 3 Key Areas which are further denoted into 7 national development goals as highlight below.”

11. The degree of trust given to the defendant is a particularly important factor so that cases of employment in a position of financial trust are more seriously regarded then cases of employees who are not so employed but steal in the course of their employment.

Mitigation

12. The defendant is aged 42. He is a first offender. He is a paramount chief from Samalaeulu. He has led a privileged life and been well rewarded for his services to commerce and the community.
13. He has been a good provider for his family. Many speak highly of him; they include good and prominent persons, pastors, Members of Parliament, persons in business and the like. Many say that he acted out of character but the Court notes that his conduct was not an isolated act, a matter which, itself, can define character.
14. The Court accepts the testimony of those who spoke up for him and allows his prior conduct and record as significant matters of mitigation.

15. In cases of abuse of a position of trust, good character and an absence of prior convictions are typical and have little weight because of the expressed need for a general deterrent sentence (see generally: Warner on Sentencing, 2 Ed. paragraph 12.205).
16. Those mitigating matters permit the Court to reduce the term of imprisonment to be actually served by a period of 2 ½ years resulting in an effective sentence of 4 years and 6 months.

Conclusion

17. The appropriate penalty is 4 ½ years.

ORDERS

- (1) Muliagatele Rapi Tevaga is convicted of the crime of dishonesty.
- (2) Muliagatele Rapi Tevaga is sentenced to a term of imprisonment for a period of 4 years and 6 months, such sentence to commence as and from 23 April 2012.



JUSTICE SLICER