

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

CR NO. 617/15

POLICE

v

RIMAMINGI TUAVAI

Hearing: 13 December 2016
Counsel: Ms A Mills for Crown
Mr N George for Defendant
Judgment: 24 January 2017

DECISION OF TAORO JP, MANARANGI JP and NOOROA JP

[1] The defendant, Rimamingi Tuavai is charged with Theft of a Samsung Galaxy S2 Mobile Phone.

[2] It was alleged that on the 4th of July 2015 at Nikao, Ms Tuavai did intentionally and dishonestly steal a Samsung Galaxy S2 mobile phone valued at five hundred dollars (\$500.00) with the intent to permanently deprive the owner Maybeline Beniamina Unu and thereby committed theft.

The Law

[3] Ms Tuavai is charged under Sec. 242 (1) (a) of the Crimes Act 1969 which states that:

“Theft or stealing is the act of intentionally and dishonestly taking, or intentionally and dishonestly converting to the use of any person, anything capable of being stolen, with intent -

(a) To deprive the owner, or any person having any special property or interest therein, permanently of such thing or of such property or interest;”

[4] This charge is punishable under section 249 (b) (viii) of the Crimes Act 1969 which states that:

“Everyone who commits theft is liable to the following punishment (b) to imprisonment for a term not exceeding five years if the object stolen is –
(viii) Anything exceeding in value the sum of forty dollars”

[5] Elements of the charge are:

i. General elements – there are no disputes about the general elements related to this offence:

- 1) The person named in the charge is the same person who is appearing in Court, and that is Ms Rimamingi Tuavai
- 2) There is a date or period of time when the offence is alleged to have taken place; which is the 4th July 2015.
- 3) There must be a place where the offence was alleged to have been committed which is at Nikao.

ii. Specific elements:

- 1) The accused took or carried away something capable of being stolen
- 2) The accused did this without the consent of the owner
- 3) The accused did not have a claim of right in the property taken

- 4) The accused at the time of such taking, intended to permanently deprive the owner of the thing taken

[6] The element that is in dispute is: The accused at the time of such taking, intended to permanently deprive the owner of the thing taken.

[7] Before the defendant can be found guilty of the charge the prosecution is required to prove the charge beyond reasonable doubt.

Representations

[8] The Defendant is represented by Counsel Mr Norman George

[9] The Prosecution is represented by Crown Counsels Ms Mills & Miss Koteka

Issue

[10] Whether the defendant, Ms Rimamingi Tuavai, at the time of taking the Samsung S2 mobile phone, intended to permanently deprive the owner Maybeline Beniamina Unu of her mobile phone

Brief account of what happened

[11] On Saturday morning, 4th July 2015, Ms Unu arrived back from Australia with her family. About 5pm that same day while at home she noticed that her Samsung S2 mobile phone was missing and realized that she left it outside the Rarotonga airport terminal. She checked with Bluesky to see if any lost phone for that day has been reported but there was none. She then went to the Police station to report her lost phone. On the 7th July 2015 she bought a new mobile phone and a new sim card. She then posted her lost phone on her Facebook page and on the 16th July 2015 she posted it on the Rarotonga Community and Beyond Facebook page. That same day she received a Facebook message from Mr Saungaki Rasmussen saying that his wife Francis Rasmussen has found a similar phone on the 4th July 2015 outside the airport terminal and gave her two numbers to contact them. About 2.30pm that same day she met with Francis Rasmussen and the Airport Police Officer Ms Tuavai, (the

Defendant) who confirmed that the phone was her lost mobile phone. Ms Tuavai told her that the phone was at the Police Station. Ms Unu and the Defendant met at the Police Station at 5pm that same day where the Defendant handed over the mobile phone in a white envelope. Ms Unu tried to access the phone but found the pin codes have changed so could not unlock the phone. The next day she took the phone to Telecom who managed to unlock the phone. She then found the applications on the phone have changed and all her photos and data have disappeared. The information, contact lists and Facebook page on the phone were those of the Defendant. Ms Unu then made a complaint with the Police. In September 2015 the Defendant offered to buy Ms Unu a new phone.

The Facts

[12] Ms Unu arrived back to Rarotonga from Australia with her family on the morning of the 4th July 2015. Once outside the terminal she used her mobile phone to ring for a transport to take them home. About 5pm that same day she noticed that her Samsung S2 mobile phone was missing and tracing back her movements that day realized that she left her phone outside the Rarotonga airport terminal. She checked with Bluesky to see if any lost phone for that day has been reported but there was none. She then went to the Police station to report her lost phone and she completed a lost property form. On 7th July 2015 she bought a new mobile phone and sim card. She then posted on her Facebook page her lost phone that day but no response. On 16th July 2015 she posted it on the Rarotonga Community and Beyond Facebook page. Exhibit 3. On the same day received a Facebook message from Mr Saungaki Rasmussen saying that his wife Francis Rasmussen has found a similar phone on the 4th July 2015 outside the airport terminal and gave her two numbers to contact them. About 2.30pm that same day she met with Francis Rasmussen and the Police Security Officer Ms Tuavai, (the Defendant) at the airport, it was confirmed that the phone was her lost phone. Ms Tuavai told Ms Unu that the phone was at the Police Station. Ms Unu and the Defendant met at the Police Station at 5pm that same day where the Defendant handed over the mobile phone in a white envelope. Ms Tuavai then advised Ms Unu that the Police IT person has locked her phone which puzzled Ms Unu. She tried to access the phone but found the pin codes have changed so could not unlock the phone. The next day she took the phone to Telecom who managed to

unlock the phone. She then found the applications on the phone have changed and all her photos and data have disappeared. The information, contact lists and Facebook page on the phone were those of the Defendant. Ms Unu then made a complaint with the Police. The Defendant offered to buy Ms Unu a new phone and asked for the matter to be settled out of court.

[13] Mr Donald Munro, Bluesky Manager for Mobile Phones advised court that there are about 256 chances to try and unlock a mobile phone. The last option to access the phone is for it to be reset to its default factory setting where everything saved on the phone will be lost.

[14] Constable Tangakure Tonitara – he served Ms Unu when she came to report her lost phone and he got her to fill in a Lost Property Report form and they both signed it. Exhibit 2.

[15] Mr Saingaki Rasmussen – When picking his wife on 4th July 2015 from work at the airport, she told him that she has found a mobile phone which she has handed to the Airport Security. On the 16th July 2015 he saw a post on the Rarotonga and Beyond Community Facebook page about a lost cell phone. He messaged Ms Unu (now Ms Mills) that his wife has found a similar phone at the airport at the same time asking her to contact him or his wife Francis Rasmussen. Exhibit 3.

[16] On the 16th July 2015 Ms Unu met with Francis Rasmussen and the Defendant Ms Tuavai at the airport and it was then confirmed that the phone found was that of Ms Unu.

[17] Rangimarie Williams (Akanoa), Airport Security Officer – on the 4th July 2015 she received a lost mobile phone from her supervisor Moeauri and she recorded it in the register book for lost properties and on the same day handed the Samsung mobile phone to the Airport Police officer Ms Rimamingi Tuavai, the Defendant, who signed the register book as the receiver of the lost property. Exhibit 4

[18] Constable William Boller – recalled a lady coming to the Police Station, she told him that she had picked up her Samsung phone from the Police Station earlier.

He was shocked when he she told him that their IT Manager has locked the phone. He advised her that found properties received do not go to the IT man, it is kept and secured in the found property cabinet.

[19] Aporo Kirikava, IT Manager for the CIs Police – confirmed that he was never handed a mobile phone by the Defendant to unlock in the month of July 2015 as claimed by her. He cannot open phone unless he has the access pin codes. Police Dept do not have any procedures for lost mobile phones to come to the IT division.

[20] Detective Senior Sergeant Roimata Peraua – interviewed the Defendant on 23 October 2015 at 12.31pm. Ms Tuavai refused to be videoed during the interview.

- i. Police have policy for lost property, Exhibit 6. There is a section on how to deal with properties handed to a Police Officer somewhere other than the Police Station.
- ii. Airport Police office only opens when there is a flight normally 2 hours per flight.
- iii. There is no lockup area for found properties in the office at the airport.

[21] Defendant – Ms Rimamingi Tuavai

- i. She is currently suspended on pay.
- ii. On 4th July 2015, when all departing passengers have boarded the flight, Airport Security Officer Akanoa handed her a lost Samsung Galaxy S2 mobile phone and a register which she signed for receiving the phone.
- iii. She then took the phone into the Airport Police office and placed it in a plastic tray on the table in the office, there were other properties in boxes in the office (found/confiscated items), she finished work about 9am.

- iv. She claimed she did not know the processes for receiving found or lost items for items found at the airport, she thought that items found at the airport remains at the airport.
- v. Sunday 5th July 2015, she worked in the evening (8pm – 11pm), she got bored and tried to access the mobile phone, she managed to do this after about 1 ½ hours by just pressing random numbers.
- vi. She changed the security settings but got scared afterwards because she could not change it back to the pin lock because she didn't learn the pin number.
- vii. On the 9th July 2015, due to her phone being damaged by her daughters and the need for a phone in case someone rings her, she thought to borrow the mobile phone.
- viii. Confirmed there is a landline phone in the office.
- ix. She removed the sim and memory cards from the Samsung S2 mobile phone and the green cover of the phone and placed these in the tray in the office. She then placed her sim card in the phone so she can use her own number.
- x. She used the phone until the 15th July 2015 which was a fortnight, on this day she went to Bluesky and bought her a turbo phone. She then removed her sim card from the Samsung cell phone and put it into her new phone.
- xi. She was rostered to work that evening where she returned the phone and she placed the green cover and the sim card back on the phone but she could not find the memory card.
- xii. She then placed the Samsung phone inside a white envelope and took it to the Police Station and placed it in her pigeon hole.

- xiii. On Thursday 16th July 2015, she was rostered to work at the airport from 1pm – 4pm. That afternoon she met with Ms Unu who she then advised that the phone is in her pigeon hole at the Police Station and if she could meet her there at 4pm.
- xiv. At the Police Station the Defendant handed Ms Unu the mobile phone inside a white envelope.
- xv. She claimed that she did not tell Ms Unu that the phone was in the property room at the Police Station, there was no one at the Police Station that time, the reason she put it in her pigeon hole.
- xvi. She is aware of the standard procedures relating to found property.
- xvii. Reason she did not follow standard procedures with the mobile phone is because she thought that properties found at the airport remains at the airport.
- xviii. Defendant met with Ms Unu in September and offered to buy her a new mobile phone.
- xix. admitted that she was wrong in using Ms Unu's phone.
- xx. did not intend to steal and deprive Ms Unu of her phone.

Analysing the facts

[22] In analysing the facts and the closing submissions, we note the following relating to the issue raised in this case, the issue being 'Did the defendant, Ms Rimamingi Tuavai, at the time of taking the Samsung S2 mobile phone, intended to permanently deprive the owner Maybeline Beniamina Unu of her mobile phone'.

[23] The date of the alleged offence is the 4th July 2015. This is the day that Ms Unu accidentally left her phone outside the airport terminal which was found by Ms Frances Rasmussen who handed the phone to the Airport Security Officer who then

handed it to the Airport Police Officer Ms Rimamingi Tuavai the Defendant. Ms Tuavai took the phone and placed it in the tray in the Airport Police office and when she finished work closed the office and went home. The next day the 5th July 2015 she returned to work and this is the day that she managed to unlock the phone, again she left the phone in the Airport office and went home after work. On the 9th July 2015, due to her young daughters damaging her phone, she switched the sim card and the memory card in the Samsung mobile phone to hers and she used the phone up to the 15th July 2015 when she went and bought herself a new mobile phone, she then replaced the sim card and the cover of the Samsung mobile phone, she has lost the memory card. She then put the mobile phone in a white envelope and placed it in her pigeon hole at the Police Station. She claimed there was no Police officer at the station reason she did not report the found mobile phone. On the 16th July 2015, a day after buying her a new phone and placing Ms Unu's phone in her pigeon hole at the Police Station, she met up with Ms Unu and handed her the Samsung mobile phone.

[24] The charge is that it was alleged that on the 4th July 2015 at Nikao, Ms Rimamingi Tuavai did intentionally and dishonestly steal a Samsung Galaxy S2 mobile phone valued at five hundred dollars (\$500.00) with the intent to permanently deprive the owner Maybeline Beniamina Unu and thereby committed theft.

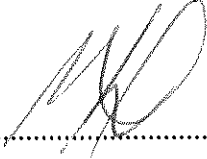
Conclusion

[25] In concluding, we find that on the 4th of July 2015, the Defendant Ms Rimamingi Tuavai did not intentionally and dishonestly steal a Samsung Galaxy S2 mobile phone valued at five hundred dollars (\$500.00) with the intent to permanently deprive the owner Maybeline Beniamina Unu.

[26] Therefore we find that the Prosecution has not proven the charge beyond reasonable doubt and the charge is now dismissed.


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Tangi Taoro JP


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Bernice Manarangi JP


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Mata Nooroa JP