

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

CR NO's 18/16, 480/16

POLICE

v

NAPOUA BENIONI

Date: 7 March 2017

Counsel: Messrs A Mills & A Herman for the Crown
Mr D McNair for the Defendant

(ORAL) JUDGMENT OF HUGH WILLIAMS CJ

[1] The accused, Napoua Benioni, is charged with one count of cultivating two cannabis plants between 1 April and 20 May 2016. He has elected to be tried by judge alone.

[2] At the conclusion of the Crown's opening but before any evidence was called, Mr Benioni's counsel, Mr McNair, applied for the charge to be dismissed on the basis that there was no case to answer disclosed on the depositions. Essentially Mr McNair's application was founded on, one, that there was no sufficient information that the property where a search warrant was executed on 20 May 2016 was owned or occupied by the accused and, secondly, that there was insufficient evidence that the two cannabis plants found at the property on that day had been cultivated.

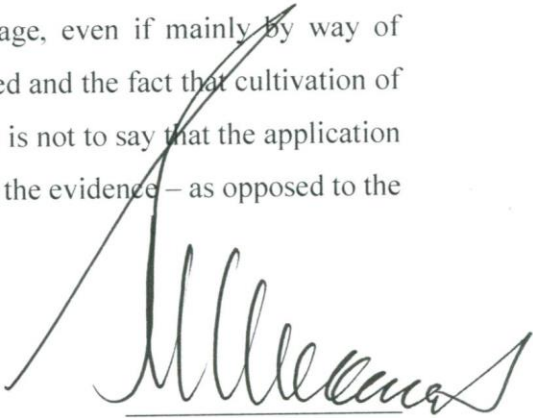
[3] Essentially the test is whether there is sufficient evidence disclosed on the depositions and in the photographs that a jury properly directed, where there is a jury trial, might properly reach a verdict of guilty or whether the evidence is insufficient to carry a jury as far as that.

[4] The depositions of the two witnesses whom the Crown intends to call show:

- a) That a probationary constable, Bernard Tararo, went to a property in Turangi on 20 May 2016 which he says in his deposition was Napoua Benioni's residence. When executing the search warrant Constable Tararo had pointed out to him by Detective Sergeant George two young cannabis plants in the backyard behind a wall just inside a hedge.
- b) The other evidence to be called is from Detective Sergeant Johnny George who is a Cook Islands expert in the Serious Crime and Drugs Unit and has been involved investigating numerous drug offences in Rarotonga for a number of years. It was he who, on 20 May 2016, discovered the two young cannabis plants on property which he thought was occupied by the accused and his partner Ms Anderson. He said in his deposition that the plants were about two months old. In the photographs he took on 20 May the two plants are shown growing in plastic containers. They would appear to be about 30cm high. They are certainly not seedlings. The containers in which they are growing are weed-free and as far as it is possible to discern from photographs the two plants would appear to be in a healthy condition.

[5] Assessing the matter as best one can at this early stage of the case, we have the depositions of two police officers that on 20 May 2016 they attended a property which they understood to be occupied by Mr Benioni and his partner and that there they discovered two cannabis plants in pots which appear to be well tended.

[6] There is, in my view, sufficient evidence at this stage, even if mainly by way of inference of both the occupation of the property by the accused and the fact that cultivation of the cannabis plants to allow the Prosecution to proceed. That is not to say that the application could not be renewed at a subsequent stage of the trial should the evidence – as opposed to the depositions – justify such a course.



Hugh Williams, CJ