

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

**CR NO's 447/21  
1825/22  
448/21**

**R**

**v**

**SHARON SAMUEL  
&  
VINCENT AHIAO**

**Counsel:** Mesdames M Pittman & J Crawford for the Crown  
Mr B Mason for Defendant (Samuel)  
Ms M Tangimama for Defendant (Ahiao)

**Sentence:** 8 August 2023

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**SENTENCING NOTES  
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

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[9:0:0]

[1] Sharon Samuel and Vincent Ahiao are before the Court today for sentence having pleaded guilty to serious dishonesty offending charges. They are long term partners.

[2] Ms Samuel has entered guilty pleas to two charges:

- (a) Forgery, a representative charge under ss 287 and 288 of the Crimes Act 1969, the maximum penalty is 10 years imprisonment; and secondly
- (b) Obtaining by false pretences under s 269(1) of the Crimes Act 1969, the maximum penalty is 7 years imprisonment.

[3] Mr Ahiao has pleaded guilty to a charge of money laundering under s 280A(3)(a) and (7) of the Crimes Act. The maximum penalty is 3 years imprisonment or a fine of \$30,000 which clearly the defendant has no ability to pay.

### **Background Facts**

[4] Counsel have helpfully advised that the facts are agreed and I will now read them.

[5] In January 2017 the ANZ Bank in Rarotonga notified the Cook Islands Financial Intelligence Unit of a case of potential benefit fraud involving New Zealand pension payments from the Ministry of Social Development into the bank account of the deceased Marie Giddeon. In order to receive a pension an individual is periodically required to sign a declaration and return it to the Ministry of Social Development confirming their details and that they are still entitled to receive the pension. Pension payments cease once the Ministry of Social Development is advised of a pensioner's death but may continue for up to 28 days after the death to cover matters such as funeral expenses. Ms Giddeon died intestate (which means without a will) on 12 January 2011. On 8 April 2011 Mr Ahiao, who was the nephew of Ms Giddeon, was granted probate by the Cook Islands High Court as the executor of her estate. He gained control of her ANZ account and of her post office box. Both Mr Ahiao and Ms Samuel had an ATM card to access the bank account and they had shared access to the mailbox.

[6] In December 2010 a declaration was sent to the Ministry of Social Development to Ms Giddeon's mailbox for completion. On 27 June 2011 Ms Samuel completed the declaration, forged Ms Giddeon's signature and returned the form to the Ministry of Social Development. She continued to complete and return these declarations with Ms Giddeon's forged signature until December 2016, a period of five and half years. Ms Samuel also forged the signature of lawyer Norman George as a witness to Ms Giddeon's signature on a number of occasions. A total of \$118,840.44 was paid by the Ministry of Social Development in New Zealand into Ms Giddeon's bank account during this period. Ms Samuel and Mr Ahiao were the only people with access to the account and they made regular cash withdrawals from the account. Mr Ahiao was not aware that Ms Samuel was completing and returning the declarations but continued to receive and spend the money and did not advise nor enquire with

the Ministry of Social Development as to why the payments continued after Ms Gideon's death. He said he did not know how to stop them.

[7] Ms Samuel initially admitted receiving and accessing the money but denied signing the declaration forms. She later admitted to forging the declarations but confirmed that Mr Ahiao had no knowledge of her actions.

### **Probation Reports**

[8] I have read helpful Probation reports. They confirm that both defendants come to the Court as first offenders. Ms Samuel aged 46 years, Mr Ahiao aged 41 years. They are in a stable relationship. They have four children, two of them young.

### **Victim Impact Statement**

[9] I have also received a victim impact statement from the Ministry of Social Development. I propose to read from that statement because it is very important. The statement is prepared by the solicitor for the Ministry of Social Development and is dated 10 May 2023. It states:

“A large number of Cook Islanders enjoy the freedom to return to their homeland while retaining the regular payments of their New Zealand superannuation payments. Those funds permit a worry-free life to the recipients and a boon to the families, communities, and businesses who benefit from that money working its way through the Cook Islands economy. Like all benefits paid by the New Zealand Government, a high level of trust is inherently placed on the recipient. Where the systems in place are found inadequate to prevent fraud, steps may have to be taken to ensure those funds go only to the people entitled. It would be a burden on every recipient and their families were this type of offending to alter that high trust model. No one wishes to see a requirement for return to New Zealand on a regular basis as a condition to overseas payment of New Zealand superannuation or any other sort of “proof of life” process. The Ministry urges a sentence which properly recognises the danger this particular fraud represents to the individual recipients and the community at large and will act as a deterrent to any further instances of this type of offending. The community as a whole benefits from the current high trust model. The Ministry relies on the honesty of family and the systems of the Cook Islands Government and banking system to reduce fraud opportunities. We wish to retain and build on our confidence in those system to ensure future entitlements can be paid in a trouble-free manner.”

[10] I read those statements and observations because they are extremely important, particularly in light of the acknowledgment by Ms Samuel, that until she read the victim impact statement she was not aware of the potential wide-reaching consequences of her criminal activity. It is important that all Cook Islanders respect the rights of their fellow superannuitants in observing honestly and in a trustworthy manner, the requirements of the Ministry of Social Development in New Zealand.

### **Purposes and Principles**

[11] I note the purposes and principles of sentencing applicable in this case: to hold the offenders to account, to denounce their conduct, to deter them and others from committing the same or similar offences. The Court is required to take into account the gravity of offending and the degree of culpability of each offender separately, as well as the desirability of consistency in sentencing.

### **Aggravating and Mitigating Features of the Offending**

[12] I turn to aggravating and mitigating features of the offending which the Crown identifies and counsel for the defence accept.

[13] The extent and duration of the offending; this was sustained offending which continued for five and a half years. Premeditation; Ms Samuel made a series of conscious decisions during the offending period to forge Ms Gideon's signature, and at times the signature of a lawyer as witness, and then to return the forged forms to the Ministry of Social Development.

[14] I have referred to the high trust model of the superannuation system. The Crown notes that this offending strikes at its core and has the potential to impact all those in the Cook Islands who are lawfully entitled to benefits.

[15] Mr Ahiao abused his position of executor. It was through his position as executor of Ms Gideon's estate that both offenders were able to access her bank account and post office box. I am sure Ms Gideon when she appointed Mr Ahiao her executor, believed she was appointing an honest and trustworthy person to that very important position. It is extremely disappointing to see that her trust also, has been abused.

[16] The extent of the loss, \$118,840.44, a significant amount. As the Crown has noted, the New Zealand Government has incurred further cost and loss through the time spent on investigating the fraudulent activity and assisting the Cook Islands Police with the prosecution.

[17] There are no mitigating of the offending.

### **Authorities**

[18] The Crown and defence have referred to helpful authorities, the most relevant being that of the *Police v Wichman*<sup>1</sup> in 2018. The amount fraudulently obtained in that case approximated \$230,000. A starting point of 6 years imprisonment was adopted.

### **Submissions**

[19] The Crown submits in relation to Ms Samuel's offending, that a starting point of 4 to 5 years imprisonment is appropriate. Mr Mason accepts that a custodial sentence for Ms Samuel is inevitable, but submits that a starting point at the lower of that range would be appropriate.

[20] The Crown and Ms Tangimama for Mr Ahiao acknowledge that a starting point of 18 months imprisonment would be appropriate, but all counsel agree that a non-custodial sentence is available in this case, taking into account that a sentence of imprisonment which is inevitable in respect of Ms Samuel, leaves Mr Ahiao as the prime provider and carer in their household. Their family includes their four children, one of whom I believe no longer lives at home, but two young children who require care, love and ongoing attention, as well as the ability of Mr Ahiao to provide through his employment, sufficient income to meet the family's commitments.

### **Sentencing**

[21] In respect of Ms Samuel I take a starting point of 4 ½ years imprisonment. She is entitled, as the Crown acknowledges, to a full one-third discount for her guilty pleas. Other matters which may be reflected by discounts are that she comes to the Court as a first offender.

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<sup>1</sup> *Police v Wichman* CKHC, CR 616-619/18 (19 November 2018).



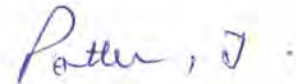
She is remorseful and there is a health issue which, on a minimal basis can be taken into account given that she must serve a custodial sentence. I round off those discounts to 50%. The end sentence will therefore be 2 years, 3 months or 2 ¼ years imprisonment on the forgery charge, and 2 years on the false pretences charge; those sentences to be served concurrently.

[22] The sentence, as you have just heard, Ms Samuel, imposed on you is 2 ¼ years imprisonment. That sentence will commence from tomorrow morning. You will report to the prison by 10 am.

[23] In respect of Mr Ahiao, the sentence is 18 months Probation supervision with the first 9 months to be served on community service.

[24] There will be an order for reparation in the sum of \$118,840.44. That order is made against the defendants jointly and severally.

[25] You may stand down.



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**Judith Potter, J**