

G.P.  
A.C.

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TU'IPULOTU 'ILAVALU

BEFORE THE HON. CHIEF JUSTICE WARD

**Counsel:** S. Tapueluelu for Prosecution  
S. Hola for Accused

**Date of hearing:** 10 and 11 August 1999.  
**Date of judgment:** 13 August 1999.

### JUDGMENT

This accused is charged with fraudulent conversion, contrary to section 162 of the Criminal Offences Act, and with obtaining by false pretences, contrary to section 164 of the same Act.

The events that gave rise to these charges occurred in 1992 and relate to an organisation called the Tonga Non Government Association.

The prosecution case is that the organisation was a shell through which the accused conducted a fraudulent operation. The charges relate to one transaction which followed the same pattern as many others. Although only the one transaction is charged, the court has heard evidence from the prosecution of the general arrangement of the organisation and the manner in which it was run in order to establish the fraudulent nature of the operation.

In about October 1992, the complainant, Mafile'o Tohifolau, heard advertisements over the radio stating that the TNGA would build houses on payment of a sum that was the equivalent of a small percentage of the true cost. The advertisement said that the houses were to be paid for by foreign donors. It referred to a construction company and told the listeners that, if

they wanted a house, they should go to the accused who was named in the advertisement.

The complainant went to the accused's office. There were a lot of people there all trying to buy houses. The people were given a list of the houses and their prices at the office. Although there were staff in the office dealing with the applicants, the complainant was able to go to the accused and they discussed where the house was to be built. The complainant wanted the house for her son and paid a deposit of \$2,000.00 to the accused. The accused wrote out a receipt for that sum and wrote on it the size of the house, 36x24. It appears the price of the houses was based entirely on the area with the smallest house at 24x16 for which a deposit of \$500.00 was required. The complainant's house was to cost her \$2,200.00 and so she had to return a few days later and pay the balance of \$200.00. She again paid it to the accused against another receipt written by the accused.

The accused told her that there were a large number of people who had already paid their money and she would have to wait her turn. After some time, she had heard nothing and tried to contact the accused. She had heard rumours that the Association was not, in fact, building anything and she was becoming alarmed. She was able to speak to the accused on her visits and each time was told to come back on another day. She asked for her money to be returned and to cancel the agreement but the accused still simply told her to come back on another day. Some months later some of the people who had paid for houses arranged for a lawyer to go with them to see the accused. The complainant went as well and there were a very large number of people present because they believed they were to receive their money back. The accused told them that the money was buried in a graveyard and sent off one of her staff to fetch it. When he returned empty handed, the accused went back into her office and would not come out again.

The complainant told the Court that nothing has been done to build her house, she has never been refunded her money and the only reason she handed the money over was the promise that she would obtain a house of 36x24.

The prosecution called a number of the people who worked for the accused in the association. Mafi 'Ulakai worked for her in September 1992 and took the job because her husband was related to the accused. When she went there, the accused told her that the Association was being funded by ten millionaires from abroad.

She was given various jobs in the office but the general procedure was that people who came in were shown the list and chose the house they wanted. The majority chose the smallest house for which they paid \$500.00. The office staff then filled in a form and wrote out a receipt. They did not take the money but

then sent each applicant to the accused who apparently checked the application and took the money.

All cash taken by her was placed in a box or a cupboard to which only she had the key. If the accused was not able to take the money, she allowed only one other person to do so. That person was a friend and stayed with the accused. She is no longer in the country.

Although the advertisement referred to money from abroad and the accused had referred to millionaires funding the project (a statement also described by other witnesses), no witness had seen any evidence of funds coming in other than from the people who paid for houses.

The prosecution evidence shows only too clearly how the matter progressed. One of the men employed to build houses told the court that no house was ever completed. His work was limited to small work relying on materials bought locally. He was repeatedly told by the accused that equipment and materials would be coming in from abroad but they never did. He was sometimes told just to deliver a few bricks and a bag of cement to a site and no more and similar ploys which, I am satisfied beyond any doubt, were simply to keep up the appearance that something was happening.

At one stage, the accused went to Fiji telling her staff that she was going to meet the donors. She spoke of the trip being paid for by them but the bills for her expenses came back to the Association and were paid out of the money from the houses. Her son went to New Zealand ostensibly to arrange a container of timber. He was given money from the house money by the accused. Nothing came of the trip and no container ever appeared.

None of these matters were challenged in cross-examination.

Eventually the complainant told the police and they interviewed the accused in April 1993. She explained that the TNGA had been replaced by a new organization since the previous Tuesday called the Non Government Organisation Tonga Co-operative but it was effectively the same as the TNGA. When asked what were its objectives, she replied; "Just like the old organisation to assist people who do not have any money to build a house, assist in education (scholarships) and the physically handicapped."

She was asked who was the manager and said she took charge of the office work but there was a committee, which governed the whole organisation.

She described the system in the office but stated that she only approved the applications. She said she never received any money and that all money went to the Treasurer.

The Treasurer was called by the prosecution and said that he was never given any money or, indeed, anything to do most of the time.

In the interview, the accused talked of receiving money from the EEC and having contacted a large number of potential donor organisations. There was no mention of the millionaires nor details of how much the EEC had given or of any other sum actually paid although she did say the Association held a bank account into which was paid aid money from overseas.

At the trial, the accused gave no evidence and called no witness.

I must bear in mind that the prosecution must prove every element of the case beyond any reasonable doubt.

On the evidence I have heard, I have absolutely no doubt that this was a fraud. Whether it started as a genuine attempt to set up such a charitable organization I do not know but the evidence shows that by the time the complainant paid her money it was a sham. Large sums of money must have been received and there is no evidence that anything more than a very small amount was paid for housing. On the other hand, the evidence is compelling that the money has been dissipated and the person I am satisfied is shown by the evidence to have been responsible for that is the accused.

The complainant told the court that the only reason she gave the \$2,200.00 to the accused was because she believed that she would be given a house. That representation was made by the accused and was false.

I am satisfied beyond any doubt that the accused obtained that money from the complainant well knowing that she would not supply the complainant with a house. She is convicted on the second count.

Once the accused had that money it was clearly converted to her own use. The evidence satisfies me beyond any doubt that the accused simply used that money for her own purposes knowing that it had been received by her as payment for a house she was never intending to build. The accused is convicted on count one.

NUKU'ALOFA: 13 August, 1999



*C. Williams*  
CHIEF JUSTICE