

POLICE v VUI (FAATALI LEAVASA) AND OTHERS

Supreme Court Apia

Callander CJ

Hearing - 21, 22, 23, 24, 25, 28 February

1, 2, 3, 7, 8, 9, 10 March

21, 23, 24 March

Decision - 25 March 1983

Sentence - 12 April 1983

CRIMINAL LAW - separation of charges and evidence - proof beyond reasonable doubt - extended definition of theft under S 88 Crimes Ordinance.

CASES CITED:

- Police v Iosefa and Sao [1970-79] WSLR 185

LEGISLATION:

- Crimes Ordinance S 88

T Malifa for Prosecution

A V S Va'ai for Defence

Cur adv vult

The burden of proof lies upon the prosecution to establish each individual charge against each individual accused beyond reasonable doubt. In other words the evidence must make me feel sure that each charge has been proved. The onus remains upon the prosecution from the beginning to the end of the trial and there was no onus upon any of the three accused men to prove anything.

Each count has been considered by me as a separate matter and only evidence relative to that charge has been taken into account. I have not supplemented evidence from that adduced with respect to other charges.

Similarly, the position of each accused has been considered separately and I have been careful to isolate the evidence affecting each separate individual upon each individual and separate charge.

Some of the evidence is circumstantial only, and where that has been the case I have observed the requirement that such evidence be not only consistent with the alleged act but also inconsistent with any other rational conclusion than that the accused was the guilty person.

I do not accept Mr Va'ai's submission that the extended definition of theft under s.88 of the Crimes Ordinance cannot apply upon the facts of this case. Police v Iosefa and Sao [1970-79] WSLR 185 is good authority for the submission that s.88 need not be specified in the information.

In my view the extended definition applies because the Defendants were each senior members of the livestock division and they held the livestock under their control under a clear obligation that any sale would be in accordance with the rules set by the Department of Agriculture and any proceeds would belong to the Government of Western Samoa. If it is established by the evidence, beyond reasonable doubt, that one or more of them nonetheless dishonestly dealt with livestock in another manner or failed to deal with it as they were obliged by their senior employment so to do, then they will be guilty of theft under s.88.

Under s.88 it is necessary for the Prosecution to establish the following:

1. That the accused severally were holding or receiving the cattle
2. That there was an obligation upon him by way of express or implied trust or contract to deal with the livestock in a particular way
3. That the accused fraudulently or dishonestly dealt with the livestock contrary to the obligation. The mental element may, of course, be inferred from the use of false names, the failure to deliver animals ordered and paid for by legitimate farmers, and the sale of subsidised animals to the sausage shop knowing that the real value of the meat was three or four times the amount actually paid.

It is necessary, of course, to remember that while a persons act may be morally reprehensible or immorally dishonest this does not mean that it is criminally dishonest and thus within the control of the criminal code.

The sales - simpliciter - would not satisfy me that there was a dishonest or fraudulent intent. This is because I am quite satisfied that there had been for nearly a decade a widespread and irregular sale of slaughtered meat to people, mainly

Agriculture Department employees, often using the names of other people as a clearly deceitful means of accomplishing this end. This practice, while flying in the face of the Government subsidy scheme for farmers, was patently morally reprehensible but has not been generally shown to have been criminally dishonest. Perhaps the reason is that other people have not been prosecuted when indeed they should be standing in the dock with the Defendants. But that is not the point. The Court tries those charged, and those alone, and upon the basis of a sworn information. The irregular practices were such a common place that it is a wonder any animals survived faalavelaves long enough to reproduce. How there are still herds on Government farms is a matter of some speculation.

The Defendants, in their defence - although none have elected to themselves give evidence - simply argue, through the forceful advocacy of their counsel Mr Va'ai that mens rea has not been proved. They are saying that it has not been established that they behaved in a dishonest or fraudulent way. The absence of mens rea really consists in an honest and reasonable belief entertained by the accused of the existence of facts which if true would make the act charged against each of them, innocent.

It goes without saying, but I refer to it because it was the subject of a submission, that comment in the press or Parliament, has had no part in the conclusions now reached by me.

Before turning to the individual charges there are some general matters which require findings of fact before I proceed as they are crucial to most of the informations. As Mr Va'ai submitted, but on a different basis, the crux of the case is the question of the price of the livestock. He says that the evidence showed that the Government had set sale prices for culled cows, \$60 for weaners \$20 or \$30. He accepts that in what may be called the Parker Strike employee credit scheme meat was sold on the basis of 35 sene per pound live weight. He thus concludes that there was no dishonesty in employees, or the accused buying for \$60 and taking their 300 or 400 percent profit later in the day through the good offices of Amanda's sausage shop. I agree that the price is the crux: but for the reasons submitted by Mr Malifa I am quite satisfied that the evidence of the Director of Agriculture Tupuola Tavita, and the treasury investigator, Joe Coe, makes it perfectly clear that the whole point of the subsidy scheme was to improve livestock in this country not provide cheap meat for faalavelaves. Firstly, only legitimate farmers could make application. Secondly, the purpose was to enable Samoan farmers to improve their herds by buying weaners or breeding cows of good stock at a heavily subsidised price. They were not meant to be turned into sausages. They were meant to improve the livestock of Western Samoa by producing better beef animals or better dairy cows. I simply do not believe the nonsense suggested by some witnesses that the \$60 applied to all animals,

culled or breeding, live or dead. That is assuming that the Court itself exhibits some primitive form of bovine mentality and is totally incapable of determining how green is the grass. The clear fact is that the Government subsidy scheme had been the subject of massive corruption for years. The question however, is whether the accused played any part which amounts to theft under the law.

At this point I simply find that it is established that the subsidy scheme applied only to farmers. It applied only to live animals. It did not include Agriculture Department personnel unless perhaps they were farmers (and then they would have had no need to employ the deceit of using other people's names). It was clearly known to each of the three accused, particularly Vui, who was in fact chief administrator of the entire programme. There is one area of confusion. The Treasury rules as to the disposal of culled or surplus animals were not adequately proved. It seems that the Hospital and boarding schools had first claim, calculated, of course, on a live or dead weight cost per pound basis, but the question vis-a-vis livestock that could not be consumed by those institutions is vague. There was talk of auctions. But one thing is certain - whatever the price, the proceeds were to go to the Government of Western Samoa not into the back pocket of some personally enterprising but corrupt employee of that Government. Having found these preliminary matters proved to my complete satisfaction I now refer to the individual charges.

Information 3

This is against Vui alone, the Acting Chief Livestock Officer. It is alleged that he stole from Lemafa one beast valued at \$298.60. The evidence establishes that the accused gave the farm manager at Lemafa a Ty.22 delivery docket in the name of one "Rudy F of Apia". This was produced and was numbered 22556. It was for "one cull from Lemafa farm". A receipt number is shown - 410911. That receipt shows that \$60 was paid to the Department in the name "Rudy F". Vui did not give Tullitua a "please supply" letter but says that Vui told him the animal was actually for his son and had been paid for. Tullitua actually prepared the Ty.22 himself and signed as deliverer of the animal. The Ty.22 was then taken by Vui. No signature then existed for the receiver of the animal but when Tullitua later saw the book someone had signed as receiver. Someone also deleted the word Apia (written by Tullitua) and without permission amended the address to read "Tiavi/Siumu". Vui directed Tullitua to bring the animal from Lemafa and then to take it to Amanda. He gave it to one whom he thought was Amanda personally and she gave him her receipt number 85 dated 17.7.81 which reads "Vui F. Vaiala". he gave that receipt to Vui. Tullitua was not given the \$289.60 shown on the docket. Vui admitted to Corporal Amiga that "Rudy F" was his son. In fact it appears that Amanda did not handle

this transaction in person but it was clearly dealt with by her staff and the document is recognised by Tulitua. In my view there is only one inference. The Acting Chief Livestock Officer used his own powers to arrange the sale of a Government animal to his son, for \$60, and then sold it for a 400% profit the same day. The profits were not paid to the Department. He is clearly guilty of theft under the extended definition. Rudy F was not a farmer, was not entitled to an animal, let alone a slaughtered one, and the whole transaction was clearly fraudulent and dishonest. A conviction will be entered.

Information 4

This is again against Vui alleging theft of one beast worth \$337.60. On the 12 August 1981 (obviously misdated 1980 on the Ty.22) Vui approved a delivery of one cull cow to someone named Vaise Lila of Vaovai. A receipt for \$60 was issued in that name (No. 664739) on the same day. The same day an animal was sold to Amanda for \$337.60, receipt 46, in which the supplier is named simply as "Vui". Vui admitted to the corporal that it was for himself. It is true that Tulitua says the animal came from Lemafa, but Tafili Sagaga says he was ordered by Vui to slaughter the animal and take it from Avele to Amanda. It does seem that Tulitua's evidence relates to another animal. It is clear that the original Ty.22 was cancelled and replaced. It is, of course, clear that Vui used the name of Vaise Lila as a fiction and received the cash. I agree that there seems to be some doubt as to whether it was a culled cow or a bull. The information simply alleges "cattle beast" and in my judgment that is sufficient. I am satisfied that this animal was stolen and Vui will be convicted.

Information 5

This is against both Vui and Mulifusi. It alleges the theft of two cattle beasts worth \$200 each on the 25th August 1981. The prosecution says it concerns a fake sale to one Tupuola Etuale. There is no evidence of delivery of the beasts but it is established that receipt 469197 was issued in the name of Tupuola Etuale for \$120 for 2 cull cows on the 28th August 1981. Tupuola testifies that he did not buy or sell any animals in 1981 and the receipt was not his as he didn't purchase. He is not from Moata'a but from Siumu. Amanda's evidence is very important. She says she knew Tupuola Etuale from previous deals and her evidence on pages 233 and 234 of the notes shows that she clearly realised some murky dealing was afoot. She realised the wrong village had been given. She says Vui had phoned her earlier in the day to arrange the transaction. She paid \$383.30 and paid it to the deliverer but doesn't know who he was. While there is a "please supply" on the 25th August for Silao Tevaga addressed to the Farm Manager, Togitogiga, there is no please supply or Ty.22 in the name of Tupuola and there is no evidence that the

animals came from Avele. While it is quite clear that there has been dirty work at the cross-roads on the part of Vui, the chain of evidence is not without its defects and I have reasonable doubt. The charge will be dismissed.

Information 6

This information alleges the theft of two beasts worth \$200 each by Vui on the 31st August 1981 from Avele farm. The "please supply" was to Togitogiga. There was no evidence from Amanda. The only evidence is that Vui referred, wrongly to receipt 469196 twice when in fact only Salesa Asiata had paid. The date of supply appears wrong. Although the book shows what clearly appears to be a fraudulent transaction by Vui, this was not properly proved in the evidence. The charge is dismissed.

Information 7

This alleges that Vui stole one beast worth \$244 from Avele on the 1st September 1981. Receipt 469236 shows Afemata Sani paid \$180 for 3 cull cows. He paid by cheque and got his beasts. But on the 1st September Amanda paid \$244 for one beast. She says the real Afemata did not bring in the animal. Amanda says Vui called her about this beast and she paid him the money in cash. Ty.22 No.3954 dated 2nd September 1981 (but overprinted from what seems to be 1st September) was signed by Mulifusi indicating that the animal came from Avele farm. That is sufficient. Vui must be convicted.

Information 8

This charges Vui and Asonai with theft of two beasts worth \$400 between the 1st and 30th September 1981. There is much evidence as to the slaughter and transport of these animals for Vui's saofa'i. Tele'a Roache is but one example. Mr Va'ai says that Joe Coe says all animals were paid for but he is clearly wrong in giving such a general answer to such a general question. The simple fact is that two animals were slaughtered and used for the saofa'i without documentation of any kind and without any defence evidence that they were paid for. I disagree with Mr Va'ai when he says it is upon the Prosecution to prove they were not paid for. All the prosecution must prove is an unlawful taking with intent to permanently deprive the owner of his rights to the animals. Proof of non-payment is not at law, necessary. The evidence is overwhelming against both men. They will be convicted.

Information 9

This relates to Asonai's saofa'i. The animals were killed after hours, at night. That was, in my view, highly suspect. Much of what I have said about Information 8 applies to this charge as well. There is heavy evidence and no suggestion that Asonai paid. No documentation was signed. It was clear abuse of his position. Both men were involved. Both will be convicted.

Information 10

This charges Vui and Mulifusi with the theft from Avele of two cattle beasts worth \$366.40. The prime evidence is that of Amanda who paid that sum on the 2nd September 1981, the day after the other deal also involving Afemata Sani as in Information 7. The Ty.22 No. 3957 was signed by Mulifusi with reference to the real receipt given to Afemata, and it is clear that the animals came from Avele with his connivance, as manager. They were slaughtered animals. The charge is proved against both men beyond reasonable doubt.

Information 11

This alleges that Vui and Mulifusi stole two beasts worth \$900 from Avele on the 3rd September 1981. The evidence shows that a farmer named Fata Ututau paid \$50 for an animal but hasn't had anything for his money. A receipt 471811 in his name dated 10th September 1981 for \$120 for two cows was not known to him. Vui signed a "Please supply" dated the 3rd September to supply Fata with two cull cows for \$120 but did not quote a receipt number, presumably because one wasn't issued for another week! On the same day Mulifusi signed Ty.22 No. 3955 indicating two deliveries from Avele farm. Tafili signed as recipient but both beasts went to Amanda the same day to be converted both into ready cash and sausage meat worth \$405.60 as her receipt 19 of the same date indicates. Payment was by two later instalments. The name she was given was something like "Uttau Fat Siumu" but I am satisfied it was the same transaction. Both men will be convicted as there is no doubt in my mind at all.

Information 13

This information alleges that Vui and Asonai stole one Hereford Bull valued at \$399.15 from Lemafa on the 14th September 1981. This concerns the alleged sale by one Fata Sione to Amanda's firm on the 14th September for which \$399.15 was paid in two instalments. But Fata Sione said that although he approached Asonai for an animal he never paid for or received the bull. It is clear that his name has been falsely used. Amanda's docket shows the name "Vui" scratched out. Amanda's employee Catherine Fitisemanu completed the transaction and the docket is in her hand. She says she scratched out "Vui". She says he came into

the shop with those who delivered the bull. She weighed it and "took it for granted" that it belonged to Vui. Vui had simply entered the shop and left again. An unknown boy who delivered the animal then told Catherine it should be in the name of Fata Sione. Tafili Sagaga also gave evidence. He says Asonai told him to go with two other men to slaughter the bull at Lemafa and then take it to the sausage shop and have it weighed under the name of Fata Sione. A Ty.22 No. 22457 was prepared and a man named Salesa is said by Tafili to have signed as receiver. He says Vui told him to use Fata Sione's name. He appears to have been mistaken when he thought Catherine was Amanda herself, but corrected himself later in his evidence. He says this woman told him to tell Vui that she had no money. Tafili went to the Agriculture Department and told Vui accordingly. He was unshaken by cross-examination. I am satisfied beyond reasonable doubt and both accused will be convicted.

Information 14

This information alleges that Mulifusi, on the 18th September stole one beast worth \$349.45 from Avele. The evidence consists of a Ty.22 No. 3966 dated the 18th September made out to Falefia Tupua and signed by Mulifusi for one culled cow from Avele. Joe Coe interviewed Mulifusi who admitted that Falefia Tupua was his common law wife and that she had signed the Ty.22 as receiver of the animal. He admitted that it had been sold in his own name the same day for \$349.35 to the sausage shop. There is no evidence to the contrary. The evidence is very strong and he will be convicted.

Information 16

This alleges that on the 23rd September 1981 Vui and Mulifusi stole from Avele 2 cattle beasts valued at \$651.95. This charge relates to a "Please supply" signed by Vui on that date directing the farm Manager Avele to supply Mr Fiaula Mou with 2 only dairy cull cows at \$60. No receipt number was referred to but on the Ty. 22 No. 3968 also prepared on the 23rd September and signed by Mulifusi as deliverer the receipt number is given as 471924. That receipt is of even date and is for \$120 made out to Fiaula Mou although the last name Ula had been scratched out by the writer of the receipt. Catherine Fitisemanu then gave evidence. She produced Amanda's docket again dated the 23rd September recording the purchase of two animals for a total value of \$651.95 in the name Fiaula Mou of Matautu. I agree with Mr Va'ai that the name "Vui L" written in another hand must be ignored. Catherine paid \$251.95 that day and the balance the following day. She did not say who delivered the animal. The prosecutor called an elderly man Faafiaula of Faleatiu. He says he paid \$120 and was given receipt 471924 by Vui. He is clearly not Fiaula Mou although he may not have even noticed this because of his eyesight. Furthermore his memory of dates and other matters

is lacking. The important question is not the man's name but whether a theft took place, and whether Fiaula Mou exists or not, it is quite clear that Vui and Mulifusi acted dishonestly in using that name to make a substantial sum of money. Theft has been clearly proved.

Information 19

This information charges that Vui stole two beasts from Avele valued at \$450.50 on the 7th October 1981. On that date Vui signed a "Please supply" for 2 cull cows for breeding purposes for Mr Lemalu S. Toe. It was for \$120 receipt 472079. On the same date Ty.22 number 3979 was issued to Lemalu Toe delivered by Miss Valusaga. Amanda confirms that another employee Mrs Sanders paid out on docket 17 on the 7th October in the name Lemalu Toe Matautu Lefaga the sum of \$450.50. Isumu Lemalu Toe says his father Lemalu Toe died on the 9th September 1980 and no animals were sold in his name in 1981. He was the only Lemalu Toe at Matautu Lefaga. This was clear deceit and theft is proved beyond all doubt.

Information 20

This alleges the theft on the 9th October 1981 by Vui of one beast worth \$200 from Avele. On the 9th October Vui signed a please supply for one steer from Avele in the name Fata Ututau for \$89.25 and a Ty.22 in the same name, also referring to a steer, was prepared by Miss Valusaga who says that she used the American dating system and put the month first, thus, 10.9.81 instead of 9.10.81. Receipt 472103 was issued to Fata Ututau on the 9th October for the \$30 deposit referred to by Vui in the "Please supply". Fata Ututau gave evidence that he paid \$50 but that his receipt was uplifted by Vui and Asonai and never returned to him. He has never received the steer. Nor has he had his money back. There is no evidence as to disposal of any animal. It is clear that someone stole the animal or part of the money, but in my view there is a reasonable doubt as to whether it was Vui. Charge dismissed.

Convictions will be entered and the Defendants are remanded in custody to the 12th April 1983 for Probation reports and sentence.