

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

**CR NOS. 482/21,534/21, 575/21, 576/21**

**K**

**v**

**ROBERT TAIMOE TAPAITAU**

Hearing: 22 March 2023

Appearances: P Wicks KC and J Crawford for the Crown  
N George and M Tangimama for R Tapaitau

Sentence: 22 March 2024

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**SENTENCING NOTES OF PJ KEANE, CJ**

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[1] Robert Tapaitau, you appear for sentence for four offences: three cheque frauds between 16 – 18 July 2019, and a conspiracy to defraud between 9 September – 11 October 2019.

*Three cheque frauds*

[2] Your first three offences, committed jointly with Mrs Puna, arose as a result of your personal trip to New Zealand to attend your uncle’s funeral between 16 – 20 July 2019, paid for by the Ministry of Infrastructure.

[3] On 13 July 2019, your uncle died in Auckland. On 14 July 2019, you and Mrs Puna, the then ICI Secretary, exchanged texts about flight bookings ICI was to make for you. Clearly, you had already been in contact.

[4] You and Mrs Puna agreed ICI would fund your trip on the pretext you needed, as Minister, to ensure a long delayed bitumen truck immediately left Palmerston North, and was shipped immediately by Matson.

[5] At the last minute a lunch meeting was arranged with a Matson executive at the Villa Maria winery in South Auckland and that took place, but without anything to suggest the truck was discussed, or needed to be.

[6] When you left for New Zealand the truck was about to be transported to Auckland and was already booked with Matson. There was never any suggestion Matson might offload it. The slight delay that ensued resulted from bad weather.

[7] There was no evidence you did anything else in Auckland as Minister; and the fact you asked Mrs Puna to have ICI fund the trip confirms you knew it could never be justified as ministerial travel.

[8] As a result of this fraud, ICI made three cheque payments for your return business class airfare, your accommodation and your rental car. They totalled \$3,454.

### *Conspiracy to defraud*

[9] Your fourth offence, the conspiracy to defraud between 9 September and 11 October 2019, to which you and Mr and Mrs Puna were party, was to conceal her own offending in July.

[10] On 5–8 July 2019, Mrs Puna and her family celebrated her birthday at the Edgewater Resort, funded by a \$3,035 ICI cheque. In September 2019, the Public Service Commission investigated, and she was stood down.

[11] On 9 September 2019, the Punas decided to pass off the Edgewater celebration as a management retreat at which they, as ICI and NES permanent heads, met you, their Minister, to review their work priorities. She contacted you that day and you agreed.

[12] She prepared a four-page record fabricating what had been discussed that weekend. You signed a letter to the Prime Minister, Mr Henry Puna, she and her husband had prepared, protesting she had been prejudged.

[13] This stratagem worked. With the Prime Minister's support, Mrs Puna was reinstated. That it was fraudulent was not discovered until the Police enquiry two years later.

### **Pre-sentence report**

[14] Your pre-sentence report sets your offending against the very positive aspects of your public, community and family life.

[15] Over the last two years you have suffered the loss of your mother, and your wife has suffered such losses equally. Having been a Minister of the Crown, and Deputy Prime Minister, you are now unemployed on Penhryn.

[16] Your report acknowledges your extensive contributions as Deputy Prime Minister, and as Minister for ICI, Transport, NES, and Marine Resources; and those you made especially as ICI Minister.

[17] During your tenure major infrastructure projects enhanced roads, bridges and drainage systems across Rarotonga, Aitutaki and Atiu. New cyclone shelters were constructed on Penhryn and Palmerston.

[18] Against those contributions, your report recognises, you must be held accountable for your failure to uphold the ethical standards high positions within government require; and for your breaches of trust. It recommends imprisonment.

### **Sentencing principles**

[19] Your four offences, your three cheque fraud offences, and the conspiracy to defraud, each attract a maximum term of imprisonment of 5 years; and there is no Cook Islands tariff. Dishonest offending varies so widely<sup>1</sup>.

[20] I must assess how and why you offended; over what time and on what scale; to what degree you planned your offences; how sophisticated you were; the extent to which you acted in breach of trust; your victims, if any, and any loss they suffered, taking into account any reparation.

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<sup>1</sup> *Varjan v R* CA 97/03, 26 June 2003, [21]-[22]; *Police v Thompson-Eliu* [2022] CKHC 18, [17].

[21] I must take particular note of your abuse of office as a Minister of the Crown. High office carries high responsibility and, when it is abused, high accountability<sup>2</sup>. Corrupt conduct in high office can promote corruption in others. The integrity of the public service can be compromised.

[22] The recent decision of the Court of Appeal in *R v Kamana*<sup>3</sup> is especially important. She was NES deputy director in charge of finance during Mr Puna's tenure. Her offending coincided, with yours and the Puna's. In contrast to you, and them, she pleaded guilty and assisted the authorities.

[23] Mrs Kamana committed five thefts between 28 November 2019 – 28 February 2020. She saw to the issue of five cheques, each less than \$5,000, not requiring external approval, which she had the authority to co-sign with another senior staff member. Those cheques were issued for NES goods and services. She used the funds for herself and her family. They totalled \$12,755.

[24] On sentence the then Chief Justice, Sir Hugh Williams, fixed his sentence starting point to reflect, as he said, Mrs Kamana's gross breach of trust and theft of public money, at the upper end of a 2–3 year imprisonment range.

[25] To take account of her previous good character and community service, and that she was sole income provider for her family, including a disabled brother, he reduced his starting point by a series of discounts.

[26] He sentenced Mrs Kamana to four months' imprisonment, to which he added probation for one year on discharge. The Crown appealed that sentence as manifestly inadequate.

[27] On the appeal, the Court of Appeal said that, when on appeal a sentence does prove manifestly inadequate, that sentence will only be increased to the lower end of the available sentence range.

[28] They adopted the Chief Justice's starting point, fixed at 2 years, 9 months; holding that to be well-supported by authority. They held the discounts given flawed and excessive, and the end sentence not to reflect the gravity of Mrs Kamana's offending.

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<sup>2</sup> *R v Field* [2012] 3 NZLR 1 (SC); *Police v Bishop* [2016] CKHC 15.

<sup>3</sup> *R v Kamana* [2022] CKCA 2.

[29] They held that her sentence should have been 12 months' imprisonment, but that on the appeal nine months was the least sentence they could properly impose. That was the outcome of the appeal.

[30] As to the gravity of Mrs Kamana's offending, the Court said this:

In this case [Mrs Kamana] pleaded guilty, had otherwise been of good character, contributed well to the community and church, provided sole support for a household which included a disabled adult and provided valuable assistance to authorities. However, it is impossible to overlook the gross breach of trust involved in exploiting such a senior management position, the particular responsibility placed on those entrusted with public funds, the premeditation and planning involved, and the multiple offending over a period. Without overlooking the role of personal factors, they must take second place to the need for deterrence in cases of this kind.

[31] In sentencing you, I must, as the Court there held, first fix a global starting point reflecting all the aggravating and mitigating factors of your offending; and then, quite distinctly, adjust it globally to reflect all such factors personal to you.

[32] The Court's starting point there is highly relevant to your own. The Court's evaluation of the gravity of the offending there is also highly relevant. They gave accountability and deterrence first place.

### **Offences**

[33] The first and most fundamental issue is what my sentence starting point for you must be; and, as to that, the Crown and your counsel differ radically.

#### *Crown submission*

[34] The Crown contends for a global starting point of 3 years, 6 months' imprisonment, synthesising starting points of 2 years, 6 months, for the conspiracy and 2 years for the cheque frauds.

[35] The Crown accepts that the cheque frauds occurred over a limited time, but contends your part in the conspiracy to conceal Mrs Puna's misuse of ICI funds heightens your culpability.

[36] The Crown accepts the money you misappropriated was less than in other such cases, especially *Bishop*. But, the Crown contends, it was public money gathered by taxation for public services. That is the critical thing.

[37] The Crown emphasises, especially, your abuse of your high public office. Your accountability, the Crown contends, has to be as high. A deterrent sentence is called for.

#### *Defence submissions*

[38] Your counsel contends that the Crown starting point is grossly excessive. Set against comparable cases, he says, your four offences involved minuscule public funds.

[39] You are not, he contends especially, to be equated with Teina Bishop. He like you was a cabinet minister. But he offended over three years; and the sums in issue in his case came to \$256,745.

[40] Despite my decision convicting you, he contends, you needed to travel to New Zealand urgently to see to the immediate dispatch of the bitumen truck, given the hire cost of such trucks in the Cook Islands.

[41] That being so, he contends, you believed you were entitled to look first to ICI, and to claim a civil list refund later. Within that context, he contends, attending the funeral was legitimate.

[42] He contends, as at trial, that your closest aides, the Punas, dominated and exploited you; that you gained nothing from the conspiracy; that you appear for the first time; that you are remorseful and have much still to contribute to the community.

[43] He submits you should be ordered to pay \$2,289 reparation, and discharged; or ordered to come up for sentence within six months; or sentenced to probation for 12 months, to include six months' community service.

#### *Conclusion*

[44] I am unable to accept your counsel's submission; and, conversely, I do accept the submission for the Crown.

[45] When you became a Crown Minister, Mr Tapaitau, and more especially Deputy Prime Minister, the people of the Cook Islands conferred on you high standing and authority. They invested in you high responsibility and trust.

[46] In committing these offences you abused your high office. You encouraged in their own offending your co-offenders, two public servants, of the highest rank, Mr and Mrs Puna.

[47] That is how corruption spreads, public money becomes misused and dissipated, and the integrity of the public service becomes eroded. And that is why the sentence I impose on you must be deterrent.

[48] The Crown's starting point, three years, six months, is I consider proportionate. But, on the totality principle and just to be sure, my starting point will be three years, three months.

### **Character and contributions**

[49] In evidence for the Crown the Prime Minister confirmed, as he has in his personal reference for you, that he had high confidence in you and valued you as a hard-working, conscientious, Minister. I accept his assessment unhesitatingly.

[50] I accept fully also the tenor of your character references. You are highly regarded, and trusted. You have made large contributions to your church and to your community on Penrhyn, and here on Rarotonga.

[51] What I find so hard to understand, and so very regrettable, is how a man of your obvious talent, energy, and decency, so trusted and admired, could commit the offences for which you are for sentence.

[52] You may have been new to ministerial office. But that does not begin to explain your offences, let alone excuse them. You were dishonest, as you must clearly have known, out, it seems, of some sense of entitlement.

[53] As the Crown says, dishonest offenders, who are trusted and admired, are able to take advantage of that trust, and often do. But, as the Crown accepts, it is open to me to reduce your sentence by a credit, conventionally within the range 10–15%.

[54] Your contributions to society have been so real and positive, I consider, that I should allow you a 15% credit; and so reduce your sentence by six months.

**Conclusion**

[55] I confirm that I have already convicted you of your four offences; and I now sentence you, concurrently, for those offences to imprisonment for two years, nine months.



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**P J Keane, CJ**