

HELD AT APIA

CRIM. NO. S. 450; S. 152;  
S. 153/92

BETWEEN : THE POLICE

Informant

A. N. D. : 1. ENELIKO VISESIO  
2. TANIELU SIONE

Defendants

Counsel : Edwards for Prosecution  
Enari for defendants

Hearing : 18, 22 & 26 September 1992

Decision : 5 November 1992

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DECISION OF SAPOLU, C.J.

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Tanielu and Eneliko you were ably defended by your counsel in this case and the sentence that I will impose is not a reflection on the able manner in which your counsel conducted your case. I will deal with the defendant Tanielu first...

Tanielu you are appearing for sentence on the charge of robbery which carries a maximum penalty of 10 years imprisonment, the charge of theft which carries a maximum penalty of 5 years imprisonment and the charge of possession of explosives which carries a maximum penalty of 6 months imprisonment.

All three charges arose from an armed robbery that took place at the premises of the JR Company at the Afulilo Hydro Power Project. At the time of the incident you were an employee of the JR Company at the Afulilo Project and no doubt you were aware of where explosives were kept on the premises of your employer at Afulilo.

At the hearing of this case, it was clear that you and several other unidentified persons went armed with firearms to Afulilo in a pick-up on Saturday night the 21st of March this year with the object of stealing explosives from your employer's premises at Afulilo. The fact that you were armed with firearms is a clear indication that you intended to use force if necessary to achieve your object. The evidence also showed that you and your co-conspirators wore face masks to conceal your identities from any person that you might confront at your employers Afulilo premises.

When you arrived at Afulilo, you and your co-conspirators held up at gunpoint the two nightwatchmen who were on duty at your employers premises. You then forced the nightwatchmen at gunpoint to walk away from the shack they were in and had them locked inside a restricted container whilst you and your colleagues broke open the lock to the concrete container where the explosives were kept and loaded the explosives and other associated items onto your pick-up. After loading your pick-up with explosives you then left whilst the two nightwatchmen remained locked in the concrete container you had locked them in. It was not until the following morning when the Police arrived that the two nightwatchmen were found by the Police and released from their confinement.

It was later discovered that about 29 cases of explosives, a number of explosive chords, and 734 explosive detonators were stolen from the premises of the JR Company at Afulilo.

In my experience, this must be one of the worst cases of robbery that has come before the Courts for many years. Certainly, in my experience, this case involves the largest quantity of stolen explosives.

I do realise the grave concern of the State regarding the stealing and unlawful use of explosives especially to kill fish. As a result of that grave concern, for some time all explosives imported from overseas are placed

under Police supervision and custody from the time they arrive in the country until the time they are delivered to an individual or a company for use. But even after such a delivery, the explosives are required to be safely locked up by the individual or the company to whom the explosives have been delivered. The key to the place where the explosives are kept and locked, is then placed in the custody of the Commissioner of Police. These measures reflect the grave concern of the State, based on past experience, regarding the stealing and unlawful use of explosives by some people especially to destroy the country's fishery resources and the maritime environment. Perhaps this is a coincidence that this case come up for sentence during environment week.

I have considered all that is said in the defendant's probation report and attached testimonials as well as what his counsel has told the Court, but I see no other appropriate penalty in this case other than an imprisonment term.

On the charge of robbery, the defendant is convicted to 4 years imprisonment; on the charge of theft the defendant is convicted and sentenced to 4 years imprisonment; and on the charge of being in possession of explosives the defendant is convicted and sentenced to 4 months imprisonment. The sentences are concurrent.

In the case of the defendant Eneliko, the same remarks that I have made in relation to the gravity of being in possession of explosives and the concern of the State regarding the unlawful use of explosives also apply to the case of Eneliko. The evidence in this case show that Eneliko on the 30th March this year was found in possession of 67 explosives. He did not explain any purpose for why he was in possession of these explosives, but from what is said in relation to the means he uses to earn his living namely as a planter and as a fisherman, the Court infers the purpose in which Eneliko was in

possession of these explosives was obvious other than to kill fish. I have considered what has been said by counsel on your behalf Eneliko and as well as what is being said in your probation report but in view of the comments that I have already made and the large quantity of explosives which were found in your possession I am of the view that a term of imprisonment is also appropriate in this case.

On both charges of being in possession of explosives I have decided to impose the maximum penalty of six months imprisonment in respect of each charge. In respect of the charge of failing to disclose the source of explosives that were in Eneliko's possession, he is convicted and sentenced to four months imprisonment. Sentences are also to be concurrent.

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CHIEF JUSTICE