



Ombudsman
TONGA

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**THE OMBUDSMAN'S FINAL REPORT ON
THE COMPLAINT BY
MR PENG LIU
OF HALALEVA, TONGATAPU**

CASE NO. OMB. 17/69

**Regarding the Loss of One Gold Chain from the
Complainant's Goods Seized by Police and the Ministry of
Revenue and Customs on the 11th March 2017**

7th November 2017

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EXECUTIVE SUMMARY

- 1 The complainant Peng Liu is the owner of Mike's Studio located at Lalita Building, a business offering massage services and the sale of gold jewelry. He lives in Halaleva with his elderly father, his fiancé and their child.
- 2 On the 11th of March 2017 at approximately 8am the Police and Customs officers of the Ministry of Revenue & Customs ("MRC") executed a warrant issued by the Magistrates Court the day before at the complainant's home at Halaleva and business premises at Lalita Building, Nuku'alofa. The purpose of the warrant was to seize goods suspected to have been smuggled into the Kingdom. The search at Mike's Studio at Lalita Building ended after 4pm and the search at the home at Halaleva ended after 1pm.
- 3 The Police and Customs officers who executed the warrant convened back at the Customs Head Office at the Ports Authority Building Ma'ufanga after the search where the Police recounted and handed over the seized goods to the Customs. The seized goods remained under Customs control until it was returned to the complainant on the 10th of May 2017.
- 4 The complainant through his legal counsel wrote to Customs for the release of his property on the 24th of March 2017. The reply from Customs advised that the investigation was ongoing and could not release the goods. Customs again wrote to the complainant on the 20th April 2017 that the investigation was ongoing and in addition other evidence regarding importation consigned to Losimani Lynch the complainant's fiance that had arrived in December 2016 for which the freight provided had been incorrect. This had resulted in a customs revenue shortfall of \$411.41 which together with the penalty of \$7,905.42 amounted to a total amount due of \$8,316.83. The letter also detailed a consequential tax shortfall of \$5,327.93 which with the penalty of \$1,331.98 amounted to a total of tax and penalty to pay of \$6,659.91. The letter gave the option of paying for the penalties and tax or facing criminal charges. On the 4th of May 2017 the complainant signed a "Deed of Settlement" with Customs to pay the \$8,316.83 customs shortfall and penalties for the exchange of all the goods seized under the search warrant. Clause (vi) of the agreement states –

“(vi) The Second Party [complainant] agrees that the First Party [MRC] is not liable for any damage or loss suffered as a result of the Second Party's search and seizure of goods under search warrant 53/17.”
- 5 The goods were returned to the complainant on the 10th of May 2017 facilitated by Customs officer Uinikoni Kivalu during which it was discovered that 1 gold chain was missing from Exhibit 1.3(b)(1) seized from the residence. The Exhibit note states that there were 20 gold chains and 1 gold bracelet. When the goods were returned to the complainant on the 9th of May 2017 only 19 gold chains were counted by Uinikoni and the complainant.
- 6 The complainant lodged a complaint with this office on the 23rd of May 2017.
- 7 I have four (4) recommendations in this Report pursuant to section 18(3) of the Ombudsman Act 2001-

Firstly – that MRC and Police establishes internal policies or written guidelines for the execution of joint ventures by Police and MRC of search warrants and Customs which includes the following-

- a) the importance of establishing who is the lead agency and the relevant responsibilities is of paramount importance in joint operations between Ministries;
- b) ensuring the when search warrants are executed that there is a clear intention of prosecution;
- c) that the persons on whom the warrants are being executed are present to account for all the goods seized and that the goods are collected and counted in their presence;
- d) that photos of the seized items are taken in such a manner that the quantity and details of the items are easily identifiable;
- e) that officers are sufficiently briefed and trained on their responsibilities including the chain of custody of seized items;
- f) that if the seized items are to be stored other than in Police custody, that Police ensure the security of the seized items before hand over;
- g) that seized items are stored in a secure area at all times;
- h) that when the seized items are returned, that Customs seek Police advice and instructions as to the method and protocol;
- i) that when the seized items were taken before the Magistrate, the items should have been counted in their entirety;
- j) that press releases and information given to the media conform with customs laws; and
- k) MRC and Police should explore joint training opportunities in the future to cover the division of responsibilities and upskilling investigative skills including search warrants, properly conducted interviews and protecting the integrity of exhibits seized.

Secondly - that MRC impose penalties reasonably and comply with the customs laws regarding the imposition of penalties.

Thirdly – that the MRC was indemnified by the complainant for the loss of the gold chain in accordance with the terms of the Deed of Settlement that he signed on the 4th of May 2017.

Lastly – that the MRC and Police reports back to me within **two months** of the date this report is finalized to provide a follow up report on the recommendations.

BACKGROUND

- 8 The complaint was received on the 23rd of May 2017.
- 9 I assigned the investigation to my Investigation Team who undertook the investigation which included interviews with officers from MRC, Police and the complainant and his fiancé.
- 10 The team requested and received documents from the complainant, MRC and Police.

THE OMBUDSMAN'S ROLE

- 11 Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of an organization in his capacity as an officer of that organization. This applies to the Ministry which is an organization under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
- 12 My investigation is not an appeal process nor is it a judicial proceeding. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by MRC and the Police, and then form an opinion as to whether the act or the decision and the procedures followed by MRC and the Police and then form an opinion as to whether the act or the decision was properly arrived at and was one that MRC and the Police could reasonably make.
- 13 My role is to consider the administrative conduct and decisions of MRC and to form an independent opinion on whether that conduct was fair and reasonable.

OPERATION "SPARKLING"

- 14 The MRC gathered information on the complainant noting that the last tax return lodged was in 2016 with sales of over \$100,000 and stock valued at over \$9,000. On the 1st of February MRC officer Suliasi 'Aholelei interviewed the complainant who stated that he was the sole owner of Mike's Studio although he employs his father Hongren Liu and fiancé Losimani Lynch. When asked if he imports jewelry the complainant's answer was – "He does not import the jewelries but when he goes overseas and sees something he likes then he brings it here to Tonga."¹

15

¹ Interview Statement and Intelligence Report dated the 1st of February 2017

On the 10th of March 2017 the MRC Chief Executive Officer, Kulu Bloomfield applied to the Magistrates Court for a search warrant to seize unlawfully imported goods². The basis was investigative work by MRC officers who had viewed high value gold items for sale at Mike's studio believed to have been smuggled into the Kingdom to avoid payment of duty and taxes. It was agreed between the Police and MRC that this would be a joint exercise, the first of its kind so that the Customs Officers can observe, participate and learn from the Police Officers on the execution of search warrants and actions related to it.

- 16 The search warrant was issued on the 10th of March 2017, No. 53/17³. The warrant was executed on the morning of Saturday the 11th of March 2017 at approximately 8am both at the complainant's home at Halaleva and his business premises – Mike's Studio at Lalita Building. MRC and Police called the joint operation "Operation Sparkling".
- 17 The search team (Team 1) at Mike's Studio was led by Chief Inspector of Police 'Atevalu with 8 other police officers and Senior Assistant Deputy Chief Executive Officer Sau Niulala and 11 other customs officers. The search team (Team 2) at the Halaleva residence was led by Inspector of Police Fielea Faeamani with 17 other police officers and Assistant Deputy Chief Executive Officer Heiloni Latu with 9 other customs officers.
- 18 The search teams executed the search warrant on each of the allocated premises and seized various goods and items from both locations. Both search teams returned back to the Customs Head Office at the Ports Authority Building on the afternoon of the 11th of March with the items seized. Team 1 at Mike's Studio returned after 4pm⁴ and Team 2 at the Halaleva residence returned after 1pm⁵. The search teams recounted the seized items and handed over the items into Customs care and control⁶.

SEIZED EXHIBIT 1.3(b)(1) HALALEVA

- 19 At the Halaleva residence, the Team 2 exhibit officers were Sergeant Hulita Takau and Customs officer Felefonu Mapakaitolo. The bulk of the gold items were seized from Halaleva. Each seized item was counted and labeled according to the order of discovery and details regarding the containers the items were found in were recorded. Each discovery was recorded by Constable Kalotia Mafua in the Investigation Diary.
- 20 Diary item No. 13 recorded by Constable Mafua⁷ states –

² Letter to Magistrates Court by Kulu Bloomfield dated the 10th of March 2017

³ Search warranted No. 53/17 issued to Fa'one F. A Bloomfield dated the 10th of March 2017

⁴ Diary Item No. 68 of the Investigation Diary recorded by Constable Uinise Fihaki for the Mike's Studio search team dated the 11th March 2017

⁵ Diary Item No. 30 of the Investigation Diary recorded by Constable Kalotia Mafua for the Halaleva residence search team dated the 11th March 2017

⁶ Diary Item 69 of the Investigation Diary recorded by Constable Uinise Fihaki for the Mike's Studio search team dated the 11th March 2017, Diary Item 39 of the Investigation Diary recorded by Constable Kalotia Mafua for the Halaleva residence search team dated the 11th March 2017

⁷ Diary Item No. 13 of the Investigation Diary recorded by Constable Kalotia Mafua for the Halaleva residence search team dated the 11th March 2017

*"0940hrs 13 WPC Mafua fakaha heni ma'u hake 'a e Exhibit 1.3(B)(A) ko e briefcase 'oku fa'o ai 'a e fo'i mama koula 26 pea fanga ki'i puha 'o fa'o ai 'e seini koula *puha 1 lanu valeti vaivai*

*Ex.1.3 (B)(1) – Kahoa Koula 'e 20
- Vesa koula 'e 01"*

*[WPC Mafua declares here that Exhibit 1.3(B)(A) was discovered being a briefcase containing 26 gold rings and little boxes which contained gold necklace chains * the colour of 1 box was light purple*

*Ex. 1.3(B)(1) – 20 gold necklaces
- 01 gold bracelet]*

21 The value of Exhibit 1.3(b) was estimated at \$33,151.⁸

22 In Diary Item No. 26 of the Investigation Diary recorded by Constable Kalotia Mafua⁹ states –

"1255hrs 26 WPC Mafua fakaha heni kuo lava lelei 'a e search ne fakahoko pea lava mo hono fakama 'opo'opo ngaahi Exhibit 'o label pea hiki 'e Sgt Takau ki he Search List pea 'oku 'osi fakamo'oni ki ai 'a e OIC Customs pe mo Losimani pea 'oange ai pe 'a e tatau 'a Losimani Liu 'i he Search List."

[WPC Mafua declares here that the search has been concluded successfully and the Exhibits have been collected and labeled and recorded by Sgt Takau to the Search List which has been signed by OIC Customs and Losimani and a copy of the search list¹⁰ has been given to Losimani Liu.]

23 *Losimani Lynch the complainant's fiancé was at the Halaleva home (the complainant was present at the Mike's Studio search and confirmed on the 17th of August 2017 that she initialed the pages of the search list as was given to her requiring her signature¹¹. She stated that she had no knowledge of the actual quantities because the quantities were not counted in front of her although she did read what was written on each page of the search list. This was confirmed verbally by Sgt Takau on the 18th of August 2017 who said that Losimani had not been part of the counting "na'e 'ikai kau he lau".*

⁸ Diary Item No. 33 of the Investigation Diary recorded by Constable Kalotia Mafua for the Halaleva residence search team dated the 11th March 2017

⁹ Investigation Diary for the Halaleva residence dated the 11th March 2017

¹⁰ 13 page Search List for the items seized from Halaleva on the 11th of March 2017 each page initialed by Losimani Lynch (bottom left corner) and Heiloni Latu and Sgt Takau (bottom right corner)

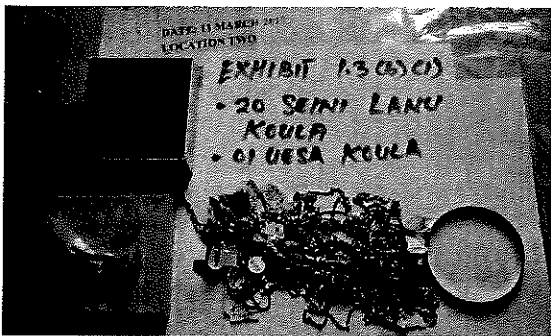
¹¹ Meeting with

24 On the Halaleva Search List at page 8 the following is listed –

“Serial No.	Description of Articles seized	Where found	Police Exhibit No.
(b)	Seini koula 20 fo’i vesa koula ‘e 1 [20 gold chains 1 gold bracelet]	Room 1	Exh 1.3.B.1”

25 Information from Sgt Takau and Constable Mafua on the 18th of August 2017 was that there was no doubt in their minds that the counting of 20 gold chains and the recording thereof in the Investigation Diary and the Search List was correct as they had counted and recounted the chains both at Halaleva and at the Customs Head Office when they handed over the exhibits in Customs care. Customs Officer Michael Cokanasiga signed for the seized items. Both Sgt Takau and Constable Mafua were willing to swear affidavits to that effect.

26 A photo taken on the day of the seizure was provided from Police. Because of the way the gold chains were placed it was not possible to count the number of gold chains.



27 Diary item No. 35 of Team 2’s Investigation Diary¹² noted that instructions from the MRC CEO, ‘Anisi Bloomfield via Michael (Customs) was not to arrest the complaint as he would be fined to cover the duty.

28 On Monday the 13th of March 2017 at approximately 4pm Sgt Takau, Constable Mafua and other officers attended at the Magistrates Court before Magistrate Similoni Tu’akalau to hand over the exhibits seized under the search warrant¹³.

¹² Diary Item No. 35 of the Investigation Diary recorded by Constable Kalotia Fihaki dated the 11th March 2017

¹³ Diary Item No. 73 of the Investigation Diary recorded by Constable Uinise Fihaki and Dairy Item No. 42 of the Investigation Diary recorded by Constable Kalotia Mafua dated the 11th March 2017

Sgt Satini notes at Item 74 of the Investigation Diary for Team 1 as does Constable Mafua in item 43, 44 of the Investigation Diary for Team 2 that the exhibits are handed over to the Magistrate Similoni Tu'akalau who ordered that all the exhibits be held at Customs and if any exhibit is wanted by the owner, he is to apply to the Magistrate Court for release¹⁴. The complainant was present at this appearance.

- 29 Information received from officers Sgt Takau, SADCEO Cokansiga, Customs Officer Vitikami Paongo was that although all the exhibits were taken before Magistrate Similoni Tu'akalau on the 13th of March 2017, the gold items were not recounted before him but were only shown to him in their containers.

THE EXHIBITS UNDER CUSTOMS CONTROL

- 30 Since the afternoon of the 11th March 2017 until they were returned to the complainant on the 10th of May 2017, the seized goods from the complainant's home at Halaleva and his business Mike's Studio were in Customs control except for the short time they were transported to the Magistrates Court on the afternoon of the 13th March 2017. During this time, the items were stored in large plastic rectangle bins with lids (approximately 5) in the office of Michael Cokanasiga at the Customs Head Office at the Ports Authority Building at Ma'ufanga. Michael Cokanasiga's office is locked however when asked about access to his room he admitted that about 5 other customs staff have a key to his room and he does not necessarily lock his room every time he leaves it.



¹⁴ Diary Item No. 75 of the Investigation Diary recorded by Constable Uinise Fihaki and Dairy Item No. 45 of the Investigation Diary recorded by Constable Kalotia Mafua dated the 11th March 2017, Tu'utu'uni 'i he Tohi Kumi Koloa fika 53/2017

- 31 On Tuesday the 14th of March 2017 Michael Cokanasiga together with Customs Officers Vitikami Paongo and Ane Fangalahi opened the exhibit containers for the purpose of sorting through the gold items to decide which might have been imported and which were likely to have been purchased locally. They did not recount the exhibits but looked through them and then put the items back in their original containers. SADCEO Cokanasiga noted that at one time he did leave the room to attend to other customs matters but then returned left the room leaving. Vitikami Paongo also stated on the 31st of July 2017 that he had stayed only to review the items seized from Mike's Studio and then left.

THE DEED OF SETTLEMENT AND RELEASE OF THE SEIZED ITEMS

- 32 The complainant through his legal counsel Petunia Tupou wrote to Customs for the release of his property on the 24th of March 2017¹⁵ -

“This letters seeks that you immediately release my client's property if nothing has been found to establish or justify the retention of the same. My client, his business and his family are suffering as a direct result of your Ministry's deployment of about 40 persons to attend his home and business to exercise the seizure, holding onto his goods, cash and belongings.”

The letter also raised concerns about media releases by MRC about the seizure.

- 33 On the 27th of February 2017 (possibly typo, should be March) Deputy Chief Executive Officer, Customs & Trade Division Kelemete Vahe wrote to Petunia Tupou¹⁶ stating that that the investigations were ongoing and the exhibits could not be released. It is noted that from the 17th of March 2017 to the 24th of April 2017 the complainant met with Customs 5 times to discuss his case.¹⁷

- 34 On the 20th of April 2017 the Acting Chief Executive Officer, Magdalena Fifita wrote to the complainant¹⁸ that the investigation was ongoing and in addition other evidence regarding importation consigned to Losimani Lynch that had arrived in December 2016 for which the freight provided had been incorrect. This had resulted in a customs revenue shortfall of \$411.41 which together with the penalty of \$7,905.42) amounted to a total amount due of \$8,316.83 (assessed under the Customs & Excise Management Act). The letter also detailed a consequential tax shortfall of \$5,327.93 with the penalty of \$1,331.98 amounted to a total of tax and penalty to pay of \$6,659.91 (assessed under the Revenue Services Administration Act). The letter gave the option of paying for the penalties and tax or facing criminal charges. The total amount of duty, taxes and penalties in the letter was \$14,976.74.

¹⁵ Letter from Petunia Tupou to Michael Cokanasiga dated the 24th of March 2017

¹⁶ Letter from Kelemete Vahe DCEO, Customs & Trade to Petunia Tupou dated the 27th February 2017

¹⁷ Undated Internal Memo from Michael Cokanasiga to Kelemete Vahe with heading "Re: Mike Studio"

¹⁸ Letter from ACEO Magdalena Fifita to the complainant dated the 20th of April 2017

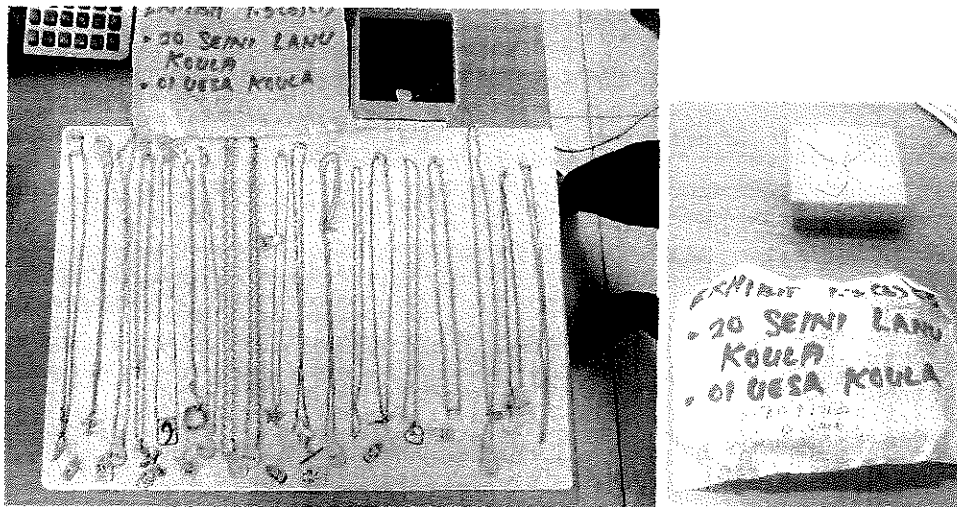
- 35 The complaint on receiving the letter from the Acting Chief Executive Officer wrote to Kulu Bloomfield¹⁹ the Chief Executive Officer of MRC accepting the offer to settle the matter administratively.
He stated that he was willing to pay the revenue shortfall for the misstated freight and that regarding the tax and penalty assessed, he had talked to the tax officers and was expecting a comprehensive audit.
- 36 On the 4th of May 2017, the complainant signed a “Deed of Settlement”²⁰ with Customs to pay only the \$8,316,83 customs shortfall and penalties for the exchange of all the goods seized under the search warrant. There was no reference to the tax penalty that had been mentioned in the 20th of April 2017 letter from Magdalena Fifita. The payment would be by installment. Included in the Deed was an indemnity clause - clause (vi) of the agreement states –
- “(vi) The Second Party [complainant] agrees that the First Party is not liable for any damage or loss suffered as a result of the Second Party’s search and seizure of goods under search warrant 53/17.”
- 37 Acting Chief Executive Officer of MRC Kelemete Vahe wrote to the Magistrates Court on the 8th of May 2017²¹ seeking permission to release the items seized under warrant 53/17 to the complainant. The Chief Magistrate replied to this letter on the 9th of May 2017 granting this request in accordance with section 112(2) of the Customs & Excise Management Act.
- 38 On the 9th of May 2017, the complainant with Losimani Lynch met with Customs Officer Uinikoni Kivalu at the Customs Enforcement Office (formerly the Shipping Corporation of Polynesia building) at Ma’ufanga for the purpose of returning the complainant’s seized goods. Uinikoni Kivalu was the only customs officer however Customs Officer Fa’one Bloomfield was aware of the handover and was in the next room. The complainant and Losimani proceeded to count the seized items in accordance with the Search List with Uinikoni watching. During this accounting it was discovered that one gold chain from Exhibit 1.3(b)(1) was missing. The Exhibit Note stating 20 gold chains but only 19 were counted by the complainant and Uinikoni. Uinikoni took a photo laying out each gold chain and called Michael Cokanasiga who told him to hold the items and he will come and check. Michael Cokanasiga confirmed that there were only 19 gold chains existing for Exhibit 1.3(b)(1). All the items were returned to the complainant on the 10th of May 2017 and evidenced by the Transfer/Cart Note signed by the complainant²².

¹⁹ Letter from the complainant to CEO Kulu Bloomfield dated the 2nd of May 2017

²⁰ Deed of Settlement between MRC, the first party and the complainant, the second party dated the 4th of May 2017

²¹ Letter from MRC Acting CEO Kelemete Vahe to the Magistrates Court of Tonga dated the 8th of May 2017

²² Transfer/Cart Noted dated the 10.05.2017 Time:1117hrs



OPINIONS

- 39 In consideration of the information before me, there are areas of concern in the joint operation by the MRC officers and Police officers –
- (a) that the complainant's partner Losimani Lynch was not present at the counting of the exhibits at Halaleva but was requested to sign each page of the Search List;
 - (b) that the photos taken of the exhibits and in particular of Exhibit 1.3(b)(1) on the day of the seizure did not show the gold chains in a manner that they could be easily identified and counted;
 - (c) that the MRC Chief Executive Officer Kulu Bloomfield had already on the day of the seizure (11th March 2017) identified that there was no intention to arrest the complainant rather only to fine him to cover the duty;
 - (d) that the Team 2 Customs exhibits officer Felefonu Mapakaitolo was not the officer who signed for the exhibits when the exhibits was handed over to Customs on the afternoon of the 11th of March 2017 at the Customs Head Office, rather Michael Cokanasiga who was not part of the seizure team at Halaleva signed for the Team 2 exhibits;
 - (e) that the Investigation Diary entries do not specify action taken. When Team 2 handed over the exhibits to Customs at the Customs Head Office the Diary Item states only that all the exhibits were handed over by Sgt Takau to Maikolo (Customs)²³. Information from Sgt Takau was that there was another counting of the exhibits when the handover was conducted at the Customs Head Office on the afternoon of the 11th March 2017 but this is not recorded in the Investigation Diary; and

²³ Diary Item No 38 and 39 of the Team 2 Investigation Diary as recorded by Constable Uinise Fihaki on the 11th March 2017

(f) when the seized items were taken to the Magistrate Court on Monday the 13th of March 2017, the gold items were not counted but were referred to in general.

40 There were also issues regarding the security of the exhibits –

(a) that the Police Diary of the seizure do not record any reference to any effort by the Police to inquire as to where the exhibits would be stored nor any opinion as to whether storage in Michael Cokanasiga's room was appropriate;

(b) that there was no secure room solely for the purpose of storing the exhibits but were stored in the office of Michael Cokanasiga which although lockable, at least 5 other persons besides Michael had the combination to the lock on his office door;

(c) on the 14th of March 2017, Vitikami Paongo, Ana Fangalahi and Michael Cokanasiga opened the exhibits for review and while doing so, Michael left the room and returned. Vitikami also left the room after he had completed the review of Team 1 exhibits;

(d) that there was opportunity for persons to access the exhibits; and

(e) that Customs Officer Uinikoni Kivalu was the only officer in the room with the complainant and Losimani Lynch when the seized items were handed back.

41 I accept that Operation Sparkling was to have been a learning exercise for the Customs Officers and as such there are areas for improvement.

42 That the comments made by the MRC in the media shortly after the seizure, contravened section 125 of the Customs & Excise Management Act "a customs officer shall not communicate or allow to be communicated any information obtained under the customs laws". The search warrant had been issued under section 75 of the Customs & Excise Management Act so all the information from the search had been obtained under the customs laws.

43 The letter with the penalties for offences unrelated to the seizure of the complainant's goods dated the 20th of April 2017 advised that the complainant had the option of accepting the penalties or be prosecuted. Section 88(3) of the Customs & Excise Management Act (for customs offences) states that –

"Any person to whom a notice of penalty is issued under this Act (the complainant was issued with penalties for section 82 of the Customs & Excise Management Act), shall not be liable to the corresponding criminal offences for the same action."

44 As the complainant had been issued with the penalties he should not have been threatened with prosecution because the law does not allow this. This was misleading information and may have contributed to the acceptance by the complainant of the penalties.

In addition, the letter was worded as penalties for offences which was also misleading as customs penalties and offences are two separate actions, with separate outcomes. To use the term offence to describe the action for which an administrative penalty was imposed was misleading and incorrect.

- 45 I question the reasonableness of the penalty that was imposed. The actual revenue forgone for the alleged misstatement of freight by Losimani Lynch in December 2016 was \$411.41 but the maximum penalty was imposed, that is the value of the imported goods multiplied by 3. The penalty assessed was \$7,905.42, a 1900% increase.
- 46 The letter from the Magistrate dated the 9th of May that Customs could dispose of the seized goods as referred to in section 112(2) of the Customs & Excise Management Act 2007 but section 112 relates to the seizure process for goods seized under section 108 and 109 of the Customs & Excise Management Act. The complainant's goods were seized under warrant pursuant to section 74 of the Customs & Excise Management Act.
- 47 That the Deed of Settlement with the provision indemnifying the Ministry from losses incurred relating to the seized goods is clear and binds the complainant. In addition, section 8(2) of the Customs & Excise Management Act provides that Customs will not be liable for any loss or action for loss or damage to goods under Customs control unless such loss or damage was the direct result of the willful act or negligence of a Customs officer. The complainant will have to prove this.

RECOMMENDATIONS

- 48 **Firstly** – that MRC and Police establishes internal policies or written guidelines for the execution of joint ventures by Police and MRC of search warrants and Customs which includes the following-
- (a) the importance of establishing who is the lead agency and the relevant responsibilities is of paramount importance in joint operations between Ministries;
 - (b) ensuring the when search warrants are executed that there is a clear intention of prosecution;
 - (c) that the persons on whom the warrants are being executed are present to account for all the goods seized and that the goods are collected and counted in their presence;
 - (d) that photos of the seized items are taken in such a manner that the quantity and details of the items are easily identifiable;
 - (e) that officers are sufficiently briefed and trained on their responsibilities including the chain of custody of seized items;

- (f) that if the seized items are to be stored other than in Police custody, that Police ensure the security of the seized items before hand over;
- (g) that seized items are stored in a secure area at all times;
- (h) that when the seized items are returned, that Customs seek Police advice and instructions as to the method and protocol;
- (i) that when the seized items were taken before the Magistrate, the items should have been counted in their entirety;
- (j) that press releases and information given to the media conform with customs laws; and
- (k) MRC and Police should explore joint training opportunities in the future to cover the division of responsibilities and upskilling investigative skills including search warrants, properly conducted interviews and protecting the integrity of exhibits seized.

Secondly - that MRC impose penalties reasonably and comply with the customs laws regarding the imposition of penalties.

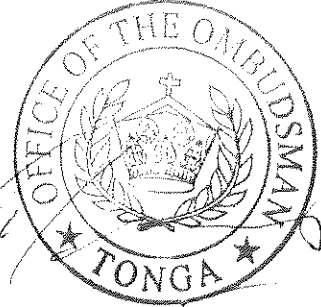
Thirdly – that the MRC was indemnified by the complainant for the loss of the gold chain in accordance with the terms of the Deed of Settlement that he signed on the 4th of May 2017.

Lastly – that the MRC and Police reports back to me within **two months** of the date this report is finalized to provide a follow up report on the recommendations.

RESPONSE FROM THE MINISTRY OF POLICE

- 49 On the 11th of October 2017, I delivered my Provisional Report to MRC and the Police setting out my findings, opinions and recommendations for their review. On the 31st of October 2017 I received a letter from the Police accepting the recommendations of this Report and suggesting additional recommendations which I have added to this report. In addition, the Commissioner of Police advised that Tonga Police had developed an Internal Control Systems manual for the control and management of operation and administration of its internal systems. A copy of this letter is attached to this Report (section 18(5) of the Ombudsman Act 2001).

50 I commend the Commissioner of Police for taking positive action to address the issues raised in this complaint.



'Aisea H. Taumoepeau, SC
Ombudsman

7th November 2017



Safer Communities

OFFICE OF THE COMMISSIONER FOR TONGA POLICE

Nuku'alofa, Tonga

P.O. Box 8, Phone (676) 23-318 & Fax (676) 23-036, email: stevecaldwell.tongapolice@gmail.com

RECEIVED
11/11/17
Don
FBI
3/11/17
3/11

31st October, 2017

Mr 'Aisea Taumoepeau SC
Ombudsman
Mateialona Road
Retirement Fund Building
NUKU'ALOFA.

Dear Ombudsman,

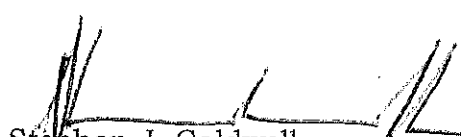
I thank you for your Provisional Report in relation to the complaint from Mr Peng LIU, Case No. OMB 17/69.

I completely agree with the recommendations you have provided. I would also like to add the following recommendations to support recommendation 48(d) in the provisional report.

1. The importance of establishing who is the lead agency and the relevant responsibilities, is of paramount importance, in joint operations between Ministries.
2. Ministry of Inland Revenue and Customs, and Tonga Police should explore joint training opportunities in the future. Training would cover responsibilities of the two Ministries and include up-skilling in investigations, search warrants, properly conducted interviews and protecting the integrity of exhibits seized.

For your interest, Tonga Police have recently developed Internal Control Systems, which provides checks on Exhibit storage and movement, amongst other things. A copy is attached for your perusal.

Sincerely,


Stephen J. Caldwell
Commissioner of Tonga Police

