

**IN THE DISTRICT COURT
AT PALMERSTON NORTH**

**CIV-2017-054-000405
[2017] NZDC 17458**

BETWEEN IMMIGRATION NEW ZEALAND
 Applicant

AND SAANE KAFOA
 Respondent

Hearing: 8 August 2017

Appearances: M Blashke for the Applicant
 P Walker for the Respondent

Judgment: 8 August 2017

ORAL JUDGMENT OF JUDGE L C ROWE

[1] This is an application by the Immigration Department for a warrant of commitment in relation to Saane Kafoa, also known as Lomu. Mrs Kafoa is Tongan. She has been in New Zealand for a number of years, and unlawfully so since March 2005. She was served with a deportation order in 2012 and essentially went to ground.

[2] She has incurred debts with various DHBs which appear to be in relation to her having children in New Zealand and she has previously refused to divulge her address. The assertion is that she has tried to undermine New Zealand's immigration system by not being forthcoming with her address and continuing to remain in New Zealand, notwithstanding the deportation order in 2012.

[3] She came to police attention a few days ago in Levin where she has been living with her husband, who also has unlawful immigration status in New Zealand. When this was found out she was taken into custody under the Immigration Act 2009 and this application for the warrant of commitment was made.

[4] There are very good grounds for issuing a warrant of commitment pending Mrs Kafoa's deportation including the amount of time since her status in New Zealand became unlawful and the deportation order in 2012, subsequently refusing to divulge her address and going to ground for a number of years.

[5] Having said that, Mrs Kafoa has a [young child] who is currently in the care of her sister, and she is four months' pregnant. She very sadly had an infant child pass away who is buried in Levin. If she is taken into custody she will not have the opportunity to visit her child's grave before leaving New Zealand.

[6] If it was at all feasible to be able to release her on conditions instead of issuing a warrant for commitment, there are good humanitarian or compassionate reasons for doing so.

[7] I have received affidavits today from Mrs Kafoa's sister, Loneka Miller, who is present in Court and I spoke to her yesterday. She is offering her house in Levin where she lives with her husband. She is taking time off so that she can assist. She will be flying back to Tonga with her sister and her sister's [child] when the deportation is able to be arranged. Mrs Kafoa would have her own room. Mrs Millar undertakes to see to it that Mrs Kafoa complies with any conditions that I might impose and will report any failure to comply with those conditions. She understands that she can withdraw her consent at any time.

[8] I also have an affidavit from Mrs Kafoa's pastor. He lives in Levin, he is the pastor of the Tongan Assembly Church in Palmerston North. He has known Mrs Kafoa for two years. He says that she is a youth member of the church and teaches the younger ones. She is very committed, she comes to church three times a week for youth services and then on Sunday for the main service. He describes her as reliable and he offers his support.

[9] Mrs Miller and the church offer tangible support for Mrs Kafoa to the extent that I am prepared to release her on conditions under s 320 Immigration Act. There are many other members of her community and family who are in Court today, also demonstrating their support of her. They will understand that this is a moment when

their willingness to help and their credibility is being recognised by the Court. I think as a community you will know that if Mrs Kafoa lets you down and goes to ground again, then that will also undermine your credibility as a community and it may impact in the future if you are ever put in this position again. So I do trust that you will help Mrs Kafoa obey her conditions and see to it that she gets on the aircraft back to Tonga in a week or two when required to do so.

[10] That being the case for compassionate reasons I decline the application for a warrant of commitment beyond today. I order that, Mrs Kafoa, you be released into the care of your sister and you will be on the following conditions:

- (a) You are to live at [address deleted], Levin.
- (b) You are to remain at that address between 7.00 pm and 7.00 am daily, it is a night-time curfew. We need to know that you are there.
- (c) If an immigration officer or police officer comes to the door between 7.00 pm and 7.00 am to check that you are there, and they may, you need to present at the door to show that you are there.
- (d) You are required to complete any documentation necessary to obtain travel documents for the purpose of deportation. You need to co-operate with the Immigration Department, help them complete all of the documents.
- (e) You are to surrender yourself to an immigration officer or police officer at 11.00 am on 19 August at the Wellington Airport Police Station for the purpose of deportation. That looks like the day you are leaving.

[11] You do need to understand that if you breach any of these conditions you can be arrested without warrant at any time and obviously at that point you would be held in custody until you were deported.

[12] I do not know what the future holds for you and any future applications you might want to make to return to New Zealand but I think you do need to understand

that if you did not obey these rules, you would be making it nigh-on impossible to return to New Zealand at any time. You have good reason to come back here as we all know, so it is important you obey these rules and it is important that you do not let your family down and your wider Tongan community down who have shown you a lot of support today.

[13] There is a notice of conditions of release that you need to sign. I will stand you down so that you sign that. Once you have signed that, go home with your sister and your daughter. Please obey the rules. I am trusting you, your community and your family.

LC Rowe
District Court Judge