

IN THE COURT OF APPEAL OF TONGA  
CRIMINAL JURISDICTION

*Crown Law*  
*Scan & file*  
AC 19 of 2014  
[SC CR 35 of 2013]  
*12/08/14*

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BETWEEN:                    KELEPI HALA'UFIA                    -                    Applicant

AND                    :                    REX                    -                    Respondent

'O. Pouono for the Applicant

J. Lutui for the Respondent

**DECISION**

- [1] The Applicant, formerly an Inspector of Police, was convicted of manslaughter after trial by Judge alone and, on 9 July 2014 was sentenced to 11 years imprisonment, the last 12 months being suspended. The period of suspension does not appear to have been specified.
- [2] On 11 July 2014 notice on appeal against conviction and sentence was filed. The principal ground of appeal is that the trial judge placed undue weight on the evidence of one Manu.
- [3] The Applicant was one of five accused standing trial in connection with the same incident in which an off duty New Zealand police officer of

Tongan origin was beaten to death in the Central Police Station after being taken into custody. Two of the five were acquitted.

- [4] This is an application for bail pending the hearing of the appeal which, the Registrar of the Court of Appeal advises, will be heard in the forthcoming October sessions.
- [5] Mr Pouono relies on Section 4B(1)(a) of the Bail Act which provides that a Court shall grant bail pending appeal if a) there is a reasonable prospect of the appeal succeeding and c) there are substantial grounds for believing that the Applicant will surrender to custody when required and will commit no further offences while on bail. Condition c) is not in issue, the only question is whether condition a) is satisfied.
- [6] Mr Pouono relied on the second sentence of paragraph 85 of the judgment which he submits mis-states the correct position which would become apparent if a re-trial were to be ordered and the defence given further opportunity to cross-examine Mr Manu.
- [7] Having perused the judgment I am satisfied that while Mr Pouono may have an arguable point it falls far short of providing a reasonable prospect of successfully appealing the conviction.
- [8] The question which the Court will ask itself on the hearing of the appeal is whether the conviction is unsafe. If the Court is satisfied that a conviction is safe then despite misdirections or irregularities the conviction will be upheld. The proper venue for thorough consideration of this question is the full Court.

[9] The application fails and is dismissed.

NUKU'ALOFA: 8 August 2014.

N.Tu'uholoaki  
8/8/2014.



  
PRESIDENT