

IN THE COURT OF APPEAL OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

APPEAL NO. AC 8 of 2011
[CR 152 of 2010]

BETWEEN: **JOHN OWEN JONESSE**

- **Appellant**

AND : **THE CROWN**

- **Respondent**

Coram : **Scott P**

Burchett J

Salmon J

Moore J

Counsel : ***Mr Niu*** for the Appellant

Mr Sisifa for the Respondent

Date of hearing : **19 September 2011.**

Date of judgment : **30 September 2011.**

JUDGMENT OF THE COURT

- [1] This is an appeal against conviction and sentence arising out of the tragedy of the sinking of the MV Princess Ashika. Mr Jonesse was charged and convicted after trial before a jury on one charge of manslaughter by gross negligence, five counts of sending an unseaworthy ship to sea and offences of forgery and knowingly dealing with a false document. He received a 5 year sentence on the manslaughter charge and sentences of 4 years or less on the other charges, all to be served concurrently. There was no provision for suspension of any part of the sentence.
- [2] When the matter came before this court we were advised by Counsel that the Crown was prepared to concede that, at worst, the appellant's blameworthiness was no greater than that of the captain of the vessel and that his sentence should be no greater than that imposed on the captain. In the light of this concession Mr Niu for the appellant withdrew the appeal against conviction.
- [3] It is of course for this court to determine whether in the light of the Crown's concession the sentence of five years with no suspension of any part of that term should be substituted by the lesser sentence and suspension of a substantial part, imposed on the captain of the Princess Ashika.
- [4] Mr Jonesse was the managing director of the Shipping Corporation of Polynesia Limited the owner of the Princess Ashika. He had been in that position for one year. He had previously held administrative positions in New Zealand companies but had not been involved in a company with shipping interests. The Princess

Ashika was at the relevant time the principal asset of the company. The company also employed a captain to manage the onshore interests of the company and of course the captain of the vessel itself. The position of the onshore captain was vacant at the relevant times.

- [5] The sentencing judge noted that Mr Jonesse was the controlling mind of the company and that the company itself was in a shambles regarding safety aspects required by law. The Princess Ashika was purchased from Fiji and Mr Jonesse was involved in the purchase. The judge considered that the vessel must have been obviously unseaworthy, even to a person without shipping experience. However when it arrived in Tonga it was inspected and eventually given a certificate of seaworthiness by the Department of Marine. On its fifth voyage the ship sank with a large loss of life. The judge in the court below considered that the court should send a clear message to other companies and individuals that they must not behave as the defendant company had done in this case and if they did, they did so at their peril. He properly emphasized the extent of the tragedy resulting from the failure to ascertain the deficiencies of the vessel. He considered that a prison sentence was entirely appropriate to deter others and punish the appellant and his company.
- [6] Mr Niū for the appellant acknowledged that Mr Jonesse had overall responsibility for the company but pointed out that it had a captain to look after the shore operations and a captain to look after the ship at sea. He noted that three surveyors had signed a report covering their areas of inspection and had made recommendations as to work which should be done. The acting


director of Marine read the report and issued a certificate of seaworthiness. Mr Niu emphasized that Mr Jonesse had no previous experience of shipping and that there was no admission from him that he knew that the ship was unseaworthy. Counsel emphasized that Mr Jonesse had been without employment for over a year and that his convictions meant that he was unlikely to be employed again in positions comparable to those which he had formerly held. His wife and children had returned to New Zealand and Mr Jonesse would have to serve his term of imprisonment without the comfort of visits from family members. The appellant is 62 years of age and is a first offender. Mr Niu submitted that in the circumstances the term of imprisonment imposed was excessive particularly in relation to the sentences imposed on others charged with offences relating to the sinking of the ferry.

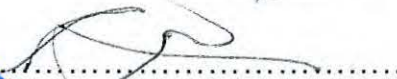
- [7] The Crown conceded that the sentence was excessive and that the appropriate sentence was that imposed on the captain of the vessel, subject to the amendment to that sentence which the Crown sought in an appeal which we heard following this one. This will have the effect that Mr Jonesse will be entitled to immediate release when this judgment is handed down. The Crown also conceded that it was difficult for a person with no background knowledge of shipping to go behind the certificate of seaworthiness issued by the appropriate authority.


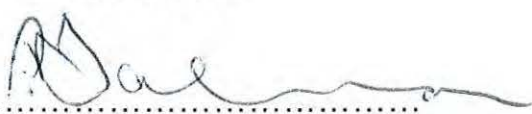
Conclusion

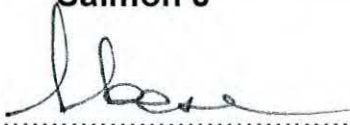
- [8] We are satisfied that for the reasons outlined by Counsel the sentence imposed was manifestly excessive particularly in relation to the sentences imposed on other offenders. Unless other factors require a different approach parity of sentences with co-

offenders of similar culpability is an important consideration in sentencing. Consequently we allow the appeal against sentence, vacate the sentence imposed in the court below for manslaughter and replace it with a sentence of three years and six months the last three years of that sentence to be suspended for three years. The Appellant also received sentences of four years imprisonment on each of 5 counts of sending an unseaworthy ship to sea. Those sentences are also vacated and replaced with sentences of 3 years 6 months in each case with a corresponding period of suspension. There is no need to make any change to the remaining two sentences which were each of 6 months imprisonment. The order that all sentences be served concurrently also remains. As indicated above our understanding is that the appellant has served six months of his sentence so that he will now be entitled to immediate release from prison.


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Scott P


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Burchett J



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Salmon J


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Moore J