

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

APPEAL NO. AC 10 of 2011
CR 155 of 2010

BETWEEN : REX - Appellant

AND : SEMISI VE'ETUTU POMALE - Respondent

Coram : Burchett J
Salmon J
Moore J

Counsel : *Mr Sisifa* for the Appellant
Mr Pouono for the Respondent

Date of hearing : 19 September 2011.

Date of judgment : 30 September 2011.

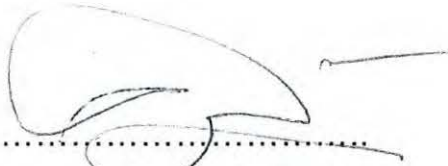
JUDGMENT OF THE COURT

- [1] This Crown appeal (which is not opposed) raises a short point of sentencing law in Tonga.
- [2] There is in the Kingdom statutory provision for the suspension of the whole or part of a sentence, but in limited circumstances. To that end, s.24 (3)(a) of the *Criminal Offences Act* (Cap.18) provides:
- “It shall be lawful for the Court when imposing a sentence of imprisonment to suspend the whole or part of such sentence for any period up to 3 years.”
- [3] The case being one where the principles stated in *Misinale v R* (1999) [2000] Tonga LR 322, it was accepted, did warrant suspension, Shuster J sentenced the Respondent to 5 years of imprisonment, part to be suspended for 3½ years, so that he was to serve 18 months starting from 1 April 2011. From this, the Crown appeals on the basis that it exceeds the allowable discretion under s.24 because the suspension exceeds 3 years.

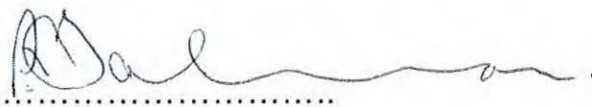
[4] The Court considers the Crown's contention is unanswerable. Accordingly, it allows the appeal; sets aside the sentence imposed and order made below, and substitutes the following.

In place of the sentence and order of the Supreme Court:

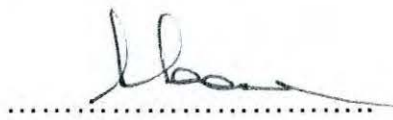
- (i) The Respondent is sentenced to 4½ years imprisonment in total;
- (ii) The Respondent is to serve 18 months imprisonment starting from 1 April 2011;
- (iii) The remaining 3 years imprisonment is suspended for 3 years.



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Burchett J



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Salmon J



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Moore J