IN THE COURT OF APPEAL OF TONGA
ON APPEAL FROM THE
SUPREME COURT OF TONGA **APPEAL NO.2/2001**

BETWEEN : ***LATU TA'UFO'OU***

- ***Appellant***

AND : ***THE PRISONS DEPARTMENT and the KINGDOM OF TONGA***

- ***Respondents***

Coram : Burchett J
Tompkins J
Spender J

Counsel : Mr Fifita for the Appellant
Mr Bloomfield for the Respondent

Date of hearing : 24 July 2001.
Date of judgment: 27 July 2001.

JUDGMENT OF THE COURT DELIVERED BY BURCHETT J

[1] The Appellant brought an action against the Respondents for damages, alleging that he was falsely imprisoned from 9 November 1999 (when he claimed he should have been released from gaol after serving consecutive sentences for housebreaking, theft and other offences) until 14 November 1999, a period covering six days. In fact, he was released on 13 November 1999. His action having been dismissed, he appeals to this Court.

[2] Briefly, the circumstances are the following. The Appellant, who had had some experience as an inmate of a prison by virtue of having served two prior sentences of imprisonment, totalling two years, for offences of dishonesty, was admitted to Hu'atolitoli prison on 9 April 1997 to serve consecutive sentences of 3 months, 1 year and 4 years, that is to say, a total period of 5 years and 3 months. While he was in the prison, the eightieth birthday of the King was celebrated, among other things, by three royal pardons, and by a decision of the Privy Council, approved by His Majesty, that twenty-eight prisoners, among whom was the Appellant, should have their terms of imprisonment reduced by one quarter. It is not in dispute that, after having his term of imprisonment so reduced, the Appellant was entitled, as well, to receive the benefit of the Mark System provided for by the Prisons Regulations made under The Prisons Act, as applied to the reduced term. Under the Mark System, regulations 184 et seq. allowed to a male prisoner, in the words of reg. 185, a "maximum remission obtainable" of "one fourth of the sentence". This meant that the Appellant's release date, if he did earn all available marks, suffering no deductions, would be 9 November 1999.

[3] What is in dispute, leaving aside some peripheral questions, is the determination of the officers of the Prisons Department that the Appellant did not earn all the marks required for the maximum remission obtainable, but only sufficient to enable him to be released on 14 November 1999, or as that was a Sunday, the day before, 13 November 1999, when he was, in fact, released. The reason for the shortfall in marks was the Appellant's alleged illness on a number of occasions when he was required to do work. Under the system, a prisoner obtained six marks for each day served, but in order to obtain the daily maximum of eight marks, he would need to do, under reg. 186, "a fair day's labour" and "steady hard work and full performance of the task allotted for the day", or alternatively, the case would have to come within reg. 188 or 189. Those last regulations provide, in some circumstances, for a discretion in the Gaoler where a prisoner is in hospital, and for special

treatment of a prisoner where "the medical officer" certifies him "to be only capable of light labour". But they were not utilised in the Appellant's case, except, perhaps, on the occasion of one hospital visit when he did receive full marks for the day, although he did no work. The prison records showed that the Appellant failed to work, claiming to be sick, on fifty days in respect of which he received only six marks per day. It was the calculation of the reduced marks for these fifty days that put back the Appellant's date of release.

[4] The Appellant denied the evidence of the prison officer who gave detailed evidence of the days of alleged sickness. But the learned Chief Justice, who heard the matter, did not believe his denials, accepting, on the contrary, that he had failed to work on the days alleged by the Respondents. Although the Appellant's counsel claimed the prison officer's evidence was hearsay, he conceded in argument that he had taken no objection to it, and there is really no basis on which the Court could conclude that the witness was without personal knowledge of the details he had himself noted in the prison records.

[5] It is unnecessary to discuss a further contention that the Appellant had a legitimate expectation of earlier release. Legitimate expectation is germane to the application of the principle of natural justice; but not to any cause of action in tort.

[6] Finally, counsel attacked a collateral conclusion of the Chief Justice that the Appellant was well aware, despite his denials, of the Marks System. It was said the Chief Justice was not entitled to infer knowledge from the Appellant's considerable experience of prison. We disagree; but, in any case, there was ample evidence on the point.

[7] For these reasons, the appeal must be dismissed with costs.

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Burchett J

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Tompkins J

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Spender J