ATTORNEY GENERAL'S OFFICE
INITIALS: JL DATE: 30/10/24
☑ File ☑ Website
☑ Database ☐ Social Media
☑ Email internal ☐ _____

'I HE FAKAMAAU'ANGA POLISI
FAKAMAAU'ANGA HIA
FAI'ANGA LESISITA NUKU'ALOFA C/No. EC1/24

'I HE VAHA'A 'O: Polisi

Talatalaaki

MO: Sosefo Vai Mafi

Faka'iloa

HILIFAKI TAUTEA

Ko e hopo ni na'e faka'ilo ai 'a e faka'iloa ki he fakatupu ha lavea lahi maumau ai 'a e kupu 106(1)(2)(a) 'o pehe: 'I he pe ofi ki he 'aho 13/11/2022 'i Matahau na'a ke fai fakalotokovi mo ta'e ha 'uhinga fakalao ka ke fakatupu ha lavea lahi kia Tone Fatongiatau 'aki ho'o toutou tuki'i ia 'i hono mata 'o tupu ai 'ene to pea tau hono 'ulu he faliki sima 'o tupu ai 'a e fasi ki he'ene ngeesi 'ulu.

Na'e tali tonuhia ai 'a e faka'iloa pea ui ai 'e he talatalaki 'ene kau fakamo'oni 'e toko 3 pea ui 'e he faka'iloa 'ene fakamo'oni 'e toko ua.

Ko e kupu 106(1)(2)(a) 'oku pehe:

(1) Ka 'i ai ha taha te ne fai fakalotokovi mo e ta'e 'uhinga fakalao ka ne fakatupu ha lavea lahi 'a ha taha 'i ha anga pe pē 'i ha founga neongo pe ko e ha 'e fakamaau pea ka mo'ua 'e nofo pōpula 'o 'ikai lahi hake 'i he ta'u 'e 10.

(2) "Lavea lahi" ko hono 'uhinga —
(a) ha lavea 'oku fakatu'utamaki ki he mo'ui; pe

'Oku mahino mei he kau fakamo'oni:

1. Na'e fakamatala pe 'a e faka'iloa na'a ne 'ilo pe 'ene tuki'i 'a e mata to'ohema 'o e mamahi 'o mafahi pea na'e 'ikai'to e tuki ange ia he na'e to ia ki lalo. Na'a ne to fo'ohake pea ko 'ene to ko ia, na'e lavea ai hono muii ulu.

RECEIVED 29.10.24

2. Ko e fakamatala ‘a ‘Eniselika na’a ne sio na’e tau ‘a e tuki he tafa'aki to'ohema ‘o hono mata pea ne puna atu leva ‘o ta'ota'ofi 'ena fuhu 'o ‘ikai kene ilo pe ko hai ia naua na’e tuki ‘o tau ‘i hoku mata toohema pea ne holomui mai ia ki mui, ‘o ne sio atu ‘o ‘ilo ‘a e toe tuki a Vai ia Tone 'o tokoto ai pe koia ‘i lalo ‘o ikai toe ngaue.

3. Na’e fakamatala ‘a Det. Tausinga ko ia na’a ne hiki ‘a e Diary ‘o e ngaue fakatotolo. ‘I he item fika 26 na’e pehe ai ‘e he faka’iloa ‘oku fiema’u ‘e ia ‘ene loea he ko ia na’e hu ange ki hoku ‘api ‘o talaange kia ‘Eniselika kena ‘alu naua pea ne talaange ke ‘alu ia tena toki foki he ‘oku na nofo fakataha pea ne lue ke taki ‘a ‘Eniselika kena ‘alu pea teke’i ia ‘e Tone, pea ne tuki’i ia ‘e ia ‘o ma fetakai peau ma’u’i ‘e au ‘ou tukituki’i ‘o to ki lalo ‘o ‘ikai to e tu’u ki ‘olunga pea ne fekau ‘a ‘Eniselika kena ‘alu ‘oku ‘ikai ko au na’a ku kamata ‘a e me’a na’e hoko.

‘Oku mahu’inga ketau vakai ki he ngaahi tautea ‘oku hilifaki ‘e he Fakamaau’anga Lahi ke hoko ia ko e halafononga ketau fou atu ai.

‘I he hopo ko ia Vea v R (1998) TLR 136 Na’e tautea ai ‘e he Fakamaau’anga lahi ‘a e faka’iloa ki he fakalavea ‘aki ‘a e hele ‘a e mamahi. Na’e tautea ai ke ngaue popula he ta’u ‘e tolu kae toloi ‘a e tautea hili ia ‘ene ngaue popula ‘i he mahina ‘e ono.

Na’e ‘omai ‘e he talatalaaki ‘i he’ene malanga fokotu’u hilifaki tautea ‘a e ngaahi hopo fakamaau’anga lahi ‘oku makau’unga ai ‘ene fokotu’u ‘a e tautea.

(1) R v Kali Malupo anors (Unreported, Supreme Court, CR 31-33 of 2023, 19 October 2023, Cooper J).

a. Kali Malupo was convicted after trial of grievous bodily harm. His two sons were co-defendants, and were each convicted of common assault.
b. On the night in question, Kali struck the victim on the head with a machete. This caused injury to the top of the victim’s head, above the forehead where a significant area of his scalp was missing (open wound/skull exposure). This was a group attack by Kali and his two

sons on the victim, who had stopped them as they were travelling on the road in their vehicle, and smashed the headlight of their vehicle.

c. Cooper J found that no reduction should be afforded for provocation.
d. Cooper J imposed a starting point of 6 ½ years, increased this to 7 ½ years to reflect the group attack, with a clear intention to kill the victim with his repeated attempts to hit him. For his good character, 6 months was reduced resulting in a sentence of 7 years.
e. Cooper J suspended the last 2 years of his sentence for 2 years on conditions. He remarked that Kali was not a young offender, he did have previous good character, and it was likely he would take the time to rehabilitate.

'I he hopo R v Samisoni Tu'i'onetoa anors Na'e tautea ai 'a e faka'iloa

a. Samisoni was found guilty after trial of one count of causing grievous harm to the victim, by hitting his head with a metal pipe, causing him to fall to the ground and fall unconscious. While he laid unconscious on the road, Samisoni hit him again on the head with the metal pipe.
b. The Victim was a 65-year-old man who had tried to stop the fight that broke out in the village which involved Samisoni.
c. The Victim suffered a hairline fracture to the skull and 2 separate intracranial haemorrhages inside the skull, as well as a laceration of the scalp and left external canal.
d. Samisoni was 24 years old, married with no children. He had no previous conviction. He continued to deny the offending even after his conviction.
e. Niu J imposed a starting point of 5 years imprisonment. The only mitigation factor that Niu J accepted was his clean record, which afforded him a reduction of 6 months, resulting in a sentence of 4 ½ years imprisonment.
f. For his young age and lack of previous conviction, the last 18 months of his sentence was suspended for 2 years on conditions.

(3) R v Soane Patita Toutai'olepo [2020 TOSC] 3; CR 174 of 2019

a. The Accused pleaded guilty to grievous bodily harm.
b. The offending arose from an incident involving school rivalry. The Accused, who was 18 years of age at the time, threw a large rock at the victim which struck him on the left side of his head rendering him unconscious with a compound depressed fracture to the left temporal bone of his skull which required surgery.
c. By the time of sentencing, it was reported that the victim had improved and there was no residual physical or mental disability.
d. A starting point of 4 years' imprisonment was imposed.
e. 16 months was discounted for his early guilty plea. A further 8 months was discounted for lack of previous convictions, his young age and apparent remorse. Altogether, 2 years in mitigation was afforded, resulting in a sentence of 2 years.
f. The final 12 months of his sentence was suspended on conditions.

(4) R v Mo'ale Vi (Unreported, Supreme Court, CR 55 of 2017, 31 August 2017,Cato J).

a. The Accused pleaded guilty to grievous bodily harm. The victim was a fireman. He was attacked by the Accused while he slept. The Accused beat him with a lead pipe to the head. It was revenge for a previous dispute earlier that same day. The Complainant suffered a fractured skull.
b. A starting point of 5 years was imposed, and appropriate for using a weapon to inflict the injury upon the complainant who was in bed at the time.
c. There was no permanent injury to the Complainant. Cato J remarked that had there been permanent injury, a higher starting point would have been imposed.
d. Issue of provocation arose, and whether to consider in

sentencing to justify a lower starting point.

"Provocation: Where the offender has been provoked, that may justify a lower starting point. It is not enough simply to claim to have been incensed by the actions of the Victim or another, rather the sentencing Judge will need to be satisfied that there was serious provocation which was an operative cause of the violence inflicted by the offender, and which remained an operative cause throughout the commission of the offence."

e. It was accepted that provocation occurred, however it was not regarded as a significant mitigating factor due to other factors of the offending, which included excessive alcohol intake. Only 6 months was afforded as mitigation for the provocation.

f. A further 12 months was allowed as mitigation to reflect his guilty plea, cooperation, remorse, the fact he lost a job which he was fond of, and his good character. This resulted reduced his sentence to 3 years.

g. The final 12 months of his sentence was suspended on conditions. Cato J remarked that he was deserving of a suspended sentence because of his guilty plea, cooperation, he was a first-time offender, and he had a young family.

(5) R v Siale anors [2015] TOSC 13; CR 119 – 142 of 2014

a. Ko e hopo ‘eni ‘a e kau faka’iloa ‘e toko 24, ko e tamaiki ako mei he Kolisi Tupou, na’a nau fakahoko ‘a e ngaahi hia kau ai ‘a e maumau ki he koloa, haefale, feinga tufale, fakatupu lavea lahi mo e fakatupu ‘a e lavea mamafa;

b. Ko e tokoua ‘i he kau faka’iloa ko (1) Sulunga, CR 139/14 mo (2) Taliai, CR 139/14 na’e faka’ilo ‘aki ‘a e fakatupu ‘a e lavea lahi. Ko e tokotaha mamahi ko Halahuni, ko e taha ‘o e ni’ihi na’e ‘i he fale na’e ‘alu atu kiai ‘a e kau faka’iloa ‘o fakahoko ai ‘a e ngaahi hia ‘oku ha he (a);

c. Na’e feinga hola ‘a Halahuni mei he loto loki, ka na’e tolongi atu ‘e Sulunga ‘a e maka ‘o tau ‘i ai ‘o to ki lalo. Na’e taa’i ‘aki leva ‘e

Taliai ‘a e va’akau ‘a e ‘ulu ‘a Halahuni. Na’e pongia ‘a Halahuni, pea leleaki’i ki falemahaki ‘o fakahoko ‘a hono tafa;

d. Na’e fasi hono nge’esi ‘ulu, pea na’e tokoto falemahaki ‘i he mahina ‘e 1.
e. Na’e toe foki pe ‘a e tu’unga mo’ui lelei ‘a Halahuni ki he tu’unga na’e ‘iai kimu’a ‘o ‘ikai ke ‘iai ha lavea ta’engata (permanent injury).
f. Ko Sulunga mo Taliai na’a na ta’u 20 loua ‘i he taimi na’e fakahoko ai ‘a e hia.
g. Ko e tautea kamata kiate kinaua ko e ta’u ‘e 6 ½ koe’uhi ko e ngaue’aki ‘a e me’atau pea ke ha ‘a e mafatukituki ‘a e lavea ko e fasi ‘a e nge’esi ‘ulu. Na’e pehe ‘e Cato J, kapau na’e ‘i ha lavea ta’engata (permanent injury), ‘e toe lahi ange ‘a e tautea kamata.
h. Koe’uhi ko ‘ena tomu’a tali halaia, fengaue’aki mo e kau polisi, ta’u si’i, mo e hala ha lekooti hia, na’e holoki ‘a e tautea kamata ‘aki ‘a e ta’u ‘e 2.
i. Na’e toloi leva ‘a e mahina ‘e 21 fakamuimui ‘aki ‘a e ta’u ‘e 2 ‘i he ngaahi makatu’unga. Ko e ola – ngaue popola ta’u ‘e 2 mahina ‘e 9 pe ko e mahina ‘e 33.

‘Oku mo’oni ‘aupito ‘a e fokotu’u mai ‘a e talaalaaki ko e ngaahi hopo ko ia ‘i ‘olunga na’e ngaue ‘aki ‘a e me’atau i.e. maka, ukamea ‘o fakahoko ‘aki ‘a e fakalavea lahi, ka ‘i he hopo ni, na’e ‘ikai ke ngaue’aki ha me’atau ka ko ‘ene tuki’i pe ‘o to ai ki lalo pea ‘oku totonu ke si’isi’i ange ‘a e tautea kamata.

‘Oku totonu pe ke fakakau atu ‘i hono fakakaukau’i ‘o e tautea ‘a e uesia ’o e mo’ui ‘a e mamahi, tupu mei he lavea na’e hoko – ko e ninimo, uesia ‘a e nanamu mo e fanongo.

Ko ia ‘oku ou tu’utu’uni heni keke ngaue popula he ta’u ‘e 6. To’o mei ai ‘a e ta’u ‘e 1 ko e ‘uhi ko ho’o fuofua fai hia ‘eni, pea ‘oku ke kei si’i pea ‘oku ha mai ‘oku ke fakatomala pea ‘e toloi ‘a e mahina ‘e 21 fakamuimui he ta’u ‘e ua, makatu’unga ia ‘i he

i) Tapu ke ne toe fakahoko ha hia ‘oku ala lava tautea ‘aki ‘a e ngaue popula ‘i he vaha’a taimi ‘oku tautea toloi ai ‘a e tautea;
ii) Malu’i angalelei;

iii) Lipooti ki he ‘Ofisi ‘o e Malu’i Angalelei ‘i loto ha houa ‘e 48 mei he taimi ‘e ‘ata ai mei Hu’atolitoli;

iv) Fakahoko ha ako ki he mapule’i ‘a e ‘ita ‘i he malumalu ‘a ‘ene ‘ofisa malu’i angalelei;

v) Fakahoko ha ako ki hono pa’usi’i ‘a e ma’u kava malohi, lolotonga ‘a e taimi tautea toloi.

Ko ia teke ngaue popula he ta’u ‘e tolu mo e mahina e tolu

Na’e fai ‘eni ‘i Nuku’alofa ‘i he ‘aho 29 ‘o ‘Okatopa 2024 FAKAMAAU

KINGDOM OF TONGA
MAGISTRATES COURT