



- i. A fine of \$150.00 payable within one week and if not paid 3 weeks imprisonment; and
- ii. Suspension of the appellant's driver's license for a period of six months.

2. The grounds of appeal are that the penalty imposed was excessive having regard to the fact that:

- i. The appellant was a first time offender;
- ii. The appellant had pleaded guilty;
- iii. The appellant had apologised to the victim for the accident;
- iv. The charge was not serious and had resulted in no more than a scratch to the paintwork of the other vehicle.

3. Prior to the hearing written submissions were filed by Ms. Langi on behalf of the Police which were comprehensive and helpful. She concedes that the appeal should be allowed in relation to the suspension of the appellant's driver's license. This is principally because whilst the Magistrate could have, in reliance upon section 29 (3) of the Traffic Act, cancelled the appellant's driver's license he had no power to suspend the appellant's driver's license, as was apparently his intention.

4. The Court's attention was drawn to *Vaea v Police* [2013] TOSC 19 where Justice Ford said:

*There is a difference between a cancellation and a suspension. A cancellation annuls the license and puts an end to it unless the cancellation order itself is later revoked pursuant to section 29(5) of the Act. A "suspension" on the other hand, connotes something less permanent. A court imposing a sentence laid down in legislation must follow the terminology prescribed. The court is not empowered to suspend a defendant's license. It can only make an order cancelling the license and disqualifying the individual from obtaining a new replacement license for the duration of the period specified. Once cancelled, the original license ceases to exist.*

5. It follows that the Magistrate was in error in this case, was not empowered to suspend the appellant's driver's license and the appeal must be allowed.
6. I note also that in my view the imposition of a fine was clearly an adequate penalty in this case. This was conceded by Ms Langi in her submissions also.

### **The Result**

7. The appeal is allowed to the extent that the Magistrate's Order suspending the appellant's driver's license for a period of six months is quashed.

8. No order for costs has been sought by the appellant.

**Dated: Nuku'alofa 5 March 2015.**



A handwritten signature in black ink, appearing to be "J. J. J.", is written over the seal.

**CHIEF JUSTICE**