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**IN THE SUPREME COURT OF TONGA** **AM 19 of 2012**

**APPEALLANT JURISDICTION**

**NUKU'ALOFA REGISTRY**

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**LATUSELU LATU**

**-v-**

**POLICE**

**BEFORE THE HON. ACTING CHIEF JUSTICE CATO**

**APPELLANT – No appearance**
**CROWN COUNSEL – Mr. Sisifa**

## JUDGMENT

The appellant appealed against his sentence for assault. The Magistrate had convicted him after a guilty plea and sentenced him to one month's imprisonment.

The appellant's case was ably advanced by Mr Sisifa who expressed his concern about the sentence and I agree with him. It is of concern.

The appellant, I am advised, was 17 and at school. There had been a history for some time of fighting amongst pupils from rival schools and on this occasion the appellant had assaulted a student from the rival school in the street by punching him, although the other student was not injured seriously. The appellant had earlier been assaulted by students from the victim's school and seemed to act out of revenge. The victim, I have been informed, was not involved in the previous fighting.

I was informed that the appellant had no previous convictions. He was still in school in Form five. He pleaded guilty and represented himself. He candidly admitted he did not know if the victim was one of those who had injured him earlier. It seems he was not.



Recd 10/09/12

The Magistrate referred to the problems with fighting between the two schools. Although the police had attempted to stop it, as had the Government and Director of Education, attempts to do so had failed. The Magistrate expressed the view that there was a concern if this was not stopped, it would continue to a stage where a loss of life would result.

He also said that the Court had already imposed punishments for fighting between the two schools, and it was clear that the dispute between the two schools was intensifying.

He said;

> *'The Court understands that you are still in form 5 but the Court must also look beyond to a sentence that may help resolve the dispute between these two schools.'*

He then sentenced the appellant to a short term of imprisonment as a lesson to the rest of the students of the two schools;

> *"So that they were aware that this will be the punishment that will be imposed upon those who continue to assault, for no reason or without a purpose."*

Earlier, he had told the appellant he had pleaded guilty to one of the most serious offences of law in the country which was common assault.

In my view, this sentence was manifestly excessive and manifestly inappropriate. First, the crime for which the accused was convicted was not one of the most serious crimes at all. It was simply common assault and no injury was reported. The appellant had pleaded guilty and was a first offender. This Court has often said that first offenders and young offenders should receive a sentence falling short of a custodial sentence unless there is no reasonable alternative. Short term sentences on young offenders may do much more harm than good. Not only are they placed

in an institution and deprived of friends and family which may be extremely emotionally harmful but they may also encounter for the first time recidivists and other hardened criminals in prison some of whom may also be young adults. There are many ex-prisoners who tell of commencing a life of crime because they had been exposed unnecessarily to hardened criminals in prison at a young age.

Magistrates must consider the availability of the other non-custodial sentences of which there are several options available in Tonga including probation and community work, and adopt the least restrictive sentence consistent with the level of crime. Even in cases where there is no alternative but to impose imprisonment where young offenders and first offenders are involved, serious consideration must be given to significantly suspending a sentence perhaps wholly to give the offender a chance. In that sense, the suspended sentence is an important instrument in the armoury of a judge to tailor sentences not only to the circumstances of the case but to the circumstances of the offender.

In this case, whilst the Magistrate was no doubt expressing the frustration of himself and others who had experience of this fighting, singling out the appellant for in effect special treatment was wrong. There was no good reason whatsoever for sentencing him to a short term of imprisonment as a lesson to other students. He was as much entitled to the protection of law and appropriate sentencing consideration as any other youthful first offender. He did not receive that protection. This sentence could well have had a most damaging effect on a student in a school year. This Court expresses the view that it hopes that has not been the case.

Whatever may be the problems associated with these schools this was not the way to solve these difficulties.

I considered and discussed with Mr Sisifa the options. He suggested and I agree that the sentence of imprisonment should be quashed and is quashed immediately.

In lieu, a sentence is imposed under sections 198 and 199 of the Criminal offences Act (Cap 18) that the offender is placed on his own recognizance to be of good behaviour for a period of 12 months and to be called upon during such period if he is not of good behaviour for sentence.

He is also placed on probation under s 199 and ordered as a condition of probation;

1. To attend an appropriate anger management programme as directed by the probation service.

2. He is also, as a condition of probation, to write a letter of apology to the victim.

   Copies of that letter are to be given to his probation officer to be sent to the headmasters of the various schools, and a copy sent to this Court to be placed on his file.

3. He is to report to the probation service within 48 hours of receiving a copy of this judgment.

SUPREME COURT TONGA

**DATED: 9 AUGUST 2012** **ACTING CHIEF JUSTICE**