

**IN THE SUPREME COURT OF TONGA
APPELLATE JURISDICTION
NUKU'ALOFA REGISTRY**

Solicitor General
Scan & File
AM 04 of 2012
09/08/12

BETWEEN : POLICE - Appellant

AND : TOMU POUONO - Respondent

BEFORE THE HON. JUSTICE CATO

JUDGMENT

The respondent had been charged with reckless driving under s 25 (1) Traffic Act (cap 158) arising out of an accident on the 6th November 2010. The accused had admitted in a record of interview he was drunk but he apparently was not charged with this offence. He had allegedly collided with another vehicle and he had not stopped to talk with the complainant. The accident did not seem to result in injury.

On the 21st March 2012, the case was ready to proceed but the Court clerk was unable to produce the criminal summons butt which had not been brought to Court. The butt contains the original documentation of the accused criminal summons No 306/11.

The Magistrate then ordered the respondent to be acquitted and discharged.

The Police appealed, Mr Sisifa appeared for the Crown on the appeal and filed a memorandum. Mr T Fifita who had earlier appeared for the respondent said he had not received instructions and I gave him leave to withdraw. The appeal proceeded uncontested.

It was my view assisted by Mr Sisifa's memorandum that the Magistrate in dismissing the charge because the butt could not be produced at that

APPELLATE JURISDICTION

NUKU'ALOFA REGISTRY

time had exceeded his jurisdiction and acted capriciously. The failure to produce the butt was a matter which should have led to an adjournment. Whilst there may have been delays in the case for reasons which are unexplained since the original accident, and the Magistrate may understandably have been irritated or frustrated by the court's inability to produce the butt, this should not have led to the charge being dismissed and the defendant being acquitted without the merits of the case being considered as required under s 24 of the Magistrates Court Act.

The public have an interest as well as the defendant in the orderly progression and determination of cases on their merits. An adjournment was required so that the documentation could be produced. If the originals had been lost or misplaced and could not be located then secondary evidence may have been available.

Accordingly, whilst I can understand the frustration of the Magistrate and his actions, I allow the appeal and I remit the case to the Magistrates Court for a hearing of the charge on its merits and according to law as soon as possible in view of the time that has passed.

DATED: 3rd AUGUST 2012



A handwritten signature in blue ink, appearing to be "C. T. S.", is written over the seal.

JUDGE