

VILIANI UASIKE LATU

Appellant

V

POLICE

Respondents

BEFORE THE HON MR JUSTICE SHUSTER

MR LITTLE FOR THE CROWN

Mr. PIUKALA FOR THE APPELLANT

Extemporaneous Judgment delivered on 4th September 2008

EXTEMPORANEOUS JUDGMENT

The Appellant appeal a decision of the Magistrate-sitting in Fasi in criminal cases no. 369 and 392 of 2008 alleging offences of

(1) Common Assault and (2) Assault Causing Bodily Harm.

I was asked to hear this application urgently, for reasons set out in a letter dated 25/08/2008-from appellants Counsel. The reason I was able to hear this appeal (within 24 hours) is because a trial listed for yesterday and today collapsed and this appeal could be heard at short notice.

The appellant was charged with a two offences, alleging on 21st of May 2008 he unlawfully assaulted Natalia Palu and Monalisa Palu

- The first charge reads:- [a] On the 21st May 2008 at Ma'ufanga commit an offence of common assault in which you wilfully without legal jurisdiction slapped with your hand and hit the cheek of Natalia Palu without consent. Contrary to section 112 (a) of the Criminal Offences Act (Cap 18)
- The second charge reads:- [a] On the 21st May 2008 at Ma'ufanga commit an offence of causing bodily harm in which you wilfully without legal jurisdiction assaulted using your hand and hit the forehead of Monalisa Palu fell down causing injury to the left wrist and left knee without consent. Contrary to section 107 (1) of the Criminal Offences Act (Cap 18)

COURT RECORD

According to the Court Record and transcript of the proceedings the Learned Magistrate dealt with this matter as follows.

C/Pros This case was adjourned to submit but the documents are prepared your honour.

Piukala With respect your honour we apply if it's possible to adjourn the case for preliminary inquiries whilst to prepare.

Victim This cases your honour-we adjourned to submit it to the Supreme Court upon the grounds we had agreed with the accused. Up to this day it is requesting adjournment for preliminary inquiries. I request your honour that we commence with the case for its wasting my time in repeatedly appearing when it is going to be adjourned..

Ct How about Piukala if we adjourned for tomorrow, then we start trial.

Piukala I apply your honour to adjourn for next week if it is adjourned to tomorrow I would not come for I am asking for a lot of time to prepare for the case with the accused.

Ct On the 10/06/2008 the accused first appeared at the Magistrate Court in Fasi on the grounds that the case was brought here from Lopaukamea II in the order of Magistrate Peau Pifeleti due to interest with the accused. There was an agreement between the Accused and Prosecution on the request of the complainant to submit the case to the Supreme Court. Therefore based on that agreement it was adjourned to the 17/06/2008 on the request of the Prosecution to prepare the documents to submit to the Supreme Court. Yes I have heard further adjournments requested by the Counsel for the Accused Mr. Piukala, for Preliminary Inquiries. And the complainant requests for the case to be taken to the Supreme Court because the agreement was to submit the case. The evidence for this is that there were documents prepared to submit to the Supreme Court and these have been prepared. Therefore I will order as follows, there was an agreement between the two sides on the 10/06/2008 to submit on the 17/06/2008. On the 17/06/2008 I will order to submit the case based on the agreement done on the 10/06/2008 between the sides, despite the differences today. Therefore submit will carry on. Submit the paper. Hence distribute copies of the case and the case will be called on the 29th/07/2008 at the Supreme Court at 09.30 hours and bail is granted by two sureties' you accused shall be \$800 whilst the two sureties' \$500. You shall not depart Tonga unless granted by the Supreme Court and surrender your passport to the Supreme Court. You shall do all of this today. What is your choice?

Piukala: - I will not make a choice because I am not satisfied in handing the case over

Ct. No choice the trial will take place at the Supreme Court with a Judge alone or a jury, for the counsel was dissatisfied with the handling of the case.

COMMENT

Looking at the Court record I feel I must draw the following to the attention of legal representatives operating in the Magistrates Court the following:-

- A lawyer advises his/her client or an accused person
- The client –accused makes decisions and instructs his/her lawyer.
- It is trite law ELECTIONS AND PLEAS must come directly from the mouth of each and every accused.
- Lawyers may suggest to an accused or give an indication of an election or plea-but not in open court-unless the accused is- a Ltd company.
- If the court record in this case is correct; then Mr PIUKALA made the choice for the appellant by saying:-
Quote –*“I will not make a choice- because I am not satisfied in handing the case over-*
- Whereas Mr. PIUKALA ought to have said to the Magistrate:-
- *“I am or I will be advising my client that I am not satisfied in handing the case over.”*
- Mr. Piukala should have allowed his client to answer the Magistrate directly because the Magistrate made orders against him-not Mr Piukala.

RULING AND ORDER

Upon hearing: - Counsel in this matter for both the Appellant and the Crown. I order the case remitted back to the Magistrates Court with a direction a Preliminary Inquiry be carried out into the alleged offence(s) before a different Magistrate.



Shuster J
Judge of the Supreme Court