To C.J.

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

CR.APP.NO.11/00

BETWEEN : *SEMISI TAPUELUELU* - *Appellant*

AND : *POLICE* - *Respondent*

BEFORE THE HON. JUSTICE FORD

Counsel : Mr Tu'utafaiva for the appellant
Ms Simiki for the respondent

Date of filing submissions: 1st September 2000.

Date of Ruling: 11th September 2000.

RULING OF FORD J

In 1999 a Court of Inquiry was set up pursuant to sec.15 of the Prisons Act (Cap 36) to investigate a number of charges against the appellant. On 3 May 2000 the Court of Inquiry found the appellant guilty of one of the charges made against him and fined him in the sum of $25.00 and failing payment in one week, ordered one weeks imprisonment. On 15 May 2000 the appellant filed Notice of Appeal in this court seeking an order quashing the appellant's conviction. Ms Simiki, appearing for the respondent challenged the appellant's right of appeal and I called for submissions from both parties on this preliminary issue. I am grateful to both counsel for their helpful submissions.

Mr Tu'utafaiva, for the appellant, frankly accepts that there is no express statutory right of appeal against a determination of a Court of Inquiry constituted order sec.15 of the Prisons Act (Cap 36). He stresses, however, that there is nothing in the Prisons Act which states that a decision of the Court of Inquiry shall be final. He said that it was "inconceivable and highly unjust" for the appellant not to have a right of appeal against what he submitted was a conviction of a criminal offence.

Mr Tu'utafaiva then went on to submit, in the alternative, that the Supreme Court had a residual jurisdiction to hear an appeal of this nature by virtue of Sec.4 of the Supreme Court Act (Cap 10) because, as the Prisons Act gave the appellant no right to appeal from a decision of the Court of Inquiry, the situation, as Mr Tu'utafaiva submitted, would be covered by the final part of Sec.4 which gives the Supreme Court a residual jurisdiction "in any other matter not specifically allotted to any tribunal".

Finally, Mr Tu'utafaiva, in anticipation of the respondent's submission that the appellant's only remedy was judicial review, submitted that his client should not have to endure the time consuming and costly exercise of applying for judicial review.

Ms Simiki submitted that an appeal is entirely a creature of statute and if Parliament had intended to give prison officers the right to appeal against the determinations of a Court of Inquiry, it could very easily have done so and she refered to other legislation where, in not dissimilar circumstances, appeal rights are specifically provided for.

Ms Simiki then dealt with the specific submissions raised by Mr Tu'utafaiva and went on to say that, although at Common Law the Courts always had an inherent right to review or control inferior jurisdictions such as the statutory tribunal in this case, the appellant could not challenge the decision of the Court of Inquiry through the appeal process.

I agree with Ms Simiki. For the appellant to succeed, he must be able to point to some statutory basis giving him the right to appeal. In Regina –v- Medical Appeal Tribunal, ex-parte Gilmore (1957) 1QB 574, Denning L.J. considered the historical powers of the court to review the decisions of an inferior tribunal and said :

> "Finally, in 1823 the Court of King's Bench in it's golden age presided over by Abbott C.J. summed up the whole matter by saying that is certiorari always lies, unless, it is expressly taken away, and an appeal never lies unless it is expressly given by the statute."

I respectfully concur with this analysis of the legal principles.

I do not see anything in Sec.4 of the Supreme Court Act which would enable the appellant to have appeal rights in the circumstances of the present case.

Mr Tu'utafaiva's other submission was that there was nothing in the Prisons Act which says that a decision of a Court of Inquiry "shall be final" and he submitted that this Court could infer from that omission that Parliament could

could not have intended to deprive a person in the appellant's position of a right of appeal.

It is true that some legislation setting up statutory tribunals will specifically provide that the decision of the tribunal "shall be final" or words to that effect. In the Medical Appeal Tribunal case I have referred to, Lord Justice Parker considered the expression "shall be final" and said that the expression "shall be final" is "strictly unnecessary". I, respectfully, share that view. I do not think the omission of such words from the Prisons Act helps Mr Tu'utafaiva's case.

The appeal is struck out. I fix costs in favour of the respondent in the sum of $150.00.

NUKU'ALOFA: 11th September 2000.

SUPREME COURT TONGA

Roberts J.

JUDGE