

Filo

(Judgment on appeal to Supreme Court)

IN THE SUPREME COURT OF TONGA

Criminal Appeal No 17 / 90

APPELLATE JURISDICTION

BETWEEN

Toutai Taukel'aho

Appellant

and

Police

Respondent

ON APPEAL from the decision of the Magistrates' Court dated

10th September 1990

IT IS ORDERED THAT the appeal be allowed and the conviction set aside

Dated 3rd December 1990

SEAL

IN THE SUPREME COURT OF TONGA

Criminal Appeal No 17/ 90

APPELLATE JURISDICTION

BETWEEN

Toutai Taukei'aho

Appellant

and

Police

Respondent

JUDGMENT ON APPEAL

The Appellant appeared in Nuku'alofa Magistrates' Court on 10th September 1990 on a charge of driving without a licence. He thinks that he has a defence to that charge. It appears that local Counsel, Mr Veilkoso, undertook to represent him, but it is said that he did not obtain proper instructions from the appellant. Counsel, not the appellant, pleaded guilty, and a small fine was imposed.

It further appears that the summons was served on the appellant at 9.00 p.m. on 9th September, the night before the hearing date. He appeared in court the next morning, and nobody troubled to enquire when he had been served.

Section 14 of the Magistrates' Courts Act requires that

" ... if it appear at the hearing that the summons has not been served on the accused more than 24 hours before the time and date stated in the summons (if the accused was served within the district) or more than 14 days (if he was served outside the district) the case shall not proceed without the express consent of the accused, which consent shall be recorded in the record of the proceedings."

That provision is mandatory. If it is not complied with the ensuing trial is a nullity. In every case the magistrate should satisfy himself that the summons has been properly served, and if not must adjourn the trial unless the accused consents to it continuing.

It is evident that the summons in this case was not served in time, and the appellant is entitled to have the case reheard.

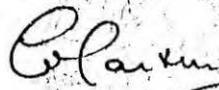
That is enough to dispose of the appeal, but there are 2 general matters which call for comment.

First, an accused person must always plead guilty himself. This reduces the likelihood of misunderstanding. A court must never accept a plea on his behalf by his counsel.

Secondly, as a matter of procedure, if it appears to a magistrate after he has dealt with a case that the summons had not in fact been served on the accused in time, that magistrate may set aside his own order and rehear the proceedings without the need for an appeal to this court.

The appeal is allowed, the conviction set aside and the case remitted to the Magistrates' Court for re-hearing.

Dated 3 December 1990


Chief Justice