

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

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**AM 9 of 2016**

*R*  
*18/07/16*

**BETWEEN: 'AMONI FIFITA - Appellant**

**AND: POLICE - Respondent**

**BEFORE THE HON. JUSTICE CATO**

**APPEAL AGAINST CONVICTION AND REFUSAL TO GRANT BAIL**

- [1] These appeals came before me at short notice on the 7<sup>th</sup> July, 2016.
- [2] The appellant appealed his conviction for theft and was convicted and sentenced to 2 years imprisonment. At his trial, he had no legal counsel. After he had given evidence, the Magistrate required him to make written submissions. He adjourned the case for this to be effected. At the later hearing, the appellant told the Magistrate he did not know how to do this and asked to make verbal admissions. He was told to file written submissions by a certain date. At the later date, the accused had still not filed written submissions. He was convicted and sentenced to 2 years imprisonment without making representations.
- [3] The Crown did not oppose this appeal and indeed consented to it. On more than one occasion, this Court has emphasised that care must be taken with unrepresented defendants to ensure they have an opportunity to meaningfully participate in their trials. Here, minimum due process was denied to the accused.

*rec'd 13/07/16*  
*lll*

There was plainly a breach of section 24(8) of the Magistrate's Court Act which expressly provides that the defendant or his lawyer shall be entitled to address the Court either at the commencement or the conclusion of his case, as he may think fit. Quite properly, the Crown did not choose to resist this Appeal. There will be an order that the proceedings be remitted to the Magistrate's Court for a date to be fixed for trial before another Magistrate .

[4] The Crown also consented to the appeal against refusal of bail, which I granted on restricted terms that included a curfew. The appellant did have a record and had been charged with a recent additional offence, but his record was not so serious that I considered he should be denied bail.

[5] He is to next appear before the Magistrate's Court at Fasi on the 9<sup>th</sup> August, 2015 at 10 am for a date to be fixed for his trial. Bail is granted to then.

**DATED: 1<sup>th</sup> JULY 2016**



*C. B. Cato*  
C. B. Cato  
**J U D G E**