



APPELLANT JURISDICTION

NUKU'ALOFA REGISTRY

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beating him with a hammer before arranging with Mr Pale and Mr Fotu to take the cow to third persons so that the meat and part of the carcass could be sold. Later, it seems Mr Vaka'utu received payment of about \$700 for the cow although the market value of the cow was assessed by the Chief Magistrate as being \$2000.00. It is unclear how much the others received for their part in this offending.

[3] The Chief Magistrate in his rulings found that the cow had indeed been killed and stolen by the accused Mr Vaka'uta and had belonged to the complainant. On the evidence I have read he was entitled to come to this view. He was also entitled to find the appellants Pale and Fotu guilty as parties to theft for their secondary roles in removing the animal and disposing of it by way of sale.

[4] For his part in stealing the cow, the Learned Chief Magistrate considered that the theft of this cow was a serious offence in Tonga. He observed that Vaka'uta had a record including one for theft. He also pointed to the fact a number of cows had been taken in the area and that the offending was prevalent. He imposed a sentence of 6 months imprisonment on Mr Vaka'uta with the final two years suspended.

[5] I consider he was entitled to impose such a sentence on Mr Vaka'uta for an act which involved the deliberate slaughter and theft of a cow for profit which did not belong to him, and he was entitled to regard this as a particularly serious criminal act in Tonga for which deterrence was required. Many animals are not

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secured well by their owners and it is easy for thieves to take advantage of this fact as occurred, here. Mr Vaka'uta was, perhaps, fortunate to have had any part of his sentence suspended. It would seem he defended the proceedings, was not co-operative and had previous convictions. Accordingly, I see no reason to interfere with his conviction or sentence and his appeal is dismissed.

- [6] As for the other appellants Mr Pale and Mr Fotu, the evidence indicates that they were secondary parties to the offending being involved in disposal of the animal after it had been slaughtered. The Chief Magistrate sentenced both to 5 months imprisonment with the last two suspended. In my view, these sentences involving imprisonment of first offenders for their secondary role in this theft were manifestly excessive, or inappropriate. In my view, more appropriate sentences in their cases were sentences of 120 hours community work in default one month's imprisonment which in my view would have provided a sufficient deterrent or message to the community.

- [7] In this case, the period in which the process has taken for this matter to come before this Court for disposal is grossly excessive. The matter relates to an incident in 2013. The trial occupied a year and after that there was another lengthy period between the filing of appeals in or about July or August 2014 and the file arriving in this Court, on the 13th September 2016, which is unacceptably long. There have been other delays in recent times in appeals from decisions of Magistrates and the record being transmitted to this Court. Steps have been taken

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to prevent this further occurring and expedite appeals. Justice can be seriously compromised by delays in trial hearings and in the hearing of appeals, also

[8] Both men have been ordered to pay to the complainant compensation for what the Court assessed was the market value of the cow being \$2000.00. Mr Vaka'uta was ordered to pay \$800 within a month and in default three months imprisonment. The other appellants were ordered to pay \$600.00 within a month or face 3 months imprisonment.

[9] Taking into account these orders to pay compensation and the inordinate delay in resolving this case, the delays being almost entirely reflective of systemic problems in the Magistrates' Court, I order the appellants, Pale and Fotu, should perform 40 hours community work with the recommendation that it be served cleaning up the Vuna Road under the direction of Probation, and in default one month imprisonment. They are also ordered to pay compensation to the complainant as ordered by the Chief Magistrate in the sum of \$600 each. I, however, vary the default period to be one rather than three month's imprisonment. The obligation to perform community work and pay compensation are, however, several obligations, If both obligations are disregarded, the appellants are each liable to a combined period in default of two months' imprisonment.

[10] In the case of Mr Fotu, I order that he commence his community work as soon as Probation are able to accommodate him and in default of performance one month imprisonment. He is to further pay compensation within three months of this judgment

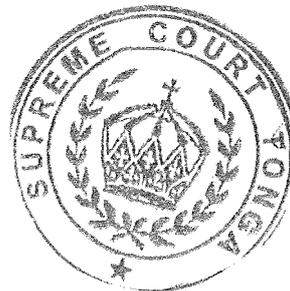
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to the complainant or serve one month imprisonment in default. In the case of Pale, who is serving a sentence of imprisonment, I have discussed with Mr Niu SC his obligations and he confirmed that his client would perform his community work once he had been released from prison or in default serve one month's imprisonment. In his case, he also is required pay compensation of \$600.00 to the complainant within three months of his release from prison or in default serve one month imprisonment. Their appeals against sentence are, accordingly, allowed.

[11] In the case of Mr Pale, the Crown opposed his appeal as having been out of time. I have been referred to the judgment of the Chief Justice in Tu'inukuafe v Police AM 10 of 2015 and the ruling that a ten day time limitation on filing an appeal was mandatory. Although I may well have been more accommodating and have granted leave to appeal out of time, because the short delay was explained by counsel as his, in my view understandable, oversight and, consequently, in my view justified an extension of the time in the inherent jurisdiction of this Court, to avoid a miscarriage of justice. This opinion is, however, academic. Mr Aho provided me with the Magistrates Court (Amendment) Act 2015 which reformed the law as the Chief Justice dealt with it and expressly gave this Court the power to extend time and, indeed, also extended the time of appeal from 10 to 28 days. Accordingly an extension is granted and I have upheld Mr Pale's appeal against sentence.

**DATED: 18 NOVEMBER 2016**



**JUDGE**