

01/06/18

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

AM 3 of 2018

BETWEEN: VILIAMI PALOMETA - Appellant

AND: POLICE - Respondent

BEFORE THE HON. JUSTICE CATO

Mrs Vaihu for the Appellant

Mr Kefu for the Respondent

J U D G E M E N T

1. This was an appeal against the decision of a Magistrate to convict the Appellant on one count of indecent assault under section 124(1)(2),4(a)(b) of the Criminal Offences Act.
2. The evidence before the Magistrate briefly was that the complainant, aged about 32, worked in a Chinese store in Tongatapu. There was evidence that she had known the Appellant for a couple of months. On or about 9th November, 2017, the Appellant entered the store and she said touched her on the left bum. This caused her to get very angry with the Appellant. It was put to her that the Appellant had come into the store and had asked her where the shavers were and she had turned and swore at him and that had made her angry which she denied. The appellant apologized to her for what had happened. It seems that the accused through counsel admitted hitting her on the side before asking for shavers. In his record of interview

tendered in evidence, the Appellant had said that he had gone into the store given her a pat and asked if they still have shavers. He said he did not have feelings towards her and knew her well. He said that he had a wife. He said he recalled it was the right side of the bum that he touched. The Appellant did not give evidence.

3. I consider there was evidence capable of supporting the Magistrate's finding of guilty. He essentially accepted the evidence of the complainant and found her a credible witness as he was entitled to do. The fact that he touched her she said on the bum in circumstances where there was no apparent good reason given for him to have done so whether or not he had been friendly with the complainant is capable of being regarded as conduct that offends a Tongan's sense of indecency, as the Magistrate found. The Magistrate, however, also seems to have convicted the Respondent on a further charge of assault. Mr Kefu explained this as an alternative account and agreed that this conviction of assault should be set aside and I do so, the appellant having been convicted on the more serious account of indecent assault. Accordingly, I dismiss the appeal against conviction for indecent assault but allow the appeal in so far as the conviction for assault is concerned, that being set aside.

4. In so far as sentence is concerned, I consider that Mr Kefu is correct when he submitted the Learned Magistrate had erred in ordering compensation of \$400 to be paid to the complainant within two weeks and in default one month's imprisonment. Section 25 of the Criminal Offences Act provides that compensation may be paid by a defendant to a complainant who has suffered injury or loss, but here Mr Kefu pointed out there had been no evidence of the complainant suffering either. I consider, in an appropriate case, injury could include proven psychological trauma such as may be present in cases involving violence but there was no suggestion of this here. Accordingly,

Mr Kefu submitted and I agree that the Appellant should simply have been fined. The appellant is aged about 44, is a first offender, earns about \$200 a week as a security officer and has a wife and three teenage children. I considered, and Mr Kefu agreed, that an appropriate fine for what was clearly very low level offending was \$250 payable within one month, and in default two weeks imprisonment.



A handwritten signature in black ink, appearing to read "Cato", is written over the right side of the seal.

C. B. Cato
JUDGE

DATED: 30 MAY 2018