

[1998] Tonga LR 157 the imprisonment sentence imposed ought to have been fully suspended because the accused had no previous conviction and he was likely to take the opportunity to rehabilitate himself.

[3] On 5 December 2018, counsel filed an application of the appellant for bail pending determination of his appeal. On 7 December 2018, the Lord Chief Justice granted bail and the appellant was released from prison on the same day.

[4] Mr. 'Aho for the respondent agreed with the ground of appeal of the appellant, and I also agree. This is a property offence and because the appellant had had no previous conviction in his 42 years, is married and has 4 children and he plants crops for their subsistence, there is every likelihood that the appellant will take the opportunity of suspension of sentence to rehabilitate himself. The whole of the 9 months imprisonment sentence ought to have been suspended.

[5] However, because the appellant has already served 32 days of that sentence in prison before he was granted bail, both counsel, and the appellant himself, and I, agreed that because imprisonment has been served for 32 days, his sentence should simply be those 32 days – a sentence which he should not have served but which he has already served, and that in lieu of that, there be no further penalty hanging over him.

[6] Accordingly, by consent, I make the following orders:

- (a) The appeal of the appellant is allowed.
- (b) The sentence of imprisonment of 9 months imposed by the Magistrate Court is quashed.
- (c) The appellant is sentenced to 32 days imprisonment backdated to be served and which has been served from 30 October 2018 to 7 December 2018.
- (d) The appellant is accordingly forthwith discharged.

- (e) The passport of the appellant shall forthwith be returned to him and his name shall forthwith be removed from the NO FLY LIST.

NUKU'ALOFA: 14 December 2018.



A handwritten signature in blue ink, appearing to read "L. M. Niu", is written over the seal.

L. M. Niu
JUDGE