

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

**AM 3 of 2020**

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**BETWEEN:            MAPA HA'ANO TAUMALOLO**  
  
-            **Appellant**

**AND :                POLICE**  
  
-            **Respondent**

**BEFORE HON. JUSTICE NIU**

**Counsel            : Mrs. P. Tupou for appellant.  
                              Mr. T. 'Aho for respondent.**

**Hearing            : 1 May 2020**

**Submissions      : 8 May 2020 by consent**

**Ruling             : 18 May 2020**

**RULING (BY CONSENT)**

[1] The hearing of this appeal was set down by agreement on 25 March 2020 to be held on 1 May 2020. Mrs. Tupou was unable to attend on the hearing date due to illness, but Mr. 'Aho attended and advised that the appeal would not be opposed and that he and Mrs. Tupou would file a joint memorandum to that effect by 8 May 2020.

- [2] On 8 May 2020, Mr. 'Aho filed a memorandum outlining the case laws on self-defence, and submitted that despite the defence of self-defence being raised by the appellant at the trial, the Magistrate failed to follow those laws and to state his reasons for holding that the defence of self-defence did not apply in the facts of this case. He accordingly conceded the appeal on behalf of the respondent.
- [3] On the same day, Mrs. Tupou filed her consent to and agreement with that memorandum, and she submitted that this Court orders that the convictions and sentences of the appellant be quashed. Mr. 'Aho has not objected to that.
- [4] However, I still have to decide, on the facts and the laws, whether or not the Learned Magistrate erred, despite the submissions and concession made for the respondent that the Learned Magistrate erred.
- [5] I agree with the submissions of Mr.'Aho as to the laws on self-defence. He refers to *Palmer v The Queen* [1971] AC 814 where the Privy Council (UK) stated:

“The question to be asked in the end is quite simple. It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did. If he had that belief and there were reasonable grounds for it, or if the jury is left in reasonable doubt about the matter, then he is entitled to an acquittal.”

And the burden of proof is not on the accused but on the prosecution to disprove self-defence. The Court of Appeal of Tonga has said so in the case of *Azuelo v R* [2009] Tonga LR 149 at 154:

“The prosecution must eliminate any reasonable possibility that the accused acted in self-defence. It must disprove self-defence and must do so beyond all reasonable doubt.”

[6] I have studied the transcript of the trial before the Learned Magistrate and his judgement in this case very carefully, and repeatedly, in an effort to find his findings as to the facts and of the facts upon which he held that the prosecution had disproved and eliminated the defence of self-defence which the accused had raised, namely, that

(a) he had punched and damaged the window of the car in order to stop the complainant driver, Seini, from running him over with the car, and

(b) that he had punched Seini in the face to stop her from running him over with the car,

but to no avail. I just could not and cannot find any justification in his judgement for convicting the appellant of the two charges of willful damage and of assault when there were evidence of self defence as pleaded in the said defences.

[7] I accordingly agree with both counsels' submissions, and I order that the appeal is allowed and that the convictions and sentences of the appellant for both offences be quashed.

**NUKU'ALOFA: 18 May 2020**



  
Niu J  
**J U D G E**