

corrected this the following day, and directed that the appeal must be heard. The hearing was set for 3 December 2020 and was adjourned to be heard on 11 February 2021.

4. On 11 February 2021 counsel for the Respondent Ms. Alyssa Kafoa gave me her written response to the appeal. Counsel for the Appellant Mr. Sunia Fili said that his client was not present and it was difficult to get hold of him. He asked that the settlement of 5 November 2020 be reinstigated. Counsel for the Respondent refused this request and asked that the decision of Magistrate Tuita be confirmed plus cost for the appeal. Counsel for the Appellant left it to the Court to decide the case.
5. I have been considering the record of the Magistrates Court hearing and the decision made by the Magistrate and his reason for the decision. I have also read and considered the appeal and its grounds and the reply by the respondent counsel.
6. The dispute was over a cow the Respondents claimed to be theirs. In evidence 3 cows were identified. Cow A was the cow in dispute - cow B was an offspring of A and cow C was the mother of A. When the dispute came for trial in the Magistrates Court on 26 August 2020, the court was advised that the cow A in dispute had been killed by the appellant for the 21st birthday of his daughter and to celebrate Mother's Sunday. In his judgment, the Magistrate referred to this as a reasonable ground for inferring that the Appellant killed cow A because he knew it was not his and not wait for the dispute to be settled.
7. The grounds for appeal were as follows:
 - 1) Cow A belong to the Appellant.
 - 2) There was an error in law when the Magistrate inferred that the billing of cow A meant the Appellant knew it was not his.
 - 3) Breach of natural justice because he did not have a lawyer, and he killed cow A for the 21st birthday of his daughter and to celebrate Mother's Sunday.
 - 4) He disputes the value of \$4000 for cow A as the market value is \$2000.
8. In reply, counsel for the Respondent submitted as follows;
 - 1) The Magistrates did not make an error in law and ruling that cow A belong to the Respondents.

- 2) The finding of facts by the Magistrate is entirely at his discretion on the reliability of witnesses.
- 3) Rely on *Kapeli v Piukala* (2008) TOLR p.38 - "It was not appropriate for the court to retry the case on matters of fact."
- 4) Same as 3 but quoting *Rae v International Insurance Brokers* [1998] 3 NZLR 190.
- 5) The fact that the appellant was denied justice as he did not have legal counsel is denied as seen in 6.
- 6) The trial was adjourned twice at the request of the appellant to find a counsel. The appellant has confirmed that he no longer needs legal counsel and he will represent himself.
- 7) The appellant did receive legal advice with his statement of defence from an in house counsel for a government department.
- 8) The amount of damages was not disputed by the appellant in the Magistrates Court.

9. At the beginning I informed the parties that my decision will be based on the written evidences forwarded by the clerk from the Magistrates Court - S.79 Magistrates Court Act. I have discretion under the same section to examine any witness produced before the Magistrate, and on good cause shown by either party, may admit fresh evidence.

10. I deal with the grounds of appeal and response as follows:

- 1) There was no error in law when the Magistrates inferred that the killing of the cow in dispute meant the Appellant knew it was not his. This was a natural inference which the Magistrates was entitled to make.
- 2) The fact that the Appellant had no counsel to represent him was by his own choice and not a breach of natural justice. From the records of the proceedings I do not see any major part that having counsel would make any difference. The hearing was under the conduct of the Magistrate. I might comment here that the submission in reply by counsel for the respondent saying that the Appellant was given a chance with 2 adjournments to seek a lawyer and finally saying that he did not need one is not in the record of the proceedings given to me. But this is not relevant

now as I have decided there was no breach of natural justice as it was by his own choice.

3) As for the market value of cow A I take the value the parties agreed to settle with, that is \$3000. Cow A had an offspring cow B and as seem from the evidence of the Appellant, a female cow can have up to 4 or 5 offsprings. In these circumstances I would add another \$1000 in respect of future offsprings of cow A.

11. I agree with the Magistrate that the evidences, on the balance of probabilities, pointed to the fact that Cow A was the offspring of cow C which was owned by the Respondents. Cow B is an offspring of Cow A and therefore owned by the Respondents.

12. I therefore dismiss the appeal and confirm and add on to the Ruling of the Magistrate as follows:

1. The Appellant pays \$4000 to the Respondent.
2. The Appellant pays the costs of \$1000 awarded by the Magistrate.
3. Costs in the appeal is awarded to the Respondent to be taxed by the Registrar if not agreed.

NUKU'ALOFA: 11 February 2021

The seal of the Supreme Court of Tonga is circular, featuring a central emblem surrounded by the text "SUPREME COURT TONGA". A signature is written over the seal.
Tupou J
ACTING JUDGE