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

AM 08 of 2021

[Mag No. CR 18/2021]

BETWEEN : POLICE
Appellant

AND : 'AMONE SINIVA KAUFUSI
Respondent

JUDGMENT

BEFORE : HON ACTING JUSTICE TUPOU

Counsel : Mr. Tevita 'Aho for the Appellant
Mr Sione Taione for the Respondent

Date of Mention: 20 May 2021

Date of Hearing: 10 June 2021

Date of Judgment: 17 June 2021

1. This is an appeal against a decision by Senior Magistrate Ms Pahulu-Kuli on 30 March 2021 that the Appellant has not proved beyond reasonable doubt that the Respondent was guilty of the charge in summons CR 18 of 2021 under section 3(g) of the Order in Public Places Act.
2. CR 18 of 2021 alleges that in the early morning of the 13th December 2020, the Respondent drove his vehicle into the home of Kaufo'ou Taulahi and said to her ("English Translation") "that he wants to help her son because he is living in sin and with a lie and that he (Respondent) is coming with the truth".
And that this was said "within the Boundaries of any town" contrary to section 3(g) of the Order in Public Places Act.
3. Kaufo'ou was upset and greatly saddened by this and told the Respondent to leave her property as he was trespassing. She did not want him to be inside her property.

18 JUN 2021

[Signature]

4. The Respondent did not leave immediately but continued talking to Kaufo'ou and she kept on saying to leave her property and that she will see him in Court.
5. Eventually, he drove out of the property but before doing so he told Kaufo'ou "that the end result of sin is death"
6. Kaufo'ou's husband Viliami Taulani heard the exchange between his wife and the respondent because he was lying down on the verandah of their home. He was also very upset and angry by what the Respondent has said.
7. The son had been declared Dux of Tonga College for 2020. On Sunday 6 December 2020 he and his parents attended the Misinale service at Free Wesleyan Church in Fanga. The normal feast followed and when it was announced that the Dux was to make a speech, the respondent told 'Ailini Vailea who was sitting opposite him and others around him that – "the Dux is a lie and false it appears on facebook."
8. There is no evidence that the parents of the Dux heard what the respondent had said but it is inevitable that someone told them and this would have been the reason that the mother, Kaufo'ou, did not want to speak to the respondent when he came on the following Sunday 13 December saying the words in paragraph 2 and told him to leave her property.
9. Section 3 of the Order in Public Places Act makes an offence for any person who commits any of the following acts –

"3(g) by shouting or beating any drum, tin or tank without just cause, blowing any horn, quarrelling or in any other manner, makes any disturbances or loud noise in any public way or within the boundaries of any town".

The penalty is a fine not exceeding \$1000 and in default imprisonment for a term not exceeding 12 months.

10. In her judgment, Senior Magistrate Pahulu Kuli accepted the evidence of the words used by the respondent when he entered the property of Kaufo'ou Taulahi (para 2).
11. She asks, however, whether the words used and the way it was said come within section 3(g).
12. She applied the ejusdem generis to help interpreting section 3 (g) to see whether what was said and the way it was said contravened section 3 (g) and the charges made.

13. She found that the act of the respondent was normal talking not shouting and concluded that, applying the ejusdem generis rule, the specific words at the beginning of section 3 (g) followed by the general words at “or in any other manner” meant that the act of the respondent had to be loud and noisy, which it was not she therefore acquitted the respondent.

THE APPEAL

14. The appeal is on a point of law in that the Magistrate misinterpreted and limited the definition of the phrase “any other manner” in section 3 (g) to mean an act causing a loud noise.
15. The appeal goes on to submit that as a consequence of this misinterpretation, she failed to consider the second aspect of the provision which provides that the criminal act conducted “in any manner” is considered as offence if it “makes any disturbance or loud noise”.
16. The third point of the appeal is that there was evidence that the words spoken by the Respondent [para. 2] caused disturbances to the minds of the complainant and her husband.
17. In his response in opposition to the appeal, Counsel for the respondent submit that the Magistrate did not err in law when applying the ejusdem generis rule on the phrase “any other manner” to mean any manner which makes a loud noise. He relies on the direction in R v ‘Atoa [2019] TOCA; AC 21 of 2018 (12 April 2019) that – the ejusdem generis rule is that where general words follow particular and specific words, the general words must be confined to things of the same kind specified.
18. He therefore submits that the interpretation made by the Magistrate was in line with Court of Appeal decision (‘Atoa) and was therefore correct.
19. Counsel for the respondent also submit that the factual findings of the Magistrates in para.56 that prosecution was not able to prove the charges to the required standard (beyond reasonable doubt). The Magistrate was therefore correct in acquitting the respondent.

DISCUSSION

20. In R v Atoa [2019] TOCA; AC 19 of 2018 (17 April 2019) the ejusdem generis rule is that where general words follow particular and specific words the general words must be confined to the thing of the same kind specified.”

21. Similarly, in *Circuit City Stores Inc, V. Adams*, 532 U.S.105 [2001] the Supreme Court defined *eiusdem generis* as a situation in which “general words are constructed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.”

22. In *R v Atoa* case, the Court of Appeal opined –

[10]” The *eiusdem generis* rule must be applied with caution. It will not be applied to limit the scope of a statutory provision where the legislative intent was to the contrary.

In *Quazi v Quazi* [1979] 3 All ER 897 Lord Scarman said:

“If the legislative purpose of a statute series should be read *eiusdem generis*, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfill the purpose of the statute. The rules like many other rules of statutory interpretation, is a useful servant, but a bad master.

23. Similarly, in *Craies on Statutes Law* (7th Ed.) at p.181 it states:

[11] “The *eiusdem generis* rules is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what is, a mere presumption, in the absence of other indications of the intention of the legislature. The modern tendency of the law, it is said, is to ‘attenuate the application of the rule of *eiusdem generis*’.

24. In an effort to see what the intention of the legislature is in section 3 (g), I note that the key word is “disturbance” and the section is headed by that word.

25. The specific words in section 3 (g) are noisy in nature and in the second part of the section makes “loud noise” itself an offence as an alternative to “disturbance”.

26. With “disturbance” being the key and intent of the legislature, it follows that anything that causes a “disturbance” within the boundaries of any town is an offence.

27. The *eiusdem generis* rules is “a mere presumption in the absence of other indications of the intentions of the legislature “(Craies) and “must be applied with caution. It will not limit the people of a statutory provision where the legislative intent was to the contrary (*Atoa*).

28. The legislature could not have intended that the “disturbance” can only be caused by loud noise to be an offence. When section 3 (g) says “or in any other manner” it means anything else, and not restricted to loud noises, that “makes any disturbances”.

29. For these reasons I agree with the submission by Counsel for the appellant –

“[17] that the words “any other manner” in its plain and ordinary meaning within section 3 (g) means any act/conduct, not provided for in the provision.”

[21] The consequence of such restrictive interpretation taken by the Magistrate will limit the scope of section 3 (g) of the Act, where it is apparent that the legislative intent was not to limit the conduct to just acts that made loud noises but also to acts that caused a disturbance.

30. The “disturbance” in this case is, as described by Counsel for the Appellant –

[22] “that the words spoken by the respondent (para 2) did cause disruption or an interruption to the state of affairs of the complainant... disagreement ensued, which led to the complainant telling the respondent to leave her property.

CONCLUSION

31. It follows and I conclude that the use of the ejusdem generis rule by Senior Magistrate Pahulu-Kuli to section 3 (g) of the Order in Public Place Acts was contrary to the intent and meaning of the section, and therefore wrong.

RESULT

32. The decision of Magistrate Pahulu-Kuli made on 30 March 2021 is quashed.

33. The Respondent is guilty of the offence charged under section 3 (g) of the Order in Public Place Act.

34. The Respondent be put on bail for 3 months on condition that he does not commit any offence during that period and this is to be concurrent with the penalty in CR 17/2021 made by the Magistrate.

NUKU’ALOFA: 17 June 2021




Tupou J
ACTING JUDGE