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IN THE SUPREME COURT OF TONGA

APPELLATE JURISDICTION

NUKU'ALOFA REGISTRY

AM 18 of 2021

BETWEEN : REX

- Prosecution

AND : MOTESIO VAIOLETI

- Accused

BEFORE HON. JUSTICE NIU

Counsel : Mr F. Samani for appellant.

Ms. A. Tavo-Mailangi for respondent.

Hearing : 9 December 2021.

Sentencing : 16 December 2021.

SENTENCING

Offence

- [1] I have found the respondent, Motesio Vaioleti, guilty of the offence of driving without due care and attention contrary to S.27 (1) of the Traffic Act on the evidence which were given in his trial at the Magistrate's Court. He now appears for sentence for that offence.
- [2] Section 27 (1) itself provides for the sentence to be imposed, namely, a fine not exceeding \$800 or imprisonment for a term not exceeding 4 months or both.

Submissions

- [3] **Mr. Samani** for the appellant says that the range of sentences imposed in the Magistrate Court for this offence is between \$100 and \$200 fine and/or compensation where damages have been suffered as a result of the offence.
- [4] He says that the car of the complainant has suffered extensive damage caused by this offence of the accused. He produced a quote for repair of the damage for \$11,960 which was given on 8 January 2021, the same day of the offence.
- [5] He says that the accused paid for the cost of towing the complainant's car to the workshop which made the quote, which was \$150.
- [6] He submits that in view of the limited means of the accused, he would agree that no fine be imposed on the accused but that he be ordered to pay part compensation to the complainant in the sum of \$800 and that if he defaults to pay it, after such time as the Court may order, he serves imprisonment of 1 month, as provided for under S.25 of the Criminal Offences Act, which provides for imprisonment of up to 3 months for such default.
- [7] **Mrs. Mailangi** for the respondent says that the respondent is 33 years of age, is married and has 2 children aged 9 and 4 and that his livelihood is farming and that they live in Ha'asini. The house they occupy belongs to a relative who lives overseas and the tax allotment he farms also belongs to another relative overseas.
- [8] She says that the accused has previous convictions but they were for non-traffic offences and are over 10 years ago. Those offences were one theft in 2001 and wilful damage in 2006.
- [9] He says that the accused needs his motor vehicle for his farming and for taking the children to school. She asks that the sentence to be considered may be towards the lower end and that his driving licence be not cancelled.

Serious offence

- [10] I am afraid that neither counsel appears to consider that this was a serious offence which the accused committed. What is serious about it is that the accused knew that his brakes were not working or were not working properly and yet he chose to drive it on the road. That is already an offence. It is already the offence of driving without due care and attention. Due care and attention is to ensure that the brakes are working properly. The accused had already committed the offence when he drove the vehicle in that condition. But what was worse, he had his kids in the vehicle as well, exposing them to injury or death.
- [11] What happened on this offence was just the evidence of his offence, the consequence of the offence he was committing every time he drove. And it was just by chance that the complainant driver was not killed. I am told by the respondent that he has not fixed his brakes up to now.
- [12] I wonder how many drivers out there are still driving around with faulty brakes or no brakes and are thinking that they are not committing any offence, such as the respondent in this case. That is why this offence is serious. With the number of motor vehicles on the road increasing all the time, the Courts must ensure that sentences they impose sufficiently deter drivers from driving without due care and attention, in particular, that they do not drive with faulty brakes.
- [13] The Legislature has enacted that the fine for such offence be up to a maximum of \$800 and I consider that the fines of \$100 to \$200 which are presently being imposed for it are not deterrent enough to ensure that they are not committed. We should not wait and only impose a heavier penalty when a life is lost as a result of this offence.

Sentence

- [14] I consider that an appropriate sentence for this offence of the respondent is a fine of \$300.00 and that it is to be paid within 2 months, from today, in default of which he will serve one month imprisonment and I order it accordingly.

[15] As to the driving licence of the respondent, I would not disqualify him, but I order that his vehicle no. L24859 shall not be driven or be on the road until the brakes of the vehicle have been certified by the Ministry responsible for Transport are functioning properly.

[16] As to compensation, I agree with Mr. Samani but I would increase the amount and I order that the respondent pays \$1,000 to the complainant in part compensation of the damages she has suffered, which sum shall be paid within 3 months from today, in default of which he will serve 2 months imprisonment.

Nuku'alofa: 16 December 2021



The seal of the Supreme Court of Tonga is circular, featuring a central emblem with a crown and a star, surrounded by the text "SUPREME COURT OF TONGA" and a star at the bottom. A blue ink signature is written over the seal.

Niu J
JUDGE