



to the offending. He was aged 21 at the time of the offending. He has no previous convictions.

- [3] The starting point for rape after a defended hearing in Tonga has been said by the Court of Appeal to be 5 years. *R v Fa'aoso* [1996] Tonga LR 42. However, here there were aggravating circumstances in that the prisoner unlawfully entered the complainant's residence in the early hours of the morning and raped her. A woman is entitled to expect she is safe in her house from predatory sexual offending. I increase the starting point to one of 7 years imprisonment for this aggravating factor.
- [4] The prisoner is young and has no previous convictions. He co-operated with police and has expressed remorse. He claims to have been very drunk that evening but whilst that may explain in part his behaviour it does not justify it and cannot be regarded as mitigation. I have read the probation report also. The report suggests that the offending was out of character. He is involved in community activities, sporting activities, is a youth choir master for his church and assists his father in the plantation. I have received good testimonials about him from the Longo Longo Poto He Laukau Club, as to his community work, the President of the Youth of Free Wesleyan Church of Longo Longo, and his Church Minister. His parents attribute his offending to drunkenness and apologise as they have to the Victim's mother and have given her a gift of money and a large pig.
- [5] I allow him mitigation of two years and 3 months imprisonment for his early guilty plea that saved the complainant having to give evidence, his previous good character, and also the fact that some compensation has been paid by his family. He is sentenced to four years and nine months imprisonment. Because he pleaded guilty and has expressed remorse, is a first offender and has been co-operative he should have part of his

sentence suspended. I suspend the final year of his sentence on the following conditions;

- a. he is not to commit any further offences punishable by imprisonment for the period of his suspension.
- b. he is placed on probation for the period of his suspension;
- c. he is to live where directed by his probation officer;
- d. he is not to consume alcohol or drugs during the period of his suspension;
- e. he is to attend a course on alcohol and drug abuse under the direction of the Salvation Army and Probation.

He is warned that any failure to abide by these conditions may mean that he is recalled to serve the remainder of his prison sentence.

- [6] On the offence of serious housebreaking he is convicted and sentenced to three years imprisonment to be served concurrently with the offence of rape. The sentences are backdated to the date of his remand in custody.

DATED: 7 MARCH 2016



*Cato*

C. B. Cato

JUDGE