

*Scan, file & Upload*

*11/08/16*

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

**CR 144 of 2014  
CR 145 of 2014**

**BETWEEN: R E X - Prosecution**

**AND: SEMISI LOLOHEA - First Defendant**

**AND: MONALISA MANUMU'A - Second Defendant**

**BEFORE THE HON. JUSTICE CATO**

**Counsel:** Mr Lutui for the Crown

Ms Fa'anunu for the First Defendant

Mr Tu'utafaiva for the Second Defendant

**SENTENCE**

[1] The prisoners had been both charged with murder of a Mr Eneasi Latu under sections 85, 86(1) (a) and (2), 87(1) (b) and 91 of the Criminal Offences Act, and in the alternative manslaughter contrary to sections 85, 86(1) (a) and (2), 92 and 93 of the Criminal Offences Act. On the 25<sup>th</sup> November 2014, they had both pleaded not guilty to all the charges.

[2] On the 13<sup>th</sup> June, 2016, Mr Manumu'a was re-arraigned and pleaded guilty to the count of manslaughter.

*rec'd 11/08/16*

- [3] Manumu'a and another accused, also charged with murder, a Mr Lolosio Valu, had elected trial by jury which was set for two weeks to commence on 20<sup>th</sup> June, to 1<sup>st</sup> July 2016. At trial, Mr Valu was discharged from an indictment for murder, manslaughter and grievous harm and pleaded guilty to a lesser charge, after the Crown indicated that it desired to offer no further evidence in relation to him towards the conclusion of the Crown evidence. By that stage, the evidence had established that he had withdrawn or left the scene, and had no part in the homicide.
- [4] Mr Lolohea had elected to be tried by Judge alone which was set down for the 5<sup>th</sup> to the 6<sup>th</sup> July, 2016.
- [5] On the 1<sup>st</sup> July, 2016, after a trial lasting several days, Mr Manumu'a was found not guilty of murder.
- [6] As a consequence, of this verdict, the Crown on the 5<sup>th</sup> July 2016, withdrew the charge of murder against Mr Lolohea. He was then re-arraigned and pleaded guilty to manslaughter.
- [7] Both men were remanded in custody for sentence on the 5<sup>th</sup> August, 2016 and, after submissions were considered, the sentencing was reserved until the 10<sup>th</sup> August, 2016.
- [8] At the hearing of the sentencing submissions, Mr Lutui and Ms Fa'anunu presented me with an agreed statement of fact. Because the agreed statement of fact largely replicated the evidence I had heard in the case of Manumu'a, I will set it out in full. It will form the basis of my sentences for both men.

#### Agreed Summary of Facts

1. The Accused person is Semisi Lolohea, 27 years of age, of Niutoua.
2. The Deceased is 'Eneasi Tu'ineau Latu, 48 years of age, of Afa. He was married and had 6 children.
3. On or about Monday 21 July 2013 at Afa, Semisi Lolohea and Monalisa Manumu'a went to the residence of 'Ana Lupe Kama for a meal. They then walked together with 'Ati Vakavelo to his tax allotment where they consumed alcohol. They consumed a 1 litre bottle and one 500ml bottle of alcohol. In the evening of that day when they finished their drinks, they returned to where 'Ana Lupe Kama resided and continued to drink alcohol.
4. While they were drinking, Lolohea and Manumu'a, kept complaining about Lotu Latu and how he had previously taken 'Ana Lupe Kama to a drinking party a week prior where she got beaten up.
5. They obtained more alcohol and continued to drink. On or about 12 am at night, Lolohea noticed Lotu Latu walking down the road in front of the residence where they were drinking, Lolohea then attacked Lotu Latu and beat him up. Monalisa also joined in and started punching Lotu Latu. Lolesio Valu intervened and stopped Lolohea and Manumu'a while Lotu Latu ran off seeking help at Heleni and Tala'a Naitoko's residence nearby.
6. At this time, 'Eneasi Tu'ineau Latu (the deceased and father of Lotu Latu) was walking back together with 'Ati Vakavelo from a kava party at one of the residence in Afa. Lolohea then collared the deceased on the road

- telling him to go and check on his son as to whether or not he was still alive.
7. The deceased got angry and left, returning a few minutes later with a machete in one hand and an iron rod in the other. He stood on the road in front of the residence where Lolohea, Manumu'a and Valu and 'Ana Lupe Kama were and shouted out to them asking why they had beaten up his son.
  8. They became very angry and began to quarrel. Lolohea, Manumu'a and Valu started to throw sticks at the deceased before walking out and attacking him. In the process, the deceased swung his knife and injured Lolohea's leg. Lolohea became more angry and continued to pursue the deceased with Monalisa and Valu. They took turns beating him with sticks while the deceased shielded himself and moved backwards.
  9. Lolohea and Manumu'a beat the deceased until he fell to the ground and they continued to beat him while he lay on the ground. This occurred in front of 'Ati and Lepeka Vakavelo's residence. Lepeka Vakavelo then called her husband for help and he came and tried to hold back both Lolohea and Manumu'a at this time, the deceased was already seriously injured and lying on the road.
  10. The deceased was rushed to the hospital. The deceased was pronounced dead on arrival and the cause of death was determined to be intracerebral (brain) haemorrhage as a result of impacts to the face and head of the deceased. He also suffered multiple blunt impacts and fractures to other parts of his body.
  11. The accused is a first time offender.

[9] At the hearing, I inquired of both counsel, Mr Lutui and Ms Fa'anunu, whether one matter which I considered important from the aspect of both prisoners' sentencing had been agreed upon. It had appeared from photographs produced at the trial of Mr Manumu'a that the deceased had been dispossessed of a machete and an iron rod with which he had earlier confronted the prisoners and Mr Valu before Manumu'a and Lolohea had each, in a concerted way hit him with a number of blows to his upper body, with heavy sticks( tree branches) as he lay on the ground near the gate in front of Mr and Mrs Vakavelo's residence. It was accepted that this was so.

[10] The count of murder had been advanced against Mr Manumu'a on the basis that he, together with Semisi Lolohea, had caused the death of Mr Latu when they unlawfully beat him repeatedly with sticks causing injuries to his body, which Manumu'a knew to be likely to cause death, and he was reckless as to whether those injuries would result in his death or not. At the trial, the defence contended, first that Mr Manumu'a had not known that the beating was likely to cause his death and hence he was not guilty of murder. Further, the defence had argued if he were guilty of murder then that was mitigated to manslaughter by the defence of extreme provocation under sections 89 and 90 of the Criminal Offences Act.

[11] During his submissions on sentence, Mr Tu'utafaiva submitted that the Jury had acquitted his client because of provocation suggesting perhaps that this was consistent with a more benign view of the facts, namely that he had acted under passion derived from extreme provocation in hitting the deceased as he lay on the ground. I indicated that it was unclear that this was so. I had allowed but had some reservation about doing so extreme provocation being put to the Jury because I felt that whatever provocation had been given had dissipated once the

deceased had been forced backwards and lost his weapons before being attacked on the ground. As I heard the evidence of the trial of Mr Manumu'a, the provocation had arisen at the commencement of the fight when the deceased lashed out with a machete and a rod which he had also brought from his home but at the time he had been fatally assaulted by both men acting in concert he was defenceless and on the ground. I consider that, at that point, their actions were much more likely motivated by revenge and anger fuelled no doubt by the considerable amount of alcohol that had been consumed by both men that day. I considered that it was more likely that the Jury considered that beyond reasonable doubt the Crown had not proven that Mr Manumu'a knew that his actions were likely, meaning would probably cause Mr Latu's death, and carried on regardless. A judge has a wide discretion in determining the facts relevant to the commission of an offence. A particular constraint is that he or she must not take a view of the facts which conflicts with the Jury's verdict. *R v Pryor* 2 Qd R 768; *R v Nicholls* [1960]1 WLR 658.

[12] That said, it is possible as Mr Tu'utafaiva submitted that certain members felt murder should be mitigated by extreme provocation in the case of Mr Manumu'a. I consider in relation to both prisoners' sentences that provocation, in any event, cannot be simply put to one side. Certainly, the major initial contributing factor for this homicide was the foolish decision of Mr 'Eneasi Latu to return armed with a machete and iron bar to the area where he knew Semisi Lolohea had earlier confronted him concerning the activities of his son. He then, I accept, acted, in a very menacing way using threatening and highly charged language. I accept he struck Lolohea with the machete causing a wound to the shin, I am told by his counsel which required some medical attention and also it seems Mr Valu was also struck during the initial stages.

[13] Having heard from all parties on the starting point, I consider that the nature of the beating involving heavy blows with two heavy tree branches to the upper body of a man who was defenceless and prone on the road plainly constituted extreme violence. Although the initial provocation may still have been operating on their minds and fueled their anger, I consider their main motivation, at the end, was to exact revenge. I, have considered a number of authorities including Tu'itavake v R [2005] Tonga LR 348, Kofutu'a v R [2010] Tonga LR 120 and Sione Vaomotou v R [2014] Tonga LR 62 cited to me by the Crown and with which I was familiar because of having to sentence in other manslaughter cases. I consider that, but for the initial provocation, my starting point would have been 14 years, for the extreme violence and brutality that these concerted assaults on a defenceless man represented. An assessment of the degree of provocation in this case must be one that, however, is meaningful. I discount the nominal starting point of 14 years imprisonment by three years to take into account the provocative actions of the deceased which relevantly set the scene for the violence that was to so tragically follow. The actual starting point in relation to both prisoners I accordingly set at 11 years imprisonment. That bears some similarity also with the upper level of the Tu'itavake guidelines 10-12 years for provocation followed by a weapon being used with great brutality based on English cases.

[14] Both counsel, in their able submissions, emphasised their client's pleas of guilty, with Mr Tu'utafaiva asserting his client's prior acknowledgment by a plea to manslaughter. Mr Lolohepa had, however, maintained a denial to the point of trial, as he had done from the date of arrest. Both prisoners were first offenders and both had provided apologies and Tongan compensation; food, pigs and mats to the family of the deceased. The apologies

were accepted by the deceased's family to whom I was informed that Mr Lolohea was distantly related.

[15] Mr Lolohea is aged 27. He is said to have had a happy childhood. He is married to an Australian who has returned to Australia pending the outcome of this sentencing. He has no children. He had met his wife when he went fruit picking in Australia. He did not seem to achieve highly at school apart from athletics in which he won medals in inter-college sport. There is a suggestion in the probation report that in Australia he used drugs and he also consumed alcohol with friends. To a considerable extent, he like Manumu'a, was I consider affected by alcohol on the night of the incident. He was it seems the one who was looking for a fight with first Mr Lotu Latu and then later aggressive towards his father, the deceased, as he passed the group to go home before returning back to confront the men with weapons. He had some history of adjustment disorder with depressive mood, but Dr Puloka had found him fit to plead and in full remission from any previous history of adjustment disorder.

[16] Mr Manumu'a is aged 25 and single. His father abandoned the family when he was a child and went to live in the United States. His mother is using a wheelchair and looked after by a daughter. She brought up the prisoner with his siblings after the father left. The prisoner had been brought up by a grandparent also which she regrets. The prisoner was the member of the family that was relied on for work in the plantation and income from fishing. Alcohol again had become an unsavoury part of his life and the consumption of this with his peers. However, he was involved in church activities and community activities. He seems to acknowledge, in his probation report, that he was intoxicated on the night of the incident. I have no doubt that the anger of both he and Mr Lolohea was fuelled also by the amount of alcohol they had consumed earlier, but the consumption of alcohol is not

a mitigation factor I can consider on sentence. He, like Mr Lolohea, in his probation report and through counsel expressed regret at the death of Mr Eneasi Latu who left a widow and several children, and their role in it.

[17] I consider the manslaughter pleas were inevitable in this case. That said, the accused must be given some meaningful mitigation for their pleas to manslaughter which were an acknowledgement of their responsibility in Mr Latu's death. In all for their pleas, expression of remorse, the fact they are first offenders, and the fact that they have made compensation and their apologies have been accepted, I allow them a discount of 2 years imprisonment by way of mitigation. Accordingly, the sentence I pass upon them both for manslaughter after conviction is 9 years imprisonment.

[18] I consider however, that both qualify for some measure of suspension of part of their sentence consistently with Mounga [1998] Tonga LR154 and the observations of the Court of Appeal in Kofutu'a [2010] Tonga LR 120 that;

"suspension had the twin aims of rehabilitation and deterrence. It did not involve a reduction in the term of imprisonment but merely suspension of part which could be activated should the prisoner reoffend'.

Both are first offenders and both now acknowledge their role and have expressed regret. Mr Manumua from the outset was more co-operative with Police, however, and eventually, after Mr Tu'utafaiva, became his counsel, offered a plea to manslaughter prior to his trial for murder. However, even so, this could not be described as an early plea having been entered in June 2016. Mr Lolohea was not so co-operative with the police, and maintained a denial to all charges until the point of trial. I consider it is

appropriate to draw some distinction between the prisoners on the length of suspension because, of the two, Mr Manumu'a was more consistent and, to my mind, genuine and a better candidate for rehabilitation than Mr Lolohea. I also note that, on the evidence, I heard at his trial Mr Manumua was not involved in any earlier altercation with the deceased as was Mr Lolohea with whom the deceased had a brief encounter on his way home. I formed the impression that of the two Mr Lolohea was the more aggressive that evening, at least in regard to the events that arose before the homicide. I reflect this by allowing Mr Manumu'a suspension of the final 2 years of his sentence on the following conditions;

- i. He is to commit no further offences punishable by imprisonment for a period of two years ;
- ii. He is on probation for the period of his suspension and is to live where directed;
- iii. He is not to drink alcohol during his suspension;
- iv. He is to attend course on anger management and on alcohol abuse under the direction of probation.

He is warned that a failure to abide by these conditions may mean he is returned to prison to serve the balance of his sentence.

[19] In relation to Mr Lolohea, I suspend the final 18 months of his imprisonment on the following conditions;

- i. He is to commit no further offences punishable by imprisonment for a period of two years ;

- ii. He is on probation for the period of his suspension and is to live where directed;
- iii. He is not to drink alcohol or consume drugs during his suspension;
- iv. He is to attend courses on anger management and on alcohol and drug abuse under the direction of probation.

[20] He is warned that a failure to abide by these conditions may mean he is returned to prison to serve the balance of his sentence.

[21] The sentences of imprisonment are both backdated to the dates the prisoners were remanded in custody.

*10th*  
**DATED: AUGUST 2016**



*C. B. Cato*  
C. B. Cato

**JUDGE**