

IN THE SUPREME COURT OF TONGA CR 76 of 2016
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

(c) He was to report to the Central Police Station once every two weeks on a Wednesday between 8am and 1pm (the reporting condition).

[2] Mr. Latu was arrested on 16 November 2016 having managed to evade the Police in the early hours of the morning of 15 November 2016 when he was in breach of the curfew condition. This matter was brought before me today so that the Crown could apply to have Mr. Latu remanded in custody for breach of his bail conditions.

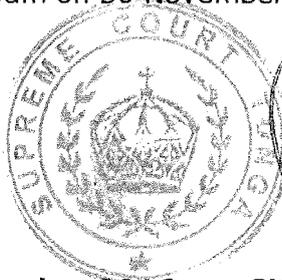
[3] Mr. Niu raised a preliminary issue and challenged the court's jurisdiction to deal with this matter because section 9(3)(a) of the Bail Act provides that a person arrested under section 9(2) is to be brought before a *Magistrate*, who may remand him in custody or grant him bail subject to the same or different conditions. I do not accept this submission which if correct would mean that this Court's jurisdiction is, in this instance, more limited than that of the Magistrates' Court. The drafters of the section appear to have overlooked that in cases of murder or treason it is only the Supreme Court or Court of Appeal that may grant bail and that must included the power to remand an accused in custody for breach of a condition of his bail, in my view. This court may exercise all the powers of the Magistrates Court except where such jurisdiction is expressly excluded (section 5 of the Supreme Court Act) which is not the case here.

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- [4] As to the merits of the Crown's application, initially Mr. Latu denied that he is in breach of his bail conditions. I was going to hear evidence on the matter but once Mr. Niu had an opportunity to take instructions it was acknowledged that Mr. Latu did breach the curfew condition and had never complied with the reporting condition. Mr. Niu explained, in relation to the curfew condition, that Mr. Latu had gone to the beach with his girlfriend in the early hours of the morning and had been observed by the Police when they stopped to get takeaways. In relation to the reporting condition, I am told that the accused simply forgot to report. Mr Niu quite properly advised me that the accused has been charged in the Magistrates' Court with a dishonesty offence and he has been remanded in custody on that offence pending this hearing.
- [5] Mr. Niu emphasised that Mr. Latu denies the murder charge and the more recent charge that has been laid against him in the Magistrates' Court. He tells me also that the accused promises 'faithfully' to comply with his bail conditions in future.
- [6] The Court might have been more open to Mr. Latu's promises of compliance with his bail conditions had he not initially denied their breach. It was only once it was made clear that the Crown was in a position to call evidence and establish the breaches that they were acknowledged. None of the reasons Mr. Latu gives in explanation for his failure to observe the conditions of his bail are in the least compelling.

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- [7] Based on what is before me I am satisfied that there is a very significant and unacceptable risk that Mr. Latu will either:
- (a) Fail to surrender to custody to face the charge against him; or
 - (b) Re-offend whilst on bail.
- [8] In those circumstances I am not going to release him on bail but am remanding him in custody to appear before Cato J on 30 November 2016 at which time the Court will have a better idea as to when Mr. Latu's trial (assuming he is committed for trial from the Magistrates' Court) will be heard. The question of bail may be reconsidered at that time if Mr. Latu wishes to pursue it.
- [9] I order the production of Mr. Latu to appear in the No. 3 Supreme Court at 9.30am on 30 November 2016.



[Signature]
O. G. Paulsen
CHIEF JUSTICE

NUKU'ALOFA: 24 November 2016