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

CR 29 & 50 of 2017

BETWEEN: R E X - Prosecution

AND: VILIAMI KUPU - Defendant

BEFORE THE HON. JUSTICE CATO

SENTENCE

[1] The accused Viliami Kupu pleaded guilty to one count of armed robbery contrary to section 154(1) and (3) of the Criminal Offences Act. Subsection 3 aggravates the offence of robbery simpliciter, which carries a maximum sentence of 10 years, to 20 years if a weapon is used in the commission of the offence.

[2] In this case, Mr Kupu together with another man, who has yet to be tried on the 31st January 2017, was armed with a machete and stole property valued at \$7671.50 by using violence on the proprietors who were Chinese.

[3] The facts indicate that the accused had filled up baskets in the store and upon reaching the counter reached into their respective backpacks and pulled out machetes. One man moved around the counter and pointed the machete at one of the owners of the store and demanded that he fill the backpack with

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cash. The other man presented a machete and told the other owner not to move.

The men then ran to a van with tinted windows that was waiting nearby and they sped away.

[4] It was brought to my attention prior to sentencing that Mr Kupu was awaiting sentence on a charge of causing grievous bodily harm contrary to section 106(1) and (2) of the Criminal Offences Act which he committed on the 17th November 2016. He pleaded guilty to that offending on the 5th July 2017 after initially entering a not guilty plea on the 27th April, 2017. The maximum sentence for this offending is 10 years imprisonment. I sentence him also for this offending.

[5] In this case, Mr Kupu broke into a warehouse also owned by a Chinese businesswoman. Having helped himself to some food, he found a piece of wood and made his way to the woman's bedroom and hit her on the head and face with the weapon after she had asked what he wanted. She suffered open wound injuries to her skull and also mandible fractures. He then made off taking no property of significance.

[6] In both instances, the offending was serious. The probation report records that Mr Kupu grew up in Vava'u in a large family of five and complained of receiving harsh discipline at home. He left school in the third form and had been truant often. He was not employed. He eventually made his way in 2015 to Nuku'alofa where he married and has one child. He lived with his wife's parents. He helped around home but was described as being very easily influenced by his peers. He has only one previous conviction for housebreaking and another for theft. He was sentenced to two years imprisonment for the housebreaking and three months for the theft concurrently which arose in 2013 in

Neiafu, Vava'u His wife is supportive of him. He is said to enjoy associating with peers smoking and consuming alcohol.

[7] In relation to the armed robbery, I note that although both men carried machetes and threatened the owners there were no actual physical injuries caused to them but their fear must have been considerable when the machetes were presented. A number of authorities were cited by the Crown to me on armed robbery. One R v Vaka CR 75, 76, 81, 82, 99 -2012 involved a number of young men who robbed a Chinese store one carrying a knife. I emphasised the importance of deterrence in sentencing in cases like these and the need to protect store owners in Tonga who often opened late at night. I sentenced Vaka on the basis of a starting point of five years and allowed him 18 months for his guilty plea. On reflection, the starting point I imposed in that case was too low and did not adequately reflect the aggravated circumstance reflected in section 154 (3). Closer to the mark in my view was an eight to ten year starting point, I commenced with in R v Maikolo Fifita and others. CR 109-11/15 (Vava'u) That case involved the robbery of a Chinese store in Vava'u by three men where a .22 rifle was carried as a weapon. The more serious of the two offenders had a starting point of ten years reduced by two years for his guilty plea. The final year of his sentence was suspended on conditions.

[8] In this case, I consider the fact that both offenders carried machetes, knives capable of doing great harm and consequently being very frightening, means that a starting point of eight and a half years is in order. That is higher than the starting point I had mooted of about 7 and half years imprisonment at the hearing but it reflects my concern that both men carried machetes and the combined effect of this must have been terrifying for the owners of the shop. Had those been used on the owners to inflict harm, a greater starting point would have been justified. The

message must be taken seriously by those who use weapons to carry out robberies in Tonga that this Court will impose condign sentences on those who offend in this way, and that this is consistent with Parliament's intent in legislating for a twenty year maximum in cases of armed robbery. The Courts will not shirk in protecting the public and shop owners from this kind of dangerous predatory criminal activity. After several years in Tonga, I observe that it is not uncommon for small businesses, commonly Chinese owned and operated to stay open well into the night, performing a service for the general Tongan community, when they can be easy victims of robbery. This Court emphasises that criminals who rob persons operating their businesses or persons in their homes, also not uncommon, can expect severe punishment.

[9] I allow the accused 18 months discount for his guilty plea. Although he professed remorse at sentence I very much doubt that he is concerned for anybody but himself. The sentence I would have imposed but for the circumstances mentioned below would have been seven years imprisonment for armed robbery. However, as a consequence of receiving certain additional information which is to be kept confidential in a sealed copy on the court file, I reduce this sentence by three years to 4 years imprisonment for armed robbery.

[10] In relation to the second offence that of grievous bodily harm where the maximum sentence is ten years imprisonment, I consider that a high starting point is merited also to reflect the very cowardly and very dangerous action of hitting a woman around the head and the face with a piece of wood causing her serious injuries including losing consciousness for some time and hospitalisation for a few days. I consider a starting point of 8 years is appropriate and for his guilty plea I also grant him an 18

months discount. The sentence I impose for grievous bodily harm is six and a half years imprisonment.

[11] Considering the totality of his offending, and the fact he is only 22 years old with some but only a limited history of prior offending, I direct that the first two and a half years of his sentence on grievous bodily harm be imposed cumulatively upon his sentence of four years on the armed robbery making an overall sentence or combined sentence of 6 and a half years.

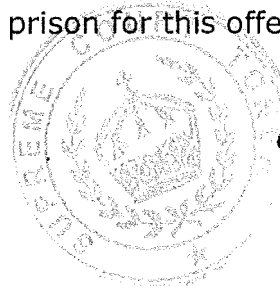
[12] I have considered the issue of whether any part of this overall sentence should be suspended. He has not been the subject of a suspended sentence before, he has pleaded guilty and been co-operative, he is only 22 and will require some supervision on release after a lengthy sentence. I accordingly, order that the final 18 months of his combined sentence of six and a half years be suspended on the following conditions;

- a. He is not to commit any offences punishable by imprisonment during the period of his suspension;
- b. He is released 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 take drugs during the period of suspension;
- e. He is to attend the following courses during the period of his suspension under the direction of probation;
 - i. A course on alcohol and drug abuse;
 - ii. A Life skills course;

iii. An anger management course;

[13] He is warned that a failure to abide by any of the conditions of his suspension may mean that application is made to return him to prison to serve the balance of his combined term of imprisonment of six and half years.

[14] His sentence of imprisonment is backdated to take into account any period served on remand in prison for this offending.



A handwritten signature in black ink, appearing to read "Cato".

C. B. Cato

J U D G E

DATED: 9 AUGUST 2017