

IN THE SUPREME COURT OF TONGA CR 102, 103, 104, 105 of 2012
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY

SA.
Scan & file

13/09/12

REX

V

1. LISIATE TONGATU'A
2. TAHIUA TONGATU'A
3. VEAPINA MA'U
4. LISIATE MA'U

BEFORE THE HON. ACTING CHIEF JUSTICE CATO

RULING

This matter came before me recently. A family were in effect all charged with housebreaking and related counts. There was a husband and wife charged, two children involved one aged 16 and one aged 13. The husband has since been discharged.

I was very concerned to find that the 16 year old boy had been held in custody for two weeks before being released when the family first appeared before me. I was advised this was because he had no surety. I was not advised as to why he was released or why his younger brother was apparently admitted to bail and he was not.

Magistrates should generally make a practical inquiry of first offenders and young person's facing criminal charges that a surety is in fact available before making this a requirement of bail where otherwise a person would be admitted to bail. In cases of doubt, other conditions governing bail should be considered.

In this case, the child probably had difficulty with a surety because both of his parents had been charged. The problem with surety requirements is that if not met, the young person will be detained in conditions which can be injurious to their mental or physical well being particularly if they come into contact with other persons on remand some of whom may be more hardened criminals. In general, detention in custody is not appropriate for first or young offenders, or children.

This Court, when it comes to sentence takes the approach that, if possible, youthful and first offenders should be given a chance and prison should be avoided if a less restrictive sentence than prison can be imposed in the circumstances of the case. It undermines this approach if offenders of this kind have been denied bail and remanded in custody for quite long periods and two weeks, as in this case, is a lengthy period. It is also, as I have said in the case of young offenders, possibly injurious to their wellbeing.

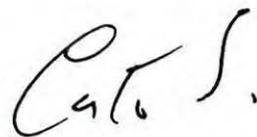
There are several alternatives to requiring a surety in a case where otherwise a person should be admitted to bail; a residence requirement that is to live with a parent or relative (a contact phone number if available should be requested), a curfew precluding a young person from going outside the residence at night, a clause requiring reporting weekly to the nearest police station, a prohibition on consuming alcohol, restrictions on leaving the island in which the crime has taken place, and of course surrender of passports are available to secure attendance. Section 5(iii) of the Bail Act is wide enough to allow magistrates to impose suitable conditions short of requiring a surety. In any event under s 5(ii) a surety condition is not a mandatory requirement of bail.

If after pursuing inquiry, a magistrate considers the defendant may have difficulty in securing a surety and is a first offender or a young person, then other requirements should be imposed as a condition of bail. A young person should not be generally be remanded in custody on condition that a surety may become available. In cases where a magistrate considers a surety is required then in the case of a young offender at least steps should be taken to ensure that a surety is

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available and willing to accept what could be an onerous responsibility if in fact the defendant fails to appear as required, before making such a requirement as a condition of bail. A young offender should not be placed on remand as here on the chance it seems that a surety would be available.

Where it is necessary to remand a young person in custody even for a short period a magistrate should direct that every practical step should be taken to ensure he is kept apart from other adults on remand.



DATED: 10 AUGUST 2012

ACTING CHIEF JUSTICE