

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

NO. CR.85 of 2007

*S/General*

*JLH  
15/8/07*

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KOSEMA TAULANGA

BEFORE THE HON. JUSTICE ANDREW

Counsel : Mr. Little for Crown  
Mr. Tu'utafaiva for the accused.

Dates of hearing : 27<sup>th</sup> July 2007

Date of judgment : 30<sup>th</sup> July 2007

SENTENCING

The accused has pleaded guilty to an offence of indecent assault on a child less than 12 years old. That offence contrary to section 125 of the criminal offences act carries a maximum term of imprisonment of five years.

A summary of facts is as follows.

"About the 14th of April 2007, the accused at the time was residing in a residence neighbouring the complainant at Ma'ufanga. The complainant on this particular day had gone with other children and played at the residence where the accused had resided.

At the accused residence, the accused took the complainant to the kitchen of the house and then he touched and fondled the complainant's vagina. He then told the complainant not to tell anyone about his actions.

The complainant on that same day told her father about what the accused had done to her.

The complainant was eight years of age at the time.”

This is a serious offence, where the overriding principle in sentence must be public deterrence. This is abhorrent behaviour by an old man aged 49 upon a young and defenceless girl. Any sentence must denounce this conduct in addition to the element of public protection.

The particulars of the offence state that the accused touched the victim's vagina with his hand. There is some evidence that this may have been on the outside of the victim's clothing, which mercifully at least may have been less traumatic for the victim rather than digital penetration. The accused can expect little leniency for this is not his first offence. In 1999 he was convicted of the offence of rape and indecent assault and was sentenced on the 12th of August 1999 to six years imprisonment. Unfortunately he did not learn his lesson and is a repeat offender. I take into account, however, that the charge in that case was more serious than this offence, and the facts there were of a much more serious nature.

Subjectively, as stated, the offender is aged 49. A probation report under the hand of Soane Kaitapu discloses that the accused comes from a large family of 13 children. He was born at 'Eua. He was married in 1997 but the marriage was soon dissolved and he has led a single life since 1998. That, it is said, may be some explanation of why he behaved in this way.

I take into account the fact that he has pleaded guilty to the charge. That has, at least spared the victim the trauma in having to relive these events by the giving of evidence. I assess the plea of guilty as deserving of a reduction in sentence of 25%. He was employed as a farmer and currently is working at Tonga timber Ltd. I accept that there may now be some remorse but his prospects of rehabilitation are more difficult to assess, especially as he has re-offended by committing a similar offence. In my view, the aggravating circumstance is that the accused is a mature man of 49 who attacked an innocent young girl of eight years of age. Additionally, he can expect little leniency as a repeat offender with the element of being a menace to society. In my view, a prison sentence is warranted. Sentences for indecent assault can range widely depending on the circumstances. In general terms an assault of this nature by a mature man on a young girl would attract a sentence of around 18 months. See, R-v-Kolo [2006] TOSC25. That however may be for a first offender as opposed to this case. I consider that the accused is in need of some form of treatment to assist him in his rehabilitation. I propose to pass a sentence which would suspend part of any sentence on condition that he accept guidance and treatment.

In this case, I would have passed a sentence of two years imprisonment. But due to the offenders plea of guilty, that is reduced to a period of 18 months.

Stand up, please.

You are sentenced to imprisonment for 18 months with the final six months suspended for one year from your date of release. On the conditions:

A) That you are on probation for that year.

During that year, the accused enrolls and attends the counselling institution in Langikapo Mei Langi, run by the free Wesleyan Church under the supervision of Rev Fili Lilo.

NUKU'ALOFA: 31 July 2007

  
JUDGE

