

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CRIMINAL DIVISION)**

08 A  
**CR NO. 805/08**

**POLICE**

**V**

**CARYN CHILWELL**  
**Defendant**

Mrs K Saunders and Miss M Henry for Police

Mr T Vakalalabure for Defendant


Date: 10 October 2008

**SENTENCE OF WESTON J**

1. Miss Chilwell you are here today for sentence on a charge of careless use of a vehicle causing injury. You were found guilty by this Court following a defended trial. In the judgment I suggested that the assessment of culpability would take into account the difficult nature of the intersection and I have done so.
2. The Probation Service has recommended a fine. The Crown said they had no significant objection to that save only they were concerned as to your means to pay a fine. The alternative to a fine would be a sentence of community service.
3. Mr Vakalalabure has addressed me on the question of a fine. He says that it should be somewhere in the region of \$300.00. He also says that a fine of that level could be paid within the day.
4. I do not believe that a fine of \$300.00 is appropriate in these circumstances. The fact of the matter is that I found you guilty of careless use and that that did cause injury to Mr loaba. Even allowing for the difficult nature of the intersection, I believe that \$300.00 is considerably too light. I believe a fine of \$1000.00 is appropriate in this case and I order you to pay that fine. In addition I order you to pay the sum of \$132.00 reparation to Mr loaba in relation to his hospital fees.
5. The question of reparation for his motor bike has been addressed between Bar and Bench. The Crown seeks an order that you pay reparation of \$2973.00 for that bike. Mr Vakalalabure has raised an issue of betterment saying that that would result in Mr loaba receiving a bike better than was involved in the accident. On the other hand the Crown says this figure is too low because the bike that was damaged in the accident was actually more costly than this and that the price in the meantime has gone down. I do not think I can resolve that issue and I would be reluctant to order you to pay that sum. My preference

would be that it is sorted out at this stage but I just do not believe I have sufficient understanding of the issues to do that. Therefore regrettably I leave that as a matter that Mr loaba must pursue separately in his civil proceedings against you.

6. I now address the question of disqualification. There is mandatory disqualification up to a period of 3 years. I believe a period of one year disqualification is appropriate. Your counsel in anticipation that I would make an order of some sort has asked for a conditional licence to be granted. I do grant that. You are authorized to drive a motor vehicle between the hours of 6.00am and 11.00pm for the purposes of your work. Some issue as to jurisdiction was raised and by agreement between the Crown and the Bench, that has been addressed by providing that this conditional licence order is subject to a reservation of leave so the Crown can apply either to review it or otherwise to address it if, once properly considering the matter, they believe that to be necessary.



Weston J