

BRUCE PALU

-v-

LUTE VAHA'I

BEFORE THE HON. JUSTICE CATO

J U D G M E N T

Mr. Pouono appeared before on the 15th June 2012. There was no appearance for the second time of the prosecutrix or her counsel.

I examined the record and I ascertained that the proceedings were arosed out of a skirmish between the complainant and the defendant at work. In separate proceeding, the complainant was sentenced for scratching the defendant in the facial area to effectively a reconnaissance of good behaviour on the section 198 of the Criminal Offences Act. In these proceedings the Magistrate found that the defendant had for his part kick the complainant to the chest area with boots causing her some bruising.

He sentences the defendant to a \$200 fine with the same conditional compensation of \$300 and to 1 month imprisonment if he did not pay the \$200 forthwith and compensation of \$300 to the complainant if not auctioned.

The appellant - Mr. Palu had already offered some measure of compensation associated with an apology that he made before the proceeding. However that money was not accepted at that time.

Essentially Mr. Pouono argued that the \$300 compensation is manifestly inappropriate or excessive in addition to the fine. The appellant through

APPELLANT JURISDICTION

NUKU'ALOFA REGISTRY

his counsel is undertaking to pay the fine of \$200 in default 1 month imprisonment by 4:00pm on the 2nd June 2012. That must be paid not later than 4:00pm.

I understand the Magistrate's view and his reason for adding a measure of compensation to the victim. However in the absent of something more serious by way of injuries, it is my view that in all the circumstances of this case a fine of \$200 was sufficient. It seems that there was a measure of provocation on both sides and the earlier offer of compensation was not accepted.

To that extend the appeal succeeds and the order of the Magistrate is varied by the deletion of the requirement to pay compensation.

There will be no order to costs.

DATED: 15 JUNE 2012



C. W. J.

JUDGE