

## SALE (ESE) v POLICE

Supreme Court Apia  
 3 April 1978  
 Nicholson CJ

CRIMINAL LAW (Offences) - Being armed with a dangerous weapon without lawful purpose - Matai of village arming himself with a broomstick for alleged purpose of keeping the peace - Purpose held not "proper lawful or sufficient".

(Sentence) - Conviction of being armed with a dangerous weapon without lawful purpose - Fine of \$75.00 imposed, or in default three months' imprisonment, held not inappropriate, or manifestly excessive.

GENERAL APPEAL pursuant to s 138 of the Criminal Procedure Act 1972 against conviction and sentence.

Appeal dismissed.

Fuimaono for prosecution.  
 Enari for defendant.

NICHOLSON CJ. This is an appeal against conviction and sentence for a charge of being armed with a dangerous weapon without proper lawful and sufficient purpose. Insofar as the conviction is concerned, the learned Magistrate's judgment is only recorded in brief note form and merely refers to the fact that two witnesses' evidence suggest that the appellant hit some person with the stick. The question of whether or not there was a hitting is not strictly relevant to the charge which is the subject of this appeal. However, in cross-examination, the appellant made the following admission recorded in note form by the Magistrate. "Blew sa horn outside fale and then pick up stick to use against anybody to make them go home. My duty is to keep peace." The stick in question, according to the appellant himself, was a broomstick, and I have no hesitation in concluding from his evidence that he was armed with a broomstick which amounted to a dangerous weapon in law. The issue that remains is whether or not, the appellant showed to a degree of reasonable probability that he was so armed for a proper lawful and sufficient purpose. I make full allowance for the customary obligations of a matai in his village to maintain order. But his obligations in these circumstances are those of a peace-keeper, not a warrior. In my view, it was not a proper, lawful, or sufficient purpose for him to advance upon this dispute armed as he was. He is not entitled to beat the people to make them keep the peace. Although the Magistrate's judgment in its brevity of reasoning is less than satisfactory, nevertheless the admission of the appellant himself in his evidence thoroughly justifies the conviction in my view.

The sentence appealed from was a fine of \$75.00 payable forthwith, and in default, three months' imprisonment. I understand that the fine was paid, so that at this stage, I am concerned merely with the question of whether or not the amount of the fine was an excessive penalty. I accept the point made by counsel for the respondent that the position

of the appellant, a matai in his village, places extra responsibilities upon him to see that the peace is kept. His actions in arming himself with the broomstick in order, as he says, to keep the peace in my view was not consistent with his obligations, or his duties as a matai, as I have already indicated. I consider there is a possibility that he was under a misapprehension that, as a matai, he was entitled to go armed in this fashion, but even so, I find it impossible to say that the fine imposed was inappropriate, or manifestly excessive. Appeal is dismissed in both respects.