

**Lausi'i and Tauki'uvea v R.**

<sup>10</sup> Court of Appeal  
Morling, Ryan and Quilliam, JJ.  
Appeal No.3/1991

7 June, 1991

*Criminal law - sentence - theft as servants - first offenders*  
*Sentence - theft as servant - breaches of trust - first offender - repeat offending*

<sup>20</sup> Both appellants were sentenced to imprisonment on charges of theft, as servants, of paint - Lausi'i to 6 months on one charge; and Tauki'uvea to 2 years total on 2 charges. Both appealed. Both were first offenders.

**HELD:**

In setting aside the terms of imprisonment and in the case of Lausi'i imposing a fine; and in the case of Tauki'uvea reducing the sentence to one year with all but 4 months of that sentence suspended for 2 years (he having already served 4 months), that;

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1. It was inappropriate for first offenders in respect of property offences to be sentenced to imprisonment unless the offences were of a particularly serious nature
  2. In Tauki'uvea's case the position was more serious because his offending was over a period of time and involved property of significant value.

Case considered : Siliako v R (Appeal No.20/90)

### Judgment

This is an appeal by Malini Lausi'i and Netane Tauki'uvea against sentences of imprisonment imposed upon them in the Supreme Court of Tonga on the 21st of January, 1991. They appeared for sentence on charges of theft as servants. As far as Lausi'i was concerned there was one charge of \$45.20 worth of paint, 2 cans in fact, and for that he was sentenced to 6 months imprisonment. Tauki'uvea faced 2 charges, the first involving paint to a value of \$90.40 and the second charge involving an indeterminate amount of paint which had been sold for \$400 and presumably was valued at something in excess of that. The appellant Tauki'uvea was sentenced to 6 months imprisonment on the first charge and 2 year imprisonment on the second, both to be served concurrently. The grounds of the appeal were that the 2 appellants were first offenders, that most of the stolen paint has been recovered, that the value was insignificant, that Lausi'i was married with children and that punishment by way of fine or suspended sentences would be convenient. Malini was represented by Mr Tonga at the appeal and he argued that the sentences were excessive and that he deserved a final chance. It appears that Tauki'uvea has already served some 4 months in prison, he being refused bail pending appeal. Without repeating some of the matters which we raised in the *Siliako* appeal, 20/90, we refer to them yet again, in so far as those comments relate to a lack of alternative sentencing options and the negative impact of imprisonment. We appreciate that there was in this case a breach of trust, given that the appellants were servants of the complainant. The sentence of imprisonment however, we think in Lausi'i's case was quite inappropriate given that he was a first offender and given also the value of the property, which was only \$45.20.

In our view, it is inappropriate for first offenders in regard to property offences to be sentenced to imprisonment unless the offences are of a particularly serious nature. That is not the position here certainly as far as Lausi'i is concerned. We look more seriously at the offending committed by Tauki'uvea, committed as it was over a period of time and given also the value of the paint stolen.

In our view, an appropriate penalty for Lausi'i was the imposition of a fine. Now the fine of course must be consistent with his means and we cannot say with any great certainty, just what those means are. However, he will be given one final chance but he must know as must all other appellants appearing in this Court, that repeated offending will inevitably be met with sentences of imprisonment. He will be fined \$250 and in default of payment by the 7th of September, 1991 he will go to prison for 3 months. As far as Tauki'uvea is concerned, as we have indicated he has already served 4 months imprisonment and we think that the appropriate sentence in his case given that fact, is a sentence of 12 months imprisonment as from 21/1/91 suspended as to 8 months for a period of 2 years. In other words, the sentence of 12 months imprisonment suspended as to 19 months will run from the date of the original sentence, so that he will now be released immediately. He will have hanging over his head, the possibility of a further 8 months imprisonment should there be any more trouble.