

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

**CR 8 of 2006**

**R E X**

**-v-**

**SOSEFO 'OTUTAHA**

**BEFORE THE HON. JUSTICE ANDREW**

**Counsel** : **Mr. Sisifa for the Crown and  
Mr. Tu'utafaiva for the  
accused.**

**Dates of hearing** : **18 October 2007**

**Date of judgment** : **22 October 2007**

**J U D G M E N T**

The accused pleaded guilty to one count of harbouring criminals contrary to section 13(e) of the Criminal Offences.

The particulars of the offence were as follows:

" Sefo 'Otutaha of Ngele'ia, on the night of the 23<sup>rd</sup> of December 2005 you knew that Joe White Masima and 'Anau Lolohea had been convicted and are prisoners of Hu'atolitoli, without lawful authority or reasonable excuse assist to hide them with intent to impede their apprehension."

The first witness for the Crown was 'Akuila Manumu'a a warder at Hu'atolitoi prison. He said that in the night of the 23<sup>rd</sup> of December he was looking for 3 escaped prisoners. He says that as he was driving with warder Pasoni a car passed them in the opposite direction and he believed it was the accused's vehicle. He said he could see 2 passengers in the vehicle but he was not sure who they were. He says they turned and followed the accused's vehicle to Ma'ufanga. He says the car was going at high speed. He says he saw that the accused's car had stopped and turned again towards the way they were coming. The car stopped and he says Pasoni spoke to the accused who was alone and he said the two persons in his car were only hitchhikers. Then he said the two escapees Joe White Masima and 'Anau Lolohea emerged from the bush (he said they had been in custody at the police station) and he says they spoke to them but they then ran away and they were not able to capture them. He also said that as well as seeing 2 heads in the accused's car there was a girl in the car when they saw and spoke to the accused but he had not seen her when he saw the two heads as the car passed him. In Cross examination he agreed that he had seen the 2 heads from a distance of approx. 100 yds. When the accused's vehicle had stopped, he agreed that he had not seen anyone come out of his vehicle.

The accused in a Record of Interview conducted on the 27 December 2005 denied that he had driven the two escapees in his vehicle. He did agree that he was present when both come out of the bush and spoke to the warders. He did agree that he had spoken to a person Mataele and said to him in the morning that he had dropped two prisoners at Tu'atakilangi. But no evidence has been heard from this person Mataele and the conversation does not necessarily say or mean that he was harbouring these two escapees.

That is really the extent of the evidence. I cannot say that the 2 escapees have been identified as the passengers in the accused's vehicle. At the time the 2 escapees came out of bush they appear to have approached the two warders who had been speaking to the accused. That places the accused at the scene where the prisoners were but it does not prove he had been harbouring them. In the absence of the identification of the escapees as being those persons who were in his vehicle I cannot be satisfied beyond reasonable doubt that he was a party to harbouring them. The only other evidence is that the accused's vehicle sped up as the warders followed it but again that is insufficient evidence to establish beyond reasonable doubt that the two escapees Joe White Masima and 'Anau Lolohea were in his vehicle and that he had been harbouring them.

I am not satisfied beyond reasonable doubt that the accused is guilty of this offence. I return a verdict of not guilty and the accused is discharged.

Nuku'alofa: 22 October 2007



*Andrew J.*

**JUDGE**