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BETWEEN :                SOSIUA MANUPELE                -                Appellant;

AND                        :                LILE TUKUTAU                -                Respondent.

Counsel:                Tu'utafaiva for Appellant  
                                Veikoso for Respondent

Hearing:                29 January 1999

Judgment:                8 February 1999

### JUDGMENT

The appellant brought a private prosecution against the respondent in the Magistrates' Court sitting in Lopaukamea Hall. The charge was under section 3(g) of the Order in Public Places Act, Cap 37, the relevant parts of which are:

- "3. Any person who shall commit any of the following acts shall be liable on conviction....that is to say, every person who-
- (g) by shouting,...quarrelling or in any other manner, makes a disturbance or loud noise in any public way or within the boundaries of any town..."

The facts were not in dispute at the trial. The appellant went to the tax 'api where the respondent lives in order to serve a solicitor's letter on the respondent's husband. When he arrived there, the respondent loudly abused him. There was equally no dispute that the words made a disturbance.

The only issue was whether the offence took place within the boundaries of any town and the evidence was that it was about one mile from Vaini and half a mile from Toloa. The Magistrate found that this was outside the boundaries of any town and acquitted the respondent.

The respondent appeals on the following grounds;

1. The Learned Magistrate erred in law in interpreting the words "or within the boundaries of any town in section 3 (g) to mean only those parts of the town inhabited by people.
2. If the Learned Magistrate was correct then, on the facts, it was open to the court to find the respondent was living on his tax allotment and that can, therefore be considered as a town.

I was assisted by counsel's submissions and intend no disrespect if I do not set them out in detail. Both counsel took time to search for definitions and to look for parallel examples that might assist in defining where the boundaries of any town may be drawn. Helpful as that research was, I consider the ordinary meaning of those words is plain. The question is not what the boundary is but where it is.

The long title of the Act is to Provide for the Regulation of Traffic and the Maintenance of Order in Public Places. In section 2, public place and public way are defined but there is no definition of the boundaries of a town. In accordance with its title, the Act makes a number of actions offences if committed in a public place or a public way. A few actions become offences if committed elsewhere that in a public place or way. Thus, for example, of the nineteen paragraphs creating offences under section 3, thirteen are offences if committed in a public place or way. In the remainder, the place in which such conduct is unlawful is specified as being elsewhere; the beach, within a town or near a building appropriated for religious worship. Clearly the intention of the Legislature was to restrict those offences to limited locations.

The magistrate had the evidence before him. He referred to the fact that this occurred in an area of tax allotments and well beyond the end of the town allotments of Vaini. He accepted that the respondent lived on her tax allotment but there was no evidence that there were a large number of people living in the same area. On those facts he found it was not within the boundaries of any town. That was a decision open to him on the facts of the case.

The appellant brought the charge in the court below and the burden was on him to prove his case. Had the events occurred in the centre of Vaini or some other town, he could rely on the fact that the Magistrate would need no further proof. The evidence here was that it was a mile outside the built-up area of Vaini. If the appellant considered it was within the boundaries of a town, he should have called evidence to prove that fact to the Magistrate. Although there is no reference to the burden of proof in the Magistrate's judgment, he clearly bases his decision on the fact that there was no evidence to demonstrate that this was within a town and so discharge the burden of proof. On the evidence before him, he decided it was not. That was a decision open to him on the facts and this court will not interfere.

The appeal is dismissed.



*[Handwritten signature]*

DATED: 8<sup>th</sup> February, 1999.

CHIEF JUSTICE