

**VILIAMI SA'ILI**

Appellant

V

**POLICE**

Respondent

**BEFORE THE HON MR JUSTICE SHUSTER**  
**MR FIFITA FOR THE APPELLANT**  
**MS TUI'TUPU FOR THE CROWN**  
**ORAL HEARING – 15<sup>th</sup> DECEMBER 2009**  
**JUDGMENT DELIVED 15<sup>th</sup> DECEMBER 2009**

**JUDGMENT ON APPEAL FROM THE MAGISTRATE'S COURT**

This appeal from the Magistrates Court, concerns a decision in criminal case no. 236- of 2009 where the Presiding Magistrate - Latu Mohenoa convicted the appellant on 11<sup>th</sup> August 2009 after a trial, on a charge of Possession or Control of Intoxicating Liquor namely home brew alleged to have been committed on the 14<sup>th</sup> May 2009 at the Appellants home in Ma'ufanga when police executed a search warrant and said they found 45 gallons of home brew.

Counsel Mr Fifita was present at the trial in the Lower Court and he made a formal submission of No Case to Answer. The Magistrate convicted the Appellant, indicating and according to Mr Fifita he wanted to impose a long prison sentence on the Appellant.

**NOTICE OF APPEAL**

The Appellant's Formal Notice of Appeal was signed and dated 11<sup>th</sup> August 2009 and was duly filed in the Supreme Court

- Summons 237/2009 alleges against the appellant a charge of – Possession and Control of Intoxicating Liquor - namely home brew.
- This offence is contrary to section 3[a] & 9 of the Intoxicating Liquor Act Cap 85 of the Laws of Tonga 1998 Volume3 in which on or about the 14<sup>th</sup> day of May 2009 at Ma'ufanga you did make one large bucket of intoxicating liquid, namely home brew, but you have no licence to make such intoxication

**THERE WERE FIVE GROUNDS OF APPEAL**

1. Finding the appellant guilty despite the fact that the prosecution failed to prove that the appellant had no licence under the Act. There was no evidence from the prosecution from the beginning to the end of its case, that the appellant had no licence.
2. Fail to follow the Supreme Court decision and reasoning in the case of Mafi v Police [1995] Tonga LR 177. It is fundamental that the decision of the higher courts must be binding on the lower courts. A copy of the decision was handed to the presiding magistrate when the counsel made his submission that there was no case to answer as he referred to the Mafi case.
3. The case on appeal falls squarely on the Mafi case cited
4. The appellant had no record of interview to admit the offence as it is the allowable hearsay in criminal laws.
5. The prosecution failed to prove its case beyond reasonable doubt.

The Court of its own volition ascertained from the court translator whether the charge shown in the summons 236/09 had been correctly translated and from his reply - it appears the translation of the Lower Courts record, was quote 'literal.'

Before Mr Fifita began his submissions, the court asked the Crown whether on the facts they had before them whether they conceded the appeal - **which they did.**

### **ACCORDINGLY**

The Crown having conceded this case:-

### **RULING AND ORDER**

1. The Conviction against the Appellant Viliami SA'ILI is set aside and is quashed.
2. The Appellant is entitled to his costs - if they are not agreed they are to be assessed and Taxed by the Chief Registrar
3. The Home brew seized by the Police is to be destroyed in the presence of a Magistrate.
4. To this extent the Appeal is allowed.

  
Judge of the Supreme Court