

*FALGHE PHEMOSO*

IN THE SUPREME COURT OF TONGA  
APPELLATE JURISDICTION  
NUKU'ALOFA REGISTRY

CIVIL APPEAL NO.AM 2 of 2012  
MC, CV 28 of 2011

**BETWEEN:      DATALINE SYSTEM**  
-      **Appellant**

**AND            :      PAELATA VEA**  
-      **Respondent**

**K. Piukala for the Appellant**  
**Respondent in person**

**JUDGMENT**

1. The Appellant brought a private prosecution against the Respondent alleging that the Respondent had obtained computer equipment valued at T\$8,120.00 from the Appellant by false pretences, contrary to section 164 of the Criminal Offences Act (Cap 18) as amended.
2. The only witness called for the Appellant/Plaintiff in the Magistrates' Court was Sosaia Tulua whose evidence was not questioned either by the Respondent/Defendant or by the Magistrate.
3. The Defendant told the Magistrate "all this is true" but said that he had not paid for the equipment as promised as he had run into financial difficulties.
4. The Magistrate then asked the Defendant whether he had "already been charged with a similar offence earlier to the current one?" The

Defendant told the Magistrate that he had been the defendant in earlier civil proceedings brought by the Plaintiff/Appellant arising out of the same transaction.

5. The precise words used by the Magistrate after the Defendant told him about the earlier proceedings are recorded as being as follows:

“As I mentioned earlier in this trial and counsel understood I had proposed the same thing earlier, counsel you are misleading the Court hence I will release the Defendant.”

6. The Magistrate's meaning is not immediately apparent but having heard both Mr Piukala and the Respondent it seems sufficiently clear that the Magistrate was purporting to stop the prosecution on the grounds of “autrefois convict” or in other words the principle that a person should not be prosecuted twice for the same offence.
7. With respect to the Magistrate, his assessment of the situation appears to have been mistaken: there is no principle that a person charged with a criminal offence and convicted may not subsequently be found civilly liable for the same transaction. It will be remembered that this prosecution was for a criminal offence, the earlier was civil.
8. In my opinion the Magistrate erred in the course he took. He also failed to give adequate reasons for his decision. Magistrates are reminded that there is a duty imposed on them to give reasonably complete reasons for their decisions (see e.g. *D.P.P. v Abouali* [2011] NSWSC 110).
9. Unfortunately, however, for the Appellant, I do not think that the Magistrate's mistake entitles him to succeed on the appeal.

10. As explained in *Funaki Enterprises v Kakala* [2010] Tonga L.R. 197 the position in Tonga is that:

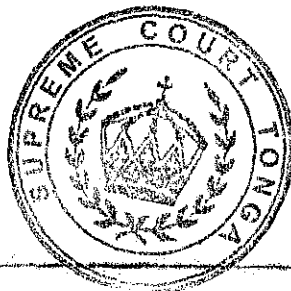
“a statement of intention about future conduct, whether or not a statement of existing fact, is not a statement that can amount to a false pretence. If however such a statement is accompanied by a statement of fact, such as a statement of ability to repay, which is proved to have been false at the time it was made, then a false, pretence may be found to have been established.”

11. I have examined the evidence given by Sosaia Tulua and it is clear that it does not establish that any statement of fact known to be false was made by the Defendant at the time the computer equipment was supplied. It follows that there was no case to answer and the case against the Defendant should have been dismissed at the close of the prosecution case.

12. In my opinion this prosecution was not very well dealt with the Magistrate and I have same sympathy with the Appellant. When however there was no case to answer an acquittal will not be set aside by reason of subsequent procedural error.

13. The appeal is dismissed.

**DATED: 27 April 2012.**



  
**M.D. Scott**  
**CHIEF JUSTICE**

N. Tu'uholoaki  
27/4/2012