

**10 Mafi & Latu v R**

Court of Appeal  
Morling, Ryan & Quillian JJ.  
Appeal No.6/1991

7 June, 1991

- 20 *Appeal - sentence - housebreaking*  
*Criminal law - housebreaking - sentence*  
*Sentencing - first offender - repeat offender*

Appeals against sentences of 2 1/2 years and 1 1/2 years imprisonment (on charges of housebreaking and theft) were taken by, respectively, Mafi and Latu. Mafi was seen as a determined repeat offender whereas Latu was characterised as a first offender.

Held (rejecting Mafi's appeal, but allowing Latu's):

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  1. The sentencing options in the Criminal Offences Act (then) were limited in the extreme being totally devoid of community based sentences.
  2. Compensation had been made.
  3. Latu should be given a second chance and his sentence suspended for 2 years as to the balance of his term.
  4. Mafi's appeal, however, was without merit.

### Judgment

These two appellants appeal against sentences of imprisonment imposed for the crimes of house breaking and theft in the Supreme Court at Tonga on the 4th of March, 1991.

Mafi was sentenced to 2 1/2 years imprisonment on a house breaking charge and 2 years imprisonment on the theft charge, the terms to be served concurrently. Latu was sentenced to 18 months imprisonment on the house breaking charge and 1 years imprisonment on the theft charge and those terms are also to be served concurrently. Mafi has a long criminal history. He is to some extent the victim of the system, in that he was sentenced to one month's imprisonment at the age of 13 for theft of a chicken. A penalty it would seem to us totally inappropriate give the lack of seriousness of the crime and the age of the child concerned. We have no doubt that particular sentence is a major factor in the life of crime which Mafi has proceeded to since that time. He now has numerous convictions for house breaking and theft in his criminal record. Latu is a first offender and the learned sentencing Judge held, quite rightly in our view, that Mafi was the ringleader and that Latu simply went along with him. Latu is a first offender, at least in the field of crimes against property although he has served a prison sentence on a another matter which has no relevance to the matters before the Court today.

The crime involved the burglary and theft from a store total compensation has been paid by appellant. Repeating what we have already said in the Siliako Appeal, it does seem to us that in Latu's case had alternative types of sentence been available to the Court then we are sure they would have been imposed. Once again, the Court was limited by the options contained in the Criminal Offences Act which are limited in the extreme and at that time were totally devoid of community based sentences.

We have reached the view in accordance with our earlier decision that Latu should be given a second chance and as far as his appeal is concerned, it will be quashed and replaced with a sentence 12 months imprisonment, suspended as to 9 months for a period of 2 years. We know that he has already 3 months in prison so that he should be released immediately.

Mafi's case is quite different. He is not quite a hardened criminal yet but he is a determined repeat offender. There is no merit whatsoever in his appeal against sentence and it will be dismissed.