# Attorney General v Moala (No.2)

Supreme Court, Nuku'alofa
Hampton CJ
C162/96

& 10 October 1996

*Contempt of court - freedom of speech - scandalising courts - intefering with justice - tests to be applied*
*Constitution - freedom of speech - contempt - balancing*
*Sentencing - contempt of court*

This was the trial of the other respondent, mentioned in the report, immediately above, on a charge of contempt of court, by publication of an article in a newpaper claiming that, inter alia, justice was not able to be obtained in the courts in Tonga.

Held:

1. The respondent was the admitted author, editor and publisher of the article in question.
2. The defence raised was the freedom to express an opinion, according to cl.7 of the Constitution, on a matter of public interest i.e. the conviction and sentencing of a controversial, high profile, politician on an assault charge even although the matter was still alive before the courts', as under appeal to the Supreme Court (although the respondent claimed not to be aware of that appeal).
3. The complaints against the article were of scandalising the courts of Tonga (i.e. bringing the courts into general disrepute, an attack on the courts as an institution thereby affecting the public confidence in the administration of justice); and secondly of tending to interfere with the course of justice in the particular proceedings.
4. That latter form of contempt is governed by the (U.K.) Contempt of Court Act 1981 and particularly by the strict liability rule (whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular proceedings regardless of intent to do so - but only if the publication creates a substantial risk that the course of justice in the particular proceedings will be seriously impeded or prejudiced).
5. Courts and judges are alike open to criticism and the law ought not to be astute to criticise adversely if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good. Justice is not a cloistered virtue - she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary people. It is the inalienable right of everyone to comment fairly upon matters of public importance. That

right is one of the pillars of individual liberty - freedom of speech.

6. The rights of freedom of speech and as enshrined in cl.7 are not absolute rights. Anyone exercising those rights must observe a duty to act responsibly. To find the balance between the right of freedom of speech, and protection of the courts, is the hardest task in this sort of case.
7. At the end of this century there is a greater accommodation or tolerance in the courts of criticism, trenchant criticism and stronger language than was formerly the case.
8. Criticism of individual decision should be temperate, made in good faith, and in the honest belief that the criticism is accurate and well-founded.
9. Applying the various criteria the article here, although some of the language was some what extravagant and some of the criticisms very robust indeed, did not overstep the bounds.
10. Bearing in mind that the case was on appeal to a judge (and not to be tried by a jury) the test of substantial risk that the course of justice in the proceedings in question would be seriously impeded or prejudiced, had not been shown to have been made out.
11. As to scandalising the courts the headline and the first 2 sentences of the article mounted, from 1 magistrate's decision, an extraordinary attack on all courts, and overstepped and had the effect of undermining, and shaking people's confidence in, the decisions of courts. The article and it's author and publisher were in contempt and the respondent found guilty.
12. The court had a whole range of sentencing power. Passion here had overcame objectivity. Regret had been expressed. The respondent was censured (reprimanded) and ordered to pay costs.

Cases considered : In re Read & Huggonson (1742) 2 Atk. 291
R v Gray [1900] QB 36
Ambard v Att. Gen. (Trinidad and Tobago) [1936] 1 All ER 704
R v Commsr. of Police, exp. Blackburn [1968] 2 QB 151

Statutes considered : Constitution, Cl7
Civil Law Act s.3
Contempt of Court Act 1981 (UK)

Counsel for Crown : Mrs Taumoepeau
Counsel for respondent : Mrs Taufaeteau

**Judgment**

I intend giving a judgment immediately because, first, I do not want the matter further delayed; secondly, I am aware that the respondent is in a difficult situation in relation to other matters and will want to know his position insofar as these proceedings are concerned; thirdly, some little time has now passed since the publication of the Editorial or the Article which is in question in these proceedings.

To do it in this way may mean that my reasons may not be as fully or as happily expressed as might be the case if I were able to take further time and release a judgment in writing subsequent.

If I do not deal, or seem not to deal, with a particular submission of either counsel or an authority raised in argument by either counsel, it is no disrespect to the argument or to the authority.

I am grateful to both counsel for the material that they have put in front of me, particularly the authorities. And it has assisted me greatly in reaching a view and in being able to express an immediate view on the matter.

These proceedings were started by a motion by the Attorney General himself, alleging that in an Editorial Article published in the 'Taimi 'o Tonga' volume 7, number 50 of Wednesday 27 December, 1995, the respondent before me, Kalafi Moala as the publisher and the Editor of that particular newspaper, 'Taimi 'o Tonga', was in contempt of Court.

The Attorney's motion was support by an affidavit from a Senior Crown Counsel. That affidavit referred to some factual matters, to the newspaper article itself, (which was in the Tongan language) and to an English language translation of that article. Subsequent affidavits were filed. One by Mrs Taufateau of counsel, acting on behalf of Mr. Moala, and a later, further, affidavit by the same Senior Crown Counsel.

Neither of those deponents, i.e. Mrs Taufateau or Miss Weigall, Senior Crown Counsel, were required for cross-examination on their affidavits when the matter came to trial before me. When it did come for trial, the respondent, Mr Moala, pleaded not guilty, and the matter has proceeded before me as a defended trial.

I will deal with some preliminary matters first before turning to the actual article complained of. Those preliminary matters really involve my clearing the deck of certain aspects which are not in issue in this matter.

It is clear, as was alleged, and as admitted in the affidavit of Mrs Taufateau and further admitted by the respondent today in evidence, that at all material times, the respondent was not only the Editor and publisher of this particular newspaper, but that he was indeed the author of the article in question.

The motion, as filed by the Attorney General, set out the article in full, and followed that in paragraph three of the motion, with an English translation of that article. It is not my intention to read either the article in original form or in the translated form into this judgment, but I will from time to time refer to some extracts from the article as I proceed with this judgment.

Both the article and the translation were properly in evidence before me and, on the evidence, I accept that the English translation provided to me in the motion (supported by affidavit) is able to be accepted and relied on by me. I find that translation is in fact in very large measure, if not entirely, supported by what was set out in Mrs Taufateau's affidavit of 16 April, 1996 in paragraph 5. Mrs Taufateau at the start of that affidavit had said that

she was duly authorised by the editor and the publisher, Mr Moala to act and to say the following things. Then I turn to paragraph 5 and it was set out in this way:

"That the Editor verily believe the newspaper is free to make comment on decision and to express it's opinion about it according to clause 7 of the Constitution; "freedom of the press" and he believed that the editorial was fair comment according to his own translation of the editorial of Vol.7 number 50, 27 December, 1995, as of an ordinary person" (and then went on to set out a translation which, as I have said, is very much the same, in all important respects, as the translation from the
150 prosecution).

In evidence today, Mr Moala backed away somewhat from that translation in paragraph 5 of the affidavit and from the translation of the prosecution and it seems to me that he tried to water down, as it were, certain passage in the translation. In particular, that process was attempt to be applied to the headline, the first and second sentences and to some extent the last sentence of the article. For reasons that will become apparent as I go on with this judgment, a deal of the judgment will focus on those particular portions of this article. Mr Moala tried to make the language less absolute, less strong, but I am not persuaded that what I have been provided with by the prosecution and what he, himself, provided through his lawyer is not indeed reliable. And I am reinforced, somewhat, in that
160 view by the fact that a witness called on his behalf, in the course of his evidence, provided a translation that seems to me to be very much in line with the translation earlier given by the prosecution and in paragraph 5 of Mrs Taufateau's affidavit.

Those are the preliminary matters I want to deal with.

It is worth stating now some of the background which led to the writing of this editorial article and I do not intend to state the background at any length. In Parliament, in Tonga, apparently in October 1995, there was an unfortunate incident that took place involving a well known, and indeed controversial, member of Parliament, 'Akilisi Pohiva, and the then Acting or Deputy Speaker of the House. That incident involved, amongst
170 other things the throwing of a book by Mr Pohiva which resulted in the House taking action and suspending for 14 days Mr Pohiva. Subsequently the Acting Speaker, the person at whom the book was thrown, took private prosecution proceedings in the Magistrate's Court against Mr Pohiva for assault. That charge was heard in the Magistrate's Court on 12 December 1995. It would seem that a claim or argument raised by Mr Pohiva of double jeopardy was rejected by the Court. Mr Pohiva was sentenced to one months imprisonment of the charge, that sentence to be suspended for a period of three years.

It was those events, both in the House and then in the Magistrate's Court, which led
180 to Mr Moala, for reasons which he explained in his evidence, writing and publishing the editorial complained of. Put shortly, he says that he thought that the decision in the Magistrate's Court could, and should, legitimately be criticised and in particular the sentencing decision which, he saw as "peculiar" or "odd" or "funny" (in the sense of peculiar or odd). He felt, as he put it in evidence, that given the high profile, the controversial profile, of Mr Pohiva, and the imminence of Parliamentary elections, that he should himself in some way try to create a balance in the public mind; that the public should not be just left with a view that "here was Mr Pohiva in trouble with the law again," but that the public through his editorial column should be told what the real
190 situation was as Mr Moala perceived it. I paraphrase of course what he said, but that was,

as I understood it, the effect of his evidence.

The article or editorial was published on 27 December 1995. By that time Mr Pohiva had in fact appealed from the Magistrate's Court to the Supreme Court against the findings in the Magistrate's Court. Therefore it is quite clear that the criminal proceedings, the private prosecution proceedings, were still alive and active, still before the Court, as at the time of the publication of this editorial.

Mr Moala says that he was not aware that an appeal had been filed. I have no reason to doubt his evidence on that point but it assumes no significance in the light of the subsequent parts of this decision.

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The editorial in question is complained of, in effect, in two respects. The first is that it scandalises the Courts of Tonga. Scandalises Courts generally, scandalising being a term going back some 250 or more years now; certainly used by the then Lord Chancellor, Lord Hardwicke in In Re Read and Huggonson (1742) 2 Atk. 291 at 469. Scandalising is a term that means bringing Courts generally into disrespect. An attack on Courts as an institution.

It is important that Courts retain the respect of the community in which they operate and that that respect must not be undermined. The system of justice at large must not be undermined. So scandalising the Court is a contempt because it affects the public confidence in the administration of justice and thereby impairs the administration of justice. The claim by the prosecution here is that the headline of the editorial itself, the first two sentences of the editorial (i.e. the first paragraph containing the first two sentences) and the last sentence of the editorial fall within this category of contempt.

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The second aspect complained of is that the balance of the article, or indeed the article as a whole, tends to interfere with the course of justice in particular proceedings. The prosecution, on behalf of the Attorney General, refers not only to the appeal proceedings from the private prosecution I have just referred to, but also to certain defamation proceedings in this Court which has been brought by Mr Pohiva and his wife against another newspaper, 'The Chronicle', and the Kingdom of Tonga and which were said to be due to go to trial in front of judge and jury in March of 1996.

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It seems to me that this allegation of contempt is the type of contempt which is now governed in the United Kingdom by the Contempt of Court Act 1981 and by what is said to be the Strict Liability Rule which is contained within that Act. (See our Civil Law Act (Cap.25) section 3).

That Strict Liability Rule which, as I have read the authorities, is really in accord with the common law in any event, is contained in section 1 of the Contempt of Court Act 1981. That says that the Strict Liability Rule means the rule of law whereby conduct may be treated as a contempt of Court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

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That Act goes on to provide in section 2 subsection 2 (and again it is a reflection of the common law), that the Strict Liability Rule applies only to a publication which creates a substantial risk, and I emphasise the word substantial, that the course of justice in the proceedings in question will be seriously, and again I underline the word seriously, impeded or prejudiced.

Before I go on to deal with each of those two aspects complained of, I do want to refer to some of the authorities which touch on both aspects complained of. As has been said the classical statement about this area of the law of contempt is to be found in the

judgment of a full bench of the Queen's Bench Division in England, in the case of R v Gray, the judgment having been given by Lord Russell C.J. The report is at [1900] Q B 36 and this particular passage at page 40;

> "Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke, Lord Chancellor, characterised as "scandalising a Court or a judge." That description of that class of contempt is to be taken subject to one and an important , qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen."

The second judgment to which I wish to refer is from Lord Atkin in the Privy Council in Ambard v the Attorney General of Trinidad and Tobago [1936] 1 All ER 704 at 709:

> "But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

The third case is that of R v Commissioner of Police of the Metropolis, Exparte Blackburn [1968] 2 QB 151 at 155. This is in the Court of Appeal in England, Lord Justice Salmon;

> "The authority and reputation of our courts are not so frail that their judgments need to be shielded from criticism ... It is the inalienable right of everyone to comment fairly upon any matter of public importance. This right is one of the pillars of individual liberty - freedom of speech, which our courts have always unfailingly upheld."

It is primarily those three cases, as I read them, that lead to the commentary (and fair summary, in my view), which can be found on the subject in Halsbury 4th Edition Volume 9 Contempt of Court and in particular at particular at paragraph 27 on page 21.

The other general matter I refer to, so that it is clear I have it in mind at all times is the effect of Clause 7 of the Constitution of Tonga. Clause 7 says: "It shall be lawful for all people to speak, write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press forever but nothing

in this clause should be held to outweigh the law of slander or the laws for the protection of the King and the Royal family."

The rights enshrined in clause 7, of freedom of speech and freedom of the press, are not absolute rights. Anyone exercising those rights must observe a duty of act responsibly. It is in that area of finding the balance between the right to freedom of speech and expression of opinion, and thereby to criticise courts on the one hand and of the protection of courts from being brought into disrepute on the other hand, that the hardest task of the court in this sort of case is to be found.

300 It is well said that courts should be subject to criticism and that, provided that that criticism is genuine and is reasonable, the court should stand a great deal of it. Undoubtedly it is also true that times have changed since 1900 and that at the end of the century there is a greater accommodation or tolerance to be found in the courts towards criticism that might otherwise, or in earlier times, have been seen as unreasonable. A greater tolerance towards the use of stronger language and of more trenchant criticism.

Before going on then to deal with the two aspects at issue here, I just reiterate that the purpose of the law of contempt is to preserve respect in the public for the administration of justice in the courts.

I turn to the two aspects complained of and I will deal with the second aspect first.
310 That is the claim that the article would tend to interfere with the course of justice in particular proceedings.

It has been said that criticism of individual decisions (and I suppose this is in an ideal world), should be temperate and be made in good faith and in the honest belief that the criticism is accurate and well founded. Of course as I have already said there has been a move in this century towards the allowance of language that at the start of the century would have been seen as quite intemperate.

Without going into the article itself in detail in this judgment, I have reached a view about it, trying to do the balancing act which I have already referred to. Although some
320 of the language is somewhat extravagant in its terms and although some of the criticisms of the particular decision are very robust indeed, yet in the light of: (i) the protection that the courts have always given to freedom of speech and freedom to express opinion and (ii) the caution which a court must exercise in this sort of situation when a court is sitting in judgment in relation to its own affairs and (iii) clause 7 of the Constitution; I have reached the conclusion that the article as a whole does not overstep the bounds in relation to the claim that this article would tend to interfere with the course of justice in particular proceedings.

As I have said, undoubtedly the particular proceedings (of the private prosecution
330 and the appeal from the Magistrates Court to the Supreme Court in those proceedings) were still alive and were still active. The appeal was to a judge of this court. Bearing in mind the test of substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced, I have reached the view that that was not the case here.

It is perhaps worth my reading just this extract from the White Book 1997 The Supreme Court Practice Volume II; under the commentary to section 2 of the Contempt of Court Act 1981. In paragraph 5912 page 1958; "A publication referring to particular legal proceedings is less likely to be held to create a substantial risk that the course of
340 justice in those proceedings will be seriously impeded or prejudiced if the proceedings are

to be heard by a judge rather than tried by a jury. The possibility that an appellate court will be influenced is even more remote."

I will stop there. That extract I have just read reflects very much the pre-existing common law, pre-existing prior to the Contempt of Court Act 1981, and one only has to look at what is contained in Volume 9 of Halsbury (4th Ed.) Contempt of Court paragraph 14, footnote 6 to that paragraph, where there is reference to various cases and it is said, that although proceedings can only be said to have been determined finally when the House of Lord has heard and decided on an appeal, the likelihood that a publication would
350 influence an appeal, and thereby amount to a contempt, is plainly very slight.

So strong the language may have been, robust the criticism may have been, but I find that it has not been shown, on this aspect, that this article would have interfered with the course of justice in those appeal proceedings.

The prosecution also rely on the defamation proceedings which I have referred to earlier in this judgment. Those proceedings, as disclosed in the evidence before me, are quite unrelated, factually, and in any other way, apart from the fact that they involve Mr Pohiva who was also involved in these private prosecution proceedings.

I find that there is no real evidence before me on this aspect that would indicate that
360 the publication of this article referring, as it does, to only this one particular case, would have tended to interfere with the course of justice in those defamation proceedings which were to go in front of a judge and a jury in March of 1996.

I am sure that the judge at that trial, (and ultimately the matter did not come to trial, it was settled, but if it had come to trial, that the judge) would have been alerted to the possibility, particularly if that was in the mind of counsel for the Kingdom of Tonga, that some prejudice from this earlier article might be seen and would have carefully directed the jury accordingly. Quite why a jury would have connected the two cases, I am not sure.

Looking at the tests laid down, "substantial risk", "seriously impeded or prejudiced", I am not satisfied on those aspects in relation to this particular allegation.
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Which brings me back to the first aspect that I referred to, i.e. as I put it generally, the scandalising of courts; the bringing of the court and the administration of justice into disrepute; a lowering of courts in the eyes of the public generally.

As I understand the authorities, there is no question of an intent having to be shown that someone set out to deliberately undermine justice. If comment is made which oversteps the bounds of reasonable courtesy and fair criticism and that has the affect of impairing the administration of justice, and confidence in justice, in the system at large, then that is sufficient to constitute a contempt.

The Law of Contempt exists to preserve respect for administration of justice in the
380 courts and that is important.

This editorial article started out with a headline which said in the English translation "Justice is no longer available in Court", then the first two sentences read in (translation in English) this way, "It is not possible to obtain justice from the Courts of Tonga and the people do not trust the decisions of the Court anymore because it's validity is in question." Those are quotations from the prosecution translations.

The prosecution also, under this heading or this aspect, complain of the last sentence of the article which reads in translation "However this kind of thing be littles the Court in the eyes of the peopele." I say at the outset that I am not so troubled or indeed not really
390 troubled at all by that last sentence. I see it as connected to, and merely the punchline

following, the criticism or critique that had been undertaken in the paragraphs immediately above it, of the particular decision in the Magistrate's Court, first to proceed with the case, the private prosecution of Mr Pohiva when the Legislative Assembly had already dealt with it and secondly then to give a sentence of one months imprisonment, suspended for three years.

I see that last sentence as being connected with the criticism of the individual decision and the body of the editorial and it says in effect, (that last sentence), that this sort of decision does not help the public view of the court. I would rather place that sentence in the same category as the aspect I have already dealt with, as to whether it would affect the particular legal proceedings. It was part of the robust criticism that I have already referred to.

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I come back the to what I see as the important part of this editorial on this aspect and that is the headline and the opening two sentences. In the affidavit of Mrs Taufateau, paragraph 5, the translation that is provided there of those first two sentences was this; "It is no longer possible to obtain justice from Tonga Court of Justice. The people no longer trust the decision of the Court anymore because it's validity is in question." There is no great difference between the two translations; the effect in my view is the same.

In fact from one point of view, it might be said that the translation, "It is no longer possible to obtain justice from Tongan court" is rather worse, is rather more of a slur, than the prosecution translation of "It is not possible to obtain justice from the Courts of Tonga."

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As I said at the start of this judgment Mr Moala in his evidence today tried to water down some of the passages and the opening sentence was one of those. He would have it that that should now read "It is increasingly difficult to obtain justice from Tonga Courts of Justice." For the reasons I expressed earlier, I reject that proposition of his.

The headline itself, "Justice is no longer available in Court". I bear in mind that headline writers strive for effect (the tabloid press all around the world in this day and age attest to that and reflect that) and it is an increasing tendency to find extravagant headlines that often bear no relationship at all to the article or the subject which follows.

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Nonetheless in my view, it is a long link indeed to make, from criticism of one Magistrate's Court decision in a private prosecution matter, in quite a low level and, in some senses, insignificant matter to a headline such as this.

But the two opening sentences in my view are worse. From one relatively minor case (and that at a low level in the judicial system), and from a criticism of that one case, (however justified that criticism might be), to write in an editorial that "it is not possible to obtain justice from the courts of Tonga and the people do not trust the decisions of the court anymore", is to mount an extraordinary attack on all courts.

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As I have said, it is possible to understand, (and I am not making any comment on the validity of that), to some extent, the criticism of the individual case that is made in the body of the article, but to attack, (as those openings do in my view) all courts, Courts as an institution, is in the judgment of this Court to overstep. It has the effect of undermining, of shaking the confidence of the people in, the decisions of the Courts.

I noted with interest that Mr Moala, in his own evidence in chief, in effect accepted that really he had gone too far, in making such general statements from only one case. As I made a note in my book, he said that he admitted that probably it could have been written differently, although he went on to say he did not intend to diminish the authority of the

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court. Under cross-examination, he was asked how he would have said it differently, how he would have changed the wording and he said that he would have, or rather could have, worded it in the way of; "Court decision criticised; justice not believed to have been obtained in Court decision." That of course would have related it to the particular case being subjected to criticism.

It was interesting to hear Mr Moala's witness, Mr Pohiva, say under cross-examination, when these opening sentences were put to him, that he regarded them as very general statements, covering not just the particular case. That from a man who was very 450 much involved in the proceedings themselves. If that was how he perceived it, then the general public would well perceive it in a similar way.

I conclude that this editorial article was indeed in contempt in the respects which I have outlined. I based those findings, as I say, on the headline and inparticular on the two opening sentences and I base it on the aspect of the scandalising of the courts themselves, the bringing into disrespect of the Court.

So in that respect, Mr Moala, I find that those parts of the article were indeed a contempt of Court and I find you guilty of contempt in regard to those, i.e. the translation of the criticism of a particular case into such a wide and sweeping and disrespectful criticism of the whole judicial system.

460 Having made that finding, there is in this court a whole range of sentencing powers available from committal to imprisonment downwards. (Counsel were further heard on the question of penalty).

Mr Moala, I detected in you, when I listened to your evidence, and I listened very carefully, two things I think that are important in terms of your position at the moment. The first is that you obviously felt strongly about what had taken place in the House and then, more importantly from your point of view, what then occurred in the Magistrate's Court. And I detected in you, in the way you gave your evidence, the desire, in writing this particular article, to come out fighting,or as an advocate, for Mr Pohiva.

470 It is perhaps in that that you lost something of the objectivity which might be expected in an editorial writer and in an editorial. As I have said in the course of my judgment, Courts are not and should not be, immune from criticism. But it was in making those rather extravagant opening statements that you did overstep and indeed, did yourself a disservice in my view. I said I have listened carefully. I did not detect in you any malice or any undesirable intent, (undesirable from the Court's point of view), or an intent to set out to scandalise a Court. But I am sure you had a rush of blood, and passion overcame objectivity. So I have that matter in mind when I look at sentencing.

Secondly, I observe in you, (and already I have touched on it to some extent in my 480 judgment), an acceptance that, with hindsight looking at the article, you could have worded it differently. You could still have had the same impact but would not have spread your criticism quite as wide as you did. And I accept that is a genuine expression, in effect, of regret on your part.

So those are the two things I wanted to comment on from listening to you today, and those are important when it comes to this aspect of matter. And they influence me on the question of sentence.

Also influential is the fact that it would seem that you have been the publisher and editor of this paper for some time. I have not been told that there have been other 490 proceedings of this sort. If there had been any, I dare say I would have heard abou it

I referred earlier to the fact that the range of penalties available seem to be these. from imprisonment, (committal to prison), to a suspended term of imprisonment, to fine, to putting you on a bond or security for good behaviour, or indeed of reprimand.

I have thought carefully about the matter. I have reached the view, and it is shaped by the factors that I have referred to, that in this instance the matter can be dealt with in a lenient way. It is my hope, and it is my belief, that no great harm has been done. But let this be seen, as it were, as a shot across your bows.

There is a balance that has to be struck. It is difficult, but freedom of speech, freedom 500 of expression of opinion, freedom of the press, have to be balanced with responsibility. It is an editor's job to find that balance. I am sure that the proceedings here and the outcome of this proceedings will be salutary.

I intend to formally censure, to reprimand you.

I do not intend to inflict or impose any other penalty, but I do intend that you pay an amount towards the cost of these proceedings. I say an amount because I would want from the Crown an indication now, (if it can be given) or subsequently, (if it wants time to consider the position) as to what the costs were in these proceedings. I will then hear argument about the extent of costs which should be awarded. (Counsel further heard).

510 Mr Moala: You will be reprimanded, censured, in relation to the finding of contempt. There will be an award against you, in favour of the Crown, of a sum of costs which I will determine in the next short while.