

REX

-V-

LESINI TONGA

BEFORE HON. JUSTICE FINNIGAN

Counsel : Mr Fifita for accused (applicant), Mr Pouono for Crown

Date of Hearing : 11 February 2000

Date of Judgment: 31 March 2000

RULING OF FINNIGAN, J

This is an application by an accused person for costs against the Crown. The facts, briefly, are that on the day of trial Crown counsel offered no evidence on the two charges of housebreaking and theft against the accused. The background to this application was discussed in chambers. From the discussion, the Court was satisfied that the Crown application was a proper one. After that the Court dismissed the charges.

It is clear that the reason for the decision to offer no evidence was a judgment made by Crown counsel after his own judgment of the Crown's evidence, which counsel explained in chambers. That was a judgment for counsel to make and the Court to accept.

When the accused, a 14-year-old boy, through counsel sought costs, I adjourned the matter for argument, as it seemed there might be a novel issue about costs requiring a judgment.

I heard the argument in chambers on 11 February 2000 and reserved my decision. Now that I have had the opportunity to consider the written and oral submissions of both counsel, I am satisfied that there is no novel point, and no injustice to the accused if costs are refused. I thank counsel for their submissions.

The simplest way to state this is to say that if the trial had proceeded on the evidence that Crown counsel had, and if the accused had been acquitted, the Court would not have awarded him costs. This is because the trial would have been in the normal course of the Crown's duty. That is, to put before the Court a prima facie case of criminality and leave the judgement of proof beyond reasonable doubt to the Court. The Crown has not argued that the Court is without jurisdiction to award costs against the Crown in criminal cases, and one order made by the Court awarding costs against the Crown was put before me. This was an order in an appeal, *Laino Latu v The Police*, Cr App 673/96, order dated 5 March 1997

However, it is not normal for the Court to do so. This is because, as Ward CJ noted in *R v Sione Foueti*, unrep Cr933/92, Ruling delivered 20 April 1995, to award costs on acquittals as a normal course would be to penalise the Crown for performing its public duty.

In the present case, the accused has sought costs on the footing that the laying of the charges wrongful and unfair. That is a matter for proof, and there has been no evidence in the present application. As it happens the accused has commenced a civil action on that basis. That action, at present heard but not yet decided, is a proper forum for the claim that the accused has made herein.

The application of the accused for costs is declined.

NUKU'ALOFA : 31 March 2000



[Handwritten Signature]
JUDGE