

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

MISC. 40/02

BETWEEN **ALBERT TSHABALALA,**
formerly of South Africa,
now of Arorangi Prison,
Rarotonga
Applicant

AND **ATTORNEY GENERAL**
of the Cook Islands
Respondent

Mr McDonnell for Applicant

Mr Elikana for Respondent

Date: 28 August 2002

DECISION OF GREIG CJ

This is an application to have an Information dismissed for want of prosecution. The accused who is not a Cook Islander or a resident here is said to have arrived in Rarotonga on or about the 4th of December last year.

The facts which I am going to refer to are of course entirely unproved at this stage. They are merely allegations that are put forwarded in a caption sheet and summary which was put forward by the Police and dated 4 June 2002. It seems from that, that on information received by the Police it was suspected that the accused was endeavouring to sell to members of the public paper or material which it was alleged could be turned into US\$20 notes. The Police

obtained a search warrant and seized a number of items including sheets of what is described as black paper and some chemicals and other items.

On the basis of that, the accused was charged on 21 December 2001 with forgery of two US\$20 notes. The accused pleaded not guilty on his first appearance and there were a number of adjournments. The accused was and is of course still entitled to bail, but he chose not to seek bail. There are three reasons for this – one is that he has no means independently I am told to support himself here. Secondly he has no family connection or friends who could support him. Thirdly I am told he feels safer in prison than outside. I am not quite sure what that means but it does indicate that at least one of the reasons for his non application for bail is at his own choosing and for his own convenience.

After a number of remands on the 6th of June the charge of forgery was withdrawn and was replaced with a charge under S297 of the Crimes Act. This is a charge that he made or used or knowingly had in his possession paper intended to resemble and pass as revenue paper, or as special paper such as is provided and used for making bank notes. The charge is that the paper that he had and was using and knowingly had in his possession was intended to resemble and to be passed off as if it was genuine bank note paper when it was not.

Mr McDonnell who appears for the accused has for some time been seeking to obtain details from the Police of the charge. In the absence of those details there has been some discussion with the Police about a disposal of the matter without trial but this so far has come to naught.

From this summary caption sheet it is clear that the Police sent the material that they obtained to a document specialist and to the ESR in New Zealand for analysis and report. That report or information from that report is set out on this summary. In the application before me Mr McDonnell says that this

evidence is not contentious and can be dealt with presumably without producing the witnesses or without the need of cross examination in any event.

During the course of this hearing Mr McDonnell was given for the first time a list of witnesses that the Police intend to call in this matter. He has not as yet received any other information or material such as is required to be given under S99 of the Act when the matter is set down for hearing. I just comment in that regard that although it is clear that there is an obligation to provide written deposition statements not later than 28 days before the date fixed for the trial, that does not mean that the Police should not or could not provide such statements at an earlier stage so that the matter might be dealt with in a more formal basis before that.

There was apparently an attempt to have the matter put down for trial in March. I have not been told but I am inclined to assume that at that stage the Police were not ready to proceed but in any event there was not available time in the Court calendar during the visit of the Judge at that session.

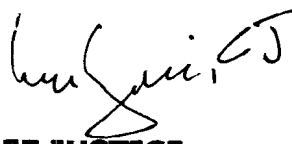
This is to be a trial before a Judge alone. It is beyond the jurisdiction of the Justices of the Peace so unfortunately it can only be dealt by one of the Judges who travels from New Zealand to Rarotonga. At the moment I understand that there is to be another High Court session in August, that will be mainly taken up by Land Court work but it is conceivable that there could be time available for a trial such as this. If it is not dealt with in August then it will have to remain untried until November or thereabouts when I or another Judge will come to deal with criminal and civil matters.

It is somewhat disturbing that it appears that this man may not receive a trial until November; that he will be in custody during that time, even if to some extent that custody is his own choice.

At the same time I am bound to say that a delay of a bit less than a year between arrest and trial is not out of the way. The application now made in June, some six months after arrest clearly cannot succeed. Through no fault of the Police there has been some delay in obtaining information and advice from experts who are unavailable here. That is perfectly proper and a delay of 6 months in that regard is really not significant; certainly not significant enough to persuade the Court to dismiss the Information or to treat the matter as being a want of prosecution.

I cannot bring the matter on for trial but I do want to stress that the matter should be brought on as soon as is possible. If it is at all possible, then I would recommend that the Registrar endeavour to find time in the next available session for this trial. If that is not possible then it should be given the very utmost priority for trial in November or in the November session. In the meantime I would urge the Prosecution and the Police to prepare, even if not in a final form, the proposed evidential statements, provide them to Mr McDonnell so that if he thinks it appropriate he can seek a deposition hearing before a Justice of the Peace and seek then a dismissal of the matter without committal.

In the circumstances although I am satisfied that Mr McDonnell and his client were justified in bringing these proceedings the application is dismissed. I do not think it is appropriate to make any order for costs and so I make no such order.


CHIEF JUSTICE
