

IN THE COURT OF APPEAL FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0024 of 2003S
(High Court Criminal Action No. HAC 011 of 2001S)

BETWEEN:

TIMOCI SILATOLU
JOSEFA NATA

Appellants

AND:

THE STATE

Respondent

Coram:

Henry, JA
Scott, JA
McPherson, JA

Hearing:

Tuesday, 5 July 2005, Suva

Counsel:

Ms M. Waqavonovono for the Appellants
Mr R. Gibson for the Respondent

Date of Judgment: Friday, 15 July 2005, Suva

ORDERS OF THE COURT

- [1] On 27 June 2003 following trial in the High Court the appellants were convicted of treason and sentenced to life imprisonment with non-parole periods of 9 years and 7 years respectively. Both have appealed conviction and sentence. They applied for but were declined legal aid by the Legal Aid Commission, being advised that although eligible the Commission had insufficient resources to assist. Mr Nata has appealed to the Board of the Commission against that decision, but the result of that is not yet available. Mr Silatolu did not appeal and the time for doing so has now expired.

[2] The appellants now apply to this Court under section 30 of the Court of Appeal Act (Cap 12) to assign them Counsel for the purposes of these appeals.

[3] Section 30 provides :-

“The Court of Appeal may at any time assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.”

[4] Neither appellant has sufficient means to enable him to obtain legal aid, so the only question is whether it appears desirable and in the interests of justice that they or either of them should have legal aid. In the circumstances we do not think Mr Silatolu’s failure to appeal the Commission decision or the non-availability of Mr Nata’s appeal should militate against exercising our jurisdiction.

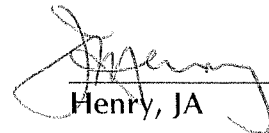
[5] Treason is of course a major criminal offence, and the effective sentences imposed were substantial. The conviction appeals raise serious constitutional issues including the validity of section 50 of the Penal Code (Cap17) and the validity of the grant of immunity. Issues as to the elements of the offence, the admissibility of evidence, corroboration, and the conduct of the trial are also raised. In respect of sentence there is an issue as to the relevance of the statutory remission provisions.

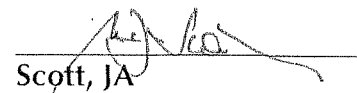
[6] Having given these matters due consideration we are satisfied that the representation of these appellants by counsel is necessary and therefore desirable to enable a fair and proper determination of the appeals. It is then necessary to consider whether the appellants should be jointly or separately represented. Mr Nata in a letter dated 2 May 2005 requested separate representation. However he did not, as stated in that letter, advance any reasons to support the request in his affidavit in support of his present application. Ms Waqavonovono, at the Court’s request, has lodged a memorandum on this aspect to which is attached a note from

Mr Nata. These do not disclose any matter which would indicate a likely conflict of interest between the two appellants, and a perusal of the grounds of appeal shows that the issues are largely common and concerned with discrete questions of law. Despite their differences of alleged involvement, as matters stand we are satisfied that one counsel can adequately represent both appellants without the risk of injustice resulting.

- [7] Accordingly there will be orders under section 30 of the Court of Appeal Act (Cap 12) that one counsel be assigned to represent both appellants for the purposes of the preparation and hearing of their appeals against conviction and sentence for treason. The Registrar is directed to take all necessary steps to effect the assignment of counsel.
- [8] Pursuant to s.32(2) of the Act, we further order that the expenses of counsel so assigned are not to exceed the sum of \$10,000.




Henry, JA


Scott, JA


McPherson, JA

Solicitors:

Office of the Director of Legal Aid Commission, Suva for the Appellants
Office of the Director of Public Prosecutions, Suva for the Respondent