

**TIMOCI SILATOLU and Anor v STATE (AAU0024 of 2003S)**

COURT OF APPEAL — CRIMINAL JURISDICTION

5 HENRY, SCOTT and MCPHERSON JJA

5, 15 July 2005

10 **Legal practitioners — legal aid — treason — life imprisonment with non-parole periods of 9 and 7 years — declined legal aid — insufficient means to obtain legal aid — interests of justice — Court of Appeal Act (Cap 12) ss 30, 32(2) — Penal Code (Cap 17) s 50.**

15 The Appellants were convicted of treason and sentenced to life imprisonment with non-parole periods of 9 and 7 years respectively by the High Court. Both the Appellants appealed against conviction and sentence. The Appellants applied for but were declined legal aid by the Legal Aid Commission. Both Appellants had insufficient means to obtain legal aid. The Appellants sought an application to have legal aid in this court for the purposes of the appeals.

20 **Held** — The crime of treason for which the Appellants were convicted is a major criminal offence and the sentences imposed were substantial. The conviction appeals raised serious constitutional issues including:

- 25 (1) the validity of s 50 of the Penal Code (Cap 17);  
 (2) the validity of the grant of immunity;  
 (3) the elements of the offence;  
 (4) the admissibility of evidence;  
 (5) corroboration; and  
 (6) the conduct of trial.

30 There was an issue as to the relevance of the statutory remission provisions. The court was satisfied that the representation by the counsel was necessary and desirable for the Appellants to have a fair and proper determination of the appeals and that one counsel can represent them both with no resulting risk of injustice despite the different involvement of the Appellants.

Application allowed.

No cases referred to.

35 *M. Waqavonovono* for the Appellants

*R. Gibson* for the Respondent

40 [1] **Henry, Scott, McPherson JJA.** 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.

45 [2] The Appellants now apply to this court under s 30 of the Court of Appeal Act (Cap 12) to assign them counsel for the purposes of these appeals.

[3] Section 30 provides:—

50 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.

5 [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.

10 [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 s 50 of the Penal Code (Cap 17) 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.

15 [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.  
20 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  
25 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.

30 [7] Accordingly, there will be orders under s 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.

35 [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.

*Application allowed.*

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