

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION: Appeal from Judgment of the High Court of Solomon Islands (Naqiolevu, J.)

COURT FILE NUMBER: Criminal Appeal Case No. 8 of 2010 (On Appeal from High Court Criminal Case No. 413 of 2006)

DATE OF HEARING: 4 October 2010

DATE OF JUDGMENT: 8 October

THE COURT: Auld, P
Adams, JA.
Hansen, JA.

PARTIES: John Maetia Kaliuae Appellant
-V-
Regina Respondent

ADVOCATES:

Appellant: Ms. McSpedden for John Maetia Kaliuae

Respondent: Ms. Olutimayin for Regina

ALLOWED/DISMISSED: ALLOWED

PAGES: 1 - 15

JUDGMENT OF THE COURT

AULD P

Introduction

1. This is an appeal by John Maetia Kaliuae against his conviction on 6th June 2010 before Naqiolevu J, on 9 out 35 counts of “official corruption” contrary to section 91(a) of the Penal Code. The particulars of each count charged that, as a public servant, the Chairman of the Solomon Islands Citizenship Commission, he corruptly obtained monies for himself from various Chinese persons for the grant of Solomon Islands citizenship to them or members of their family or others. Mr Kaliuae did not give evidence, but made a short statement from the dock, asserting his innocence of all the charges. He also called one defence witness, who gave evidence challenging one of the main prosecution witnesses on 3 of the 8 counts.

2. The Judge acquitted Mr Kaliuae on counts 1 -26 of the indictment, on all of which he was jointly charged with another, because regardless of the nature of the transactions charged and whoever had been involved in them, they had not resulted in the grant of citizenship. The Judge also acquitted him on one count (33) for want of evidence, out of the remaining ten charges on which he was charged alone.

3. All the offences, the subjects of the 10 counts, were alleged to have been committed in 2003 by a local Solomon Islands man, variously known to the witnesses as “John” or “John Maetia”; or simply a “local man”, that is, some 6 or more years before the trial in late 2010. As an identification parade had not been arranged for Mr Kaliuae before trial, none of the witnesses was asked whether they could identify him in court, and none did. One witness went so far as to volunteer that the man of whom he spoke was not in court.

4. Section 91(a) of the Penal Code creates the offence of “official corruption” where a public officer:

“... corruptly asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done,

or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office.”

5. Each of the 10 counts, so far as material, were in identical terms, charging Mr Kaliuae only with obtaining a benefit, namely that he:

“... corruptly obtained a benefit for himself namely \$[.....], for the granting of Solomon Island citizenship to [...] in the discharge of his duties.”

The issues

6. The appeal raises five main issues, the outcome of each of which turns largely on the outcome of the first.

- 1) The first arises out of grounds of appeal 1 to 3, by reference to paragraphs 39 and 65 of the Judgment. It is whether the Judge, in convicting him on each of the 9 counts, went outside the confines of the section 91(a) offence as charged –namely the *obtaining* of a corrupt benefit - by relying also or in the alternative on other uncharged conduct for which the section also provided, in particular “asking for” or “soliciting” such benefit.

- 2) The second and related issue, the subject of ground of appeal 4, relates to the first of the 9 counts (count 26), namely whether the evidence of soliciting without evidence of receiving or obtaining was sufficient to constitute the offence.

- 3) The third issue, also related to issue 1, the subject of grounds of appeal 5, 6, 7, 10 and 11. It is whether, in relation to counts 27, 28, 29, 30, 31, 32, 34 and 35, the Judge was entitled to find on the evidence that Mr. Kailuae had received each alleged benefit, as distinct from evidence identifying him as the person asking for or soliciting it.

- 4) The fourth issue, the subject of ground of appeal 8, is whether the Judge was, in any event, entitled to convict Mr Kalihuae on count 27, since it is identical to count 23 on which he had acquitted him – more precisely whether Count 27 is valid.

- 5) The fifth issue, the subject of ground of appeal 9, is whether the Judge was entitled to convict Mr Kaliuae on counts 30, 31 and 32, in reliance on the evidence of a potential accomplice to whom police immunity had been granted.

Issue 1 – Grounds 1 - 3 – Whether the Judge was entitled to and/or did convict in reliance on evidence of requesting or soliciting, regardless of evidence of obtaining a bribe

7. As indicated, section 91(a) sets out a number of separate alternative manifestations of the offence, and does so disjunctively - albeit that some of the manifestations overlap and others unnecessarily complement each other. Each, whether considered singly or in combination, instances a species or pattern of behaviour typifying corruption by a public officer. The sub-section, starting with the governing adverb “corruptly” continues with the following possibilities: “asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit” etc. As can be seen, among those possibilities are even conspiracies or what would otherwise be inchoate common law attempts to receive or to obtain - but all full statutory substantive offences by virtue of and for the purpose of section 91(a). The mischief of the provision is to cover a wide range of conduct, successful or unsuccessful, by public officers to enrich themselves by abuse of their office.
8. The prosecution case and the evidence of each of the material witnesses on whom the prosecution relied in proof of each corrupt transaction were that a person whom the prosecution invited the Judge to infer was Mr. Kaliuae, asked for and/or solicited a specific sum of money and, save in one instance (Count 26), received it, for the purpose of granting citizenship to him or his family or another.
9. Ms. Rachel Olutiamyin, for the Crown, adduced evidence from each of the material witnesses:
 - 1) of the approach of a local man named “John” or “John Maetia”, or just “a local man”, asking for and/or soliciting money for his services in securing a grant or grants of citizenship; and
 - 2) save in the case of counts 26 and 33, giving him money.
10. Mrs. Olutimayin, in her closing submissions to the Judge, spoke of this pattern throughout the trial of dual issues as to solicitation and obtaining. And Ms Linda McSpedden, for Mr Kaliuae, in cross-examination of prosecution witnesses, and in her final submissions to the Judge, adopted much the same approach as to what was relevant to his decisions. This is how he put his understanding of the “elements of the offence” in paragraphs 39, 40, 65 and 83 of his judgment:

“39.The elements of the offence are [that] the accused, being employed in the Public Service and charged with the performance of a duty by virtue of such employment, did corruptly ask ... for and receive for himself money from a number of Chinese persons on account of a thing to be done.”

"40. The Crown's case is that the accused approached the main Chinese witnesses who own businesses and their workers or relatives who make up the second group. The main witnesses acted as agent for their employees and relatives. The accused asked the main witnesses for money and received money from them to arrange citizenship."

"65. The elements which the Crown is required to prove or sustain the charges in relation to these counts are: The accused ... 'did corruptly' ask for, solicit, receive or obtain for himself money from a number of Chinese nationals, on account of a thing already done by him or to be done by him in the discharge of his duties."

"66. "... It is the evidence of the Crown that ...witnesses testified in support of the elements. The main Chinese witnesses who own businesses and their workers and relatives who make up the second group. The evidence is clear that the main witnesses were approached by the accused and they acted as agents for their families and employees."

"83. It is clear the issue for this court to determine is whether the Crown has proved its case beyond reasonable doubt that the accused is the person referred to by various Chinese workers as the man identified as 'John' and that he asked for and received money corruptly for a thing to [sic] be done, or done in the future."

11. Ms McSpedden has submitted that the Judge, in paragraphs 65 and 66 at any rate, demonstrated a misunderstanding of the nature or elements of the offences, *as charged*. She emphasised that the charges as drawn were confined to an obtaining *or* receipt of corruptly solicited money, and did not allow for conviction of a request for or solicitation of such money, regardless of whether it was paid.

12. Mrs Olutimayin, in response, maintained that the series of complementary overlapping and alternative ways for which section 91(a) provides, went to "the kernel" of the offence, a corrupt receiving or obtaining of benefit. She said that it was reflected in the way the prosecution put its case at trial - solicitation by Mr Kalihuae prompting payment to him of money for procuring citizenship. Witnesses gave evidence of solicitation prompting their payment of money for the purpose; there was detailed challenge of it in cross-examination by Ms McSpeddon; Mrs Olutimayin put the same issues to the Judge in her closing submissions; and the Judge duly considered them in his judgment.

13. However, there is not much between counsel on the principle underlying this ground, namely that, where only receipt or obtaining is averred as a particular of the offence, proof of requests for or solicitation of bribes is not *in itself* sufficient for conviction. Similarly, there is common ground that evidence of solicitation of bribes may be relevant to and probative on a charge of receipt or obtaining *simpliciter*. Ms McSpedden's complaint about the Judge's treatment of the 9 counts is that, given his varying descriptions in the above paragraphs of the elements of the offence and in his treatment of the individual counts, the Court cannot be sure that that he confined his findings of guilt to counts where there was cogent evidence of receipt or obtaining of bribes.
14. In the Court's view, there is no mileage in over-semantic comparison of the different ways in which the Judge expressed the central issue for his decision, namely as to the minimum the prosecution had to establish to secure a conviction in each case – obtaining. The real question is whether, in his consideration of each individual applicable count he adhered to it and could safely convict of obtaining on the evidence before him. A convenient starting point for the Court's examination of this question is Count 26, where the Judge convicted notwithstanding the clear absence of evidence of receipt or obtaining.

Issue 2 – Ground 4 – Count 26

15. Count 26 charged Mr. Kaliuae with corruptly obtaining for himself \$10,000.00 from a Yi Hui Lei for the grant of Solomon Islands citizenship. But none of the evidence put by the prosecution before the Judge established that he or anyone had received any money or other benefit from Yi Hui Lei or anyone in connection with this matter. The Judge, in convicting him on this count, appears to have considered that proof of solicitation would do. He dealt with it, as follows, in paragraphs 42 and 70 of his judgment.

“42. Crown witness Yi Hi Lei in his evidence, told the court the accused approached him and asked if he knew anyone who wanted Solomon Island citizenship and responded by saying yes. The witnesses when asked; Did he tell you how much it involved. He said the application form fee, approval fee, application for passport is about \$5,000 and his consultant fee round 4 – 5 thousand dollars. Total is about \$20,000. The witness told the court “I told him to arrange everything then, after I can pay him. If nothing happens I will not give him anything”. He told the court he did not give any money because the accused did not bring back any certificate or passport.”

"70. The court is of the view that in relation to count 26, Yi Hi Lei ... Hong Ma's evidence confirms that [L]ei is his brother's son and the accused approached him and asked if he knew anyone who wanted SI citizenship and said yes. The witness in response to the question, 'Did he tell you how much it involved, said '.... the total about \$10,000. He testified that he told the accused to arrange everything, then after that he can pay him, if nothing happens he will not give anything. He told the court he did not give the accused any money because he did not bring back any certificate or passport. The Court has no reason to doubt this witness testimony"

16. Ms McSpedden maintained that the Judge erred in relying simply on the evidence before him of solicitation to convict Mr Kaliuae on this count.
17. Mrs Olutimayin argued that solicitation, without receipt, of a bribe, is capable of constituting a conviction under section 91(a) since it provides a number of avenues to guilt other than of receiving or obtaining. However, she accepted that, as Count 26, like the others, alleged only obtaining, the Judge wrongly convicted of the offence as charged. She sought to overcome this difficulty by directing the Court's attention to its powers in section [22(3) and] (5) of the *Court of Appeal Act* to remedy an error of law and/or to convict of another offence arising out of the same facts. She suggested extortion by a public officer, for which section 92 of the Penal Code provides. She might more appropriately have suggested one or more of the other elements or forms of the section 91(a) offence.
18. However, the power of the Court under the *Criminal Appeal Act* to remedy a deficiency in a charge by substituting, say, a conviction for a differently framed contravention of section 91(a) is permissive; it is only exercisable subject to a rigorous threshold imposed by section 22(5). The Court should only contemplate exercising the power in cases where it is satisfied that there was before the judge clear and cogent evidence of facts on which the Court is satisfied he or she "must have been satisfied of facts which proved ... [the appellant] guilty of that other offence". Relevant to the Court's consideration whether to exercise the power in relation to this count are more general considerations raised by other grounds of appeal going to the issue of proof, including identification (see below), the amounts allegedly sought and received, and the six years' delay from the alleged commission of the offences in 2003 to their reaching trial in late 2009.
19. In the circumstances, The Court does not consider it appropriate to exercise its power to remedy the deficiency in Count 26 so as to substitute a conviction for soliciting a bribe

where the main thrust of the prosecution was the obtaining or receipt of bribe six years before.

20. Moving to the remaining nine counts - and omitting for the moment Counts 27, 28 and 29 in respect of which there are other issues than as to actual receipt of money - there is the same issue under Grounds 2 and 3. That is whether there was adequate evidence of obtaining by Mr Kaliuae. The picture is not as clear as it might have been if the Judge, in his "assessment" of the evidence in paragraphs 67 - 78 and 82 - 86 of his judgment, had: 1) related it, piece by piece to each of the six counts; and 2) taken into account by an analysis in each case, however brief, the important deficiencies and contradictions elicited by Ms McSpedden in cross-examination.
21. It is also important to remember throughout, when reading these and other paragraphs in the judgment, that his references to "the accused" doing this or that or receiving money are highly misleading, since no witness in this trial ever purported to identify Mr Kaliuae, the man in the dock, as "John" or "John Maetia" or "a local man" to whom prosecution witnesses variously referred. The Judge's treatment of the evidence in this respect thus falls far short of his own general description of his task, towards the end of the judgment, in paragraph 83:

"It is clear the issue for this court to determine is whether the crown has proved its case beyond reasonable doubt that the accused is the person referred to by various Chinese workers as the man identified as "John" and that he asked for and received money corruptly for a thing to be done ..."

Count 30

22. The evidence on which the Judge apparently relied in convicting Mr Kaliuae on this count, as summarised in paragraphs 72 and 73 of his judgment, was that of Andrew Deng Zu Au, purportedly acting as agent for, among others, Zuo Qing Zhen and his wife and children. The Judge referred to Mr Deng having testified that Zuo, in his presence, paid \$30,000 to "the accused" in instalments and of Zuo's testimony of having made a payment to "the local man" in Deng's office.

Count 31

23. The Judge, in paragraph 74 of his judgment, summarised further evidence of Mr. Deng, seemingly related to his part in acting as a go-between for Yu Wen Can and his family and of making a payment to “the accused” for the purpose of securing citizenship for them.

Count 32

24. The Judge summarised in paragraph 75 of his judgment further evidence from Mr. Deng, this time in relation to a payment to “the accused” for securing citizenship for Yang Jiang Quing and Deng Xiu Ying.

Count 33

25. This was the one count of the ten faced by Mr Kaliuae on his own on which the Judge acquitted him. The witness concerned was Guang Yao Chen, whose evidence the Judge described as “selective”. He spoke of an approach by a man who gave his name as “John”. But the witness, beyond confirming having made a written statement much earlier about a payment he had made to “John” (whom the Judge described as “the accused”) in respect of his brother’s application for citizenship, could not remember the incident independently of his statement when giving evidence.

Count 34

26. The Judge purportedly summarised in paragraphs 76 and 77 of his judgment the evidence of Chow Sung Wo (“Frankie Chow”), Luo Wei Wei, Zhou Zhen Wei and Ling Yi Juan of a seeming application on their behalf for citizenship, but no actual payment, save \$3,000 to a man called “David” as an intermediary for “John” or “John Maetia” for application forms – so, no suggestion of a direct payment, even to “John” or “John Maetia” .

Count 35

27. The Judge, in paragraph 78 of his judgment, referred to evidence of Jason Shiu Yen, on behalf of Yu Cui Mei seeking citizenship for his wife, who made payment of \$5,000 to a man introducing himself “Maetia” in part payment of a “middle man’s fee”. In fact, on examination of the transcript of Yen’s evidence as to his dealing with “John Maetia”, he acknowledged that someone else had told him the man’s name was “John Maetia – so, not only no identification of the name “John Maetia” as the accused Mr Kaliuae, but also hearsay as to the name.

28. Just running through that summary (which is of a piece with that for Counts 27, 28 and 29 below), and comparing the Judge's recorded "assessment" of the identification of "the accused" and the transactional detail with the evidence itself and its clear shortcomings, leaves the Court with serious misgivings about his general approach in determining guilt based even on obtaining. In all cases, there was no direct or sufficiently probative circumstantial evidence of identification of Mr Kaliuae as "John", "John Maetia" or "a local man" as the person who solicited or received bribes.

Issue 3 – Grounds 5,6 and 7 – Counts 27, 28 and 29

29. The main issue at trial in each of these three counts, to which the Court now returns, also went to the question of identification of Mr Kaliuae as the person who received the alleged bribe. In each of them the prosecution relied on the evidence of a reluctant witness, Mr Kun Da Huang, who spoke of dealing with and giving money to "a local man" whom he called "John" to secure citizenship for three parties. He gave little in evidence by way of further particulars, save to describe him as a "not very tall", "middle aged man" whom he had seen previously once or twice two years before. However, he went so far as to volunteer that the man was not in court and that Mr Kaliuae looked younger than "John". The Judge was not impressed with him as a witness, and said so. He mentioned him, at paragraphs 68 of his judgment, as one of the main Chinese witnesses who did not come up to full proof in respect of the full name of the man with whom he dealt and who had said that that "John" was not in court.
30. However, the Judge, when dealing generally with issues of identification on the 9 extant counts, said at paragraphs 88 and 89 of his judgment:

"88. The court is of the opinion that the evidence of the main Chinese nationals seem to link the method of approach by the accused and the purpose of approaching them. They are asked if they knew anyone who require SI citizenship and how it was to be put in place. The witnesses positively identified the accused as the person who approached them, and money was exchanged for the service.

89. In considering the various witnesses' evidence as to the identity of the accused, the court takes into consideration the *Turnbull* principle and must warn itself of the importance of the principle. The various crown witnesses have had more than one to two encounters with the accused.

The encounter with the witness is not a "fleeting" glance but a meeting and discussion over a period of time."

31. Ms McSpedden is critical of the evidence of Mr Kun Da Huang as to identification and more generally on these three counts and the other counts. She is correspondingly critical of the Judge's acceptance of the evidence as sufficient identification of Mr Kaliuae as "John", particularly having regard to his expressed reservations about it, in the face of Mr Kaliuae's presence in the dock, that "John" was not present in court.
32. Ms Olutimayin's response was brave, considering that the main issue in play here was one of identification or recognition some 6 years after the event. She suggested that, notwithstanding the Judge's reservations about Mr Ku Da Huang's evidence generally and its want of probative value in identifying Mr Kaliuae as "John", it was open to him to have rejected his evidence that Mr Kaliuae was not "John". She referred the Court to other evidence in the case that the man in question was known to many in the Chinese community and suggested that the possibility of "John" having been mistaken for Mr Kaliuae was remote. She referred in particular to the evidence of the material witnesses to the other 6 of the 9 counts where there were convictions, in which all or most of them spoke of the person with whom they dealt as having introduced himself as "John" or "John Maetia".
33. However, there remains the missing link in identification throughout, a total failure evidentially to connect the name "John" or "John Maetia" or any of the descriptions given to him with the man in the dock in this trial, Mr Kaliuae. There are also, as Ms McSpedden has demonstrated in detail, serious gaps and contradictions in the evidence throughout as to what passed between the material witnesses and "John" or "John Maetia" when put alongside the offences charged. And there is the further difficulty, already noted, of divining from the varying approaches of the Judge to the common form of charge and his exiguously faulty analysis of evidence on a count by count basis. All in all, for the reasons already given, the Court is not satisfied that any of the nine convictions is safe, and on that account allows the appeals and quashes the convictions.
34. For the avoidance of doubt only and in deference to the detailed arguments on both sides, the Court now deals briefly with the remaining issues raised by the grounds of appeal.

Issue 3 contd. – Grounds 6 and 7

35. Grounds of appeal 6 and 7 are based on the premise that because the prosecution did not establish with cogency the precise amounts of money received in each case, there could be no proper conviction on any of them as to an obtaining of a corrupt benefit. That is a false premise. There was sufficient evidence in each case on which the Judge would have been entitled to convict on the basis that money had passed, but for the issue of identification. The fact that there may have been some uncertainty or conflict in individual cases as to how much was obtained is immaterial to the issue of conviction, as distinct from sentence.

Issue 4 – Ground 8 – Counts 23 and 27 – *Autrefois Acquit*

36. Similarly, there is no need for the Court to consider the *autrefois acquit* challenge to Count 27, based on the acquittal of Mr Kaliuae on an identical charge in Count 23 insofar as it concerned him. However, whether or not Ms Olutimayin is correct in saying that the reason for the Judge's acquittal of him on that count was because "he [was] further charged on the same facts under count 27, the fact remains that he had been at risk of conviction in count 23 on the same facts. As Ms McSpedden observed, whatever the Judge's reason for acquittal on Count 23, he should fare no worse in respect of the identical Count 27. The Court considers that the proper disposal of this matter is to exercise its power under section 22(3) of the *Penal Code* to quash Count 27 having regard to the acquittal on the earlier identical charge.

Issue 5 – Ground of Appeal 9 – Counts 30, 31 and 32 – whether the Judge was entitled to convict on the evidence of a witness to whom immunity had been granted

37. The main prosecution witness on the three counts, Andrew Deng Zu, was granted immunity from prosecution in the course of his evidence in chief after an intervention by Ms McSpedden. She submitted that he should be warned, as a potential accomplice, of his right not to answer questions that might incriminate him. He gave the same evidence in substance before and after the grant of immunity. The only evidence in contradiction of his testimony was that of the one witness for the defence, Mr Willy Fafanua. He said that it was Mr Deng and others - not Mr Kaliuae – who were responsible for the offences. He said that he had seen Mr Deng giving money to others in exchange for citizenship certificates.

37. The Judge dealt briefly with the issue in paragraph 82 of his judgment, holding that Mr Deng had been consistent throughout, that there was support for his evidence in other evidence, and dismissing Mr Fafuana's contradictory evidence as untruthful. The Judge made no reference in his judgment to the need for caution when approaching the evidence of Mr Deng as a potential accomplice. That is perhaps understandable, since there was considerable debate from the bar whether Mr Deng fell into that category, and the Judge found, rightly or wrongly, in paragraphs 84 – 86, support for the evidence of Mr Deng. So it was that the Judge contented himself in paragraph 82 of his judgement with the following reference to Mr Deng's evidence:

"82. The court, in considering the crown's prosecution witness ... evidence and the grant of immunity by the crown, noted at the beginning of his testimony and the grant of immunity by the crown the witness demeanour remains the same. He was willing to give his evidence truthfully without restraint. The witness testified that he was asked to tell the truth according to law and clearly that is what he proceeded to do. Refer to Wells J in the case of *R Greame*, where His Honour said, 'A condition achieved must ... be the display by the accused of *bona fides* at all relevant time."

38. Ms McSpedden complains of the Judge's reliance on the evidence Mr Deng to convict Mr Kaliuae on Counts counts 30, 31 and 32 because, she asserts, he failed to consider properly or at all the need for caution in accepting the evidence of a potential accomplice to whom immunity had been offered, especially where, as here: 1) his evidence was against the weight of other evidence, in particular that of the one defence witness, Mr Willy Fafuana; and 2) he had received an assurance in the form of the immunity that might have prompted him to give false testimony. She relies on observations of Goldsbrough J in *R v Lake & Ors* HCSI-CRC 430 of 2004 and the failure of the Judge expressly to articulate for himself a warning appropriate for a jury about reliance on the evidence of a potential accomplice in the absence of corroboration by non-accomplices.
39. Ms Olutimayin maintains that the Judge's treatment of the matter reveals no flaw in his reliance on the consistency of Mr Deng in his evidence before and after the grant of immunity and his evidently favourable view of his evidence. She continues that, absent an explicit reference by him to warn himself of the need for caution in the event that he might consider there was no or no adequate corroboration, does not mean that he did not have

such obvious considerations in mind. What really counted, she submits, was his favourable assessment of Mr Deng in contrast to his unfavourable view of the evidence of Mr Fafunua. At the very worst, she argues, if he failed in any formal way to observe the legal proprieties in the way he reached and articulated his findings, the Court should apply the proviso.

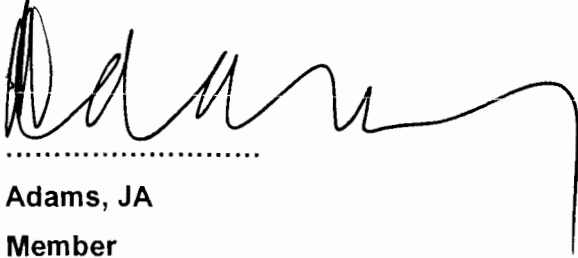
40. It is, as we have said, unnecessary for the Court to rule on this issue, given its allowance of the appeal on other grounds. It is often a nice point the extent to which a Judge sitting on his own in a criminal matter should spell out for the public in his judgment the need for caution and to look for corroborative evidence when considering the evidence of a potential accomplice. In the circumstances of this case, given the Judge's clear attention to the importance of assessing Mr Deng's credibility, coupled with his express search for support and finding of support in the evidence of other witnesses, albeit of little assistance on the issue of identification, all we can say is that we would have hesitated long before quashing the convictions in Counts 30, 31 and 32 on this account.
41. Accordingly, for the reasons given, we allow the appeals on all the extant counts in the indictment and quash the convictions.

Adams JA.

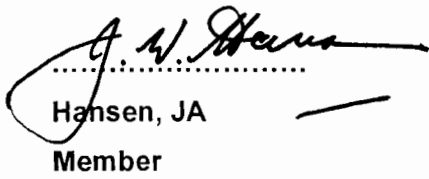
42. Although I am party to the judgment of the Court both as to its conclusions and reasons, I wish merely to clarify one point concerning the possible application of section 22(5) of the Court of Appeal Act. In agreeing with paragraph 18 of the judgment, I would not wish to be taken as expressing a view that it is open to utilise this provision to convict the appellant of another offence, for example of soliciting a payment on which it was not open for him to be convicted on the indictment as particularised without amendment, as distinct from the situation that arises where the potential conviction was at all events open on the indictment to which he pleaded.



Auld
President



Adams, JA
Member



Hansen, JA
Member