

REGINA-v-JEREMY FASI

HIGH COURT OF SOLOMON ISLANDS
(Mwanasalua, J.)

Criminal Case No. 489 of 2004

Hearing: 10th, 11th and 12th April 2006

Ruling: 1st August 2006

R. Talasasa for the Crown

D. Gold for the Accused

RULING

Mwanasalua, J: The accused is charged with thirteen counts of abuse of office under Section 196 of the Penal Code. He is employed in the Public Service as a Magistrate in Honiara. Counsel for the accused made a no case to answer submission under Section 269 of the Criminal Procedure Code when the Crown closed its case in this trial. Counsel asked the Court to acquit the accused of the offences on that ground of no case to answer.

The submission is based upon three grounds: First, there is no evidence that the accused abused his authority; Second, there is no evidence that the accused signed the application forms; and Third, there is no evidence that the accused prejudiced the rights of other persons.

The test to be applied in a no case to answer submission.

The test is not that the Crown has proved its case beyond reasonable doubt but that the evidence adduced by the Crown at its best is capable of proving the case for the Crown beyond reasonable doubt that the accused is guilty.¹

The evidence adduced by the Crown

The accused received application forms for citizenship from the Chairman of the Citizenship Commission. The Chairman of the Commission, Mr. John Maetia Kaliuae asked the accused to sign the forms. The names of the applicants in the forms were Mr. Guang Yao Chen and Ms. Liming Chen, Mr.

¹ *R V. Tome, Criminal Appeal Case No. 4 of 2004; R V. Saamae, Criminal Appeal No. 3 of 2004 and Stephen Romane V. Regina, Criminal Case No. 144 of 2004(2) ruling dated 11th November 2005*

Wen Can Yu, Ms. Yi Juan Liang, Mr. Bai Ru Luo, Ms. Wei Wei Luo, Mr. Dong Liang Tang, Ms. Hui Xia Zheng, Ms. Bi Hong Cen, Mr. Yi Hui Lei, Mr. Jian Qing Yang and Ms. Deng Xia Ying and Ms. Zhen Hui Mei. These applicants are citizens of China who entered the Country between 2000 and 2003 as migrant workers.

The accused dated and signed item 34 of the forms on 12th May 2003, except for the form bearing the name of Mr. Yi Hui Lei which he had earlier dated and signed on 8th May 2003. The application forms were taken away by Mr. Kaliuae after the accused had dated and signed at the foot of item 34.

The applications were never tabled before the Commission for consideration. This was because they were withheld by the Secretary to the Commission who held the view that the applications were invalid.

On 16th May 2003, Mr. Guang Yao Chen, Mr. Zhung Wei Zhou, Mr. Yi Hui Lei and Ms. Yu Cui Mei purported to lodged separate appeals to the then Minister responsible for Citizen matters, Mr. Clement Rojumana.

Mr. Guang Yao Chen appealed on behalf of Ms. Liming Chen and himself. Mr. Zhung Wei Zhou appealed on behalf Mr. Bai Ron Lou, Ms. Hui Xia Zheng, Mr. Dong Liang Tang, Ms. Wei Wei Lou, Mr. Wen Can Yu, Mr. Jian Qing Yang, Ms. Deng Xia, Ms. Deng Xiu Ying and himself. Mr. Yi Hui Lei appealed on behalf of Ms. Bi Hong Cen and himself. And Ms. Yu Cui Mei appealed on behalf of herself.

There were four identical grounds advanced in all the appeals. They included, inter alia, that the Secretary to the Commission was wrong in Law when she made the administration decision to reject the applications as the applicants had met all requirements for citizenship except the ten year resident period. Messrs Zhou Zhing Wei and Guang Yao Chen denied lodging any appeal to Mr. Rojumana. The appeal by Ms. Yu Cui Mei was signed by another person and not by herself. The appeals were dispatched to Mr. Rojumana under a covering letter by Mr. Kaliuae dated 16th May 2003, the same date of the appeals.

On 24th May 2003, Mr. Rojumana considered the appeals. He decided that the applicants met all the requirements for citizenship except the ten year resident period. He allowed the appeals and granted Certificates of Citizenship to the applicants. The applicants have since been issued with their Certificates of Citizenship and some have obtained Solomon Island Passports.

Consideration of Evidence

Item 34 of the application forms contain the Oath of Allegiance to the Queen, Her Heirs and Successors according to Law. All applicants for Solomon Islands Citizenship must take and subscribe to the Oath of Allegiance before a Magistrate or the Minister responsible for Citizenship matters. In this case, the accused is a Magistrate and that would have entitled the applicants to take and subscribe the Oath of Allegiance before him. However, the accused admitted that none of the applicants in this case took and subscribed to the Oath of Allegiance before him. He abused the authority of his office as a Magistrate when he signed his name at the foot of item 34 when he knew that none of the applicants took and subscribed to the Oath of Allegiance before him.

But his Counsel contended that the omission constituted an administrative error on the part of the accused. This contention is untenable for these reasons. The accused never filled in the names of the applicants in the space provided for that in item 34. The applicants were not physically present with him in his office when he signed his name at the foot of item 34. And, at the foot of item 34, just below his signature, was a note in these terms: "*NOTE: items 32, 33 and 34 must be signed before a Magistrate, Commissioner for Oaths.*" There is therefore no basis for the accused to make any error.

The accused also admitted that he sealed the application forms with the stamp of the Central Magistrates Court.

The next submission by Counsel for the accused is that the accused did not sign the applications, but only the Oath of Allegiance set forth in Section 34 of the application forms. It is to be noted that the application forms for Citizenship is comprised of 34 Sections in all. It is a requirement that all 34 Sections or items on the forms must be fully completed by the applicants before the applications are processed for consideration by the Commission. This court views item 34 as serving two purposes. First, it is part of an application which must be completed by the applicants in person before the accused as Magistrate; and secondly, the signature of the accused at the foot of item 34, indicated that the applicants took and subscribed the Oath of Allegiance personally before the accused as Magistrate. Section 34 of the form is the final item which the applicants must comply with before the applications are considered by the Commission. On the basis of the first view expressed above, the accused had signed the applications in this case.

The final submission by Counsel for the accused is that the Crown had not adduced any evidence to prove that any particular person had been prejudiced of his rights when the accused signed and sealed the applications. In its response to this submission, the Crown said that the

persons whose rights were prejudiced were the persons who have yet to satisfy the ten year resident period required by law before lodging their applications for citizenship.

The provisions of the Citizenship Act (Cap. 57) do not mention rights but merely prescribed conditions which non citizens must satisfy before they can lodge applications to acquire citizenship. It is clear to this court that the Crown has not proved the nature of the rights of the ineligible applicants whose rights were said to be prejudiced by the accused when he subscribed his name at the foot of item 34 of all the application forms.

Mr. Rojumana was not sincere in saying that the applicants had satisfied all conditions for grant of citizenship except the ten year resident period. The applicants have not satisfied conditions required by law before their applications were considered on appeal by Mr. Rojumana. The question on whether the applications were invalid can be considered at some other time when the validity of the applications through which the applicants obtained Citizenship is before the court.

Conclusion

The Crown has proved that the accused is a person employed in the Public Service; that the accused had abused the authority of his office as a Magistrate when none of the applicants took and subscribed to the Oath of Allegiance before he signed his name at the foot of item 34 which is an integral part of the applications lodged by the applicants.

However, the Crown has not proved that the accused had acted arbitrarily when the accused signed the applications; and further, that the Crown has not proved that the rights of the persons ineligible to apply for Solomon Islands Citizenship as on 24th May 2003 were prejudiced by the accused.

The failure by the Crown to establish these two elements is fatal to the progress of its case. The evidence adduced by the Crown at its best is not capable of proving its case beyond reasonable doubt that the accused is guilty. The application to acquit the accused on the basis of no case to answer succeeds. The accused has no case to answer. He is acquitted. I order accordingly.

Francis Mwanasalua
Puisne Judge