

**REGINA-v-MATHIAS PESE****HIGH COURT OF SOLOMON ISLANDS  
(Mwanosalua, J.)**

*Criminal Case No. 594 of 2005*

**Hearing:** 24, 25 April 2007

**Ruling:** 26 April 2007

*Ms. Ruschena for Prosecution*

*Mr. Anders and R. Tovosia for Defendant*

*Mr. Apaniai for PFF Officer Jason Crawford*

**RULING**

**Mwanosalua, J:** This is a summons by Mathias Pese ("the Defendant") to PFF Officer Jason Crawford to produce documents. That is to say:

1. All statements taken by the Police from Ephraim Rongomilepo which PFF Officer Jason Crawford is aware of. Such statements may pertain to what has been described as the "Ogio Operation File".
2. All handwritten notes recorded by the investigation officers during the taking of such statements.

**The Background**

The Crown alleged that the Defendant abducted and murdered Palu Buake on 28 April 2003 at Ngalmala via Nduidui village in the Guadalcanal Province. The Defendant was committed to stand trial before the High Court upon the statements of 12 witnesses, an album of photographs and a tape record of an interview taken by the Police from the Defendant. The trial of the Defendant has started but the Crown would begin calling its witnesses to give their evidence when they are all in Honiara.

The Summons was issued on 20 April 2007 under section 127 of the Criminal Procedure Code (Cap.7). This section states:

*"127. If it is made to appear on the statement of the complainant or the Defendant or otherwise, that material evidence can be given by or is in the possession of any person, it shall be lawful for the court having recognizance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the*

*purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons."*

One of the witnesses whose statements have been tendered to the Magistrates' Court during the committal proceedings in this case was Ephraim Rongomilepo. He gave two signed statements to the Police on 11 August 2005. The first statement ("*the first statement*") relates to this case and was given to the Defence. The other statement ("*the second statement*") relates to a murder case at Ogio village.

The second statement is being withheld by the Police from disclosure on two grounds. The first ground is that it is irrelevant to the Defendant's case; and second, the disclosure of its contents would seriously prejudice the public interest.

### **Consideration**

The Defence has been seeking further disclosure of information and materials from the Prosecution before this trial began on 20 April 2007. The information and materials sought included investigation diaries, running sheets, note books of investigating officers in this Defendant's case and other investigations, information relating to a shooting incident at Isuna, the number of statements recorded from Ephraim Rongomilepo on 11 August 2005, details of any Police files opened against Ephraim Rongomilepo, a copy of the tape record interview between the Police and the Defendant and so on. The Prosecution did its best to assist the Defence in all these matters up to the commencement of the Defendant's trial.

It is clear from documents before the court, that the Prosecution has assisted the Defence far more than it was obliged to do by way of disclosure before trial. In a disclosure before trial, the prosecution is under an obligation to reveal: (a) any information which may be material to the defence; (b) any inconsistent statements made by the prosecution witnesses; (c) any previous convictions of prosecution witnesses and (d) the defendant's previous convictions.<sup>1</sup>

As I have said above, the Police withheld the second statement recorded from Ephraim Rongomilepo on 11 August 2005 from disclosure because its contents contained the names of informants and witnesses in a case which is still being investigated. The public interest which the Police have relied on is that of detection of crime. The rule is that a witness is not allowed to disclose the identify of his informant or the source from which he obtained his information.<sup>2</sup> This rule applies to both oral evidence and to the disclosure of

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<sup>1</sup> See *Richard May Criminal Evidence P.303*

<sup>2</sup> *OP. Cit p 216*

evidence before trial. But to this rule there is one exception, where the judge is of the opinion that it is necessary to disclose the information in order to show the defendant's innocence.<sup>3</sup>.

The name of the Defendant appears twice in the second statement. It concerns another murder case different from this Defendant's case. There were many people named in the statement which the Police say, some are informants and others are witnesses whose statements are yet to be recorded. It contains no information which could assist the Defendant in his defence in this case. It will not assist the Defendant in his defence and that there would be no miscarriage of justice in his trial if the material is not disclosed to the defence.

The court took time to consider page three of the running sheet produced by the Crown to the defence. Between 1330 – 1730 on 11 August 2005, Ephraim Rongomilepo was interviewed by the Police in relation to a murder case which occurred at Ogio village. It seems that it was the Police docket on that case, which was described as the, "Ogio Operation File" in the summons alluded to above. He told the Police then that he was lying because he was scared. He made the second statement in relation to the murder case at Ogio Village and not to the murder case which the Defendant is being tried at the moment.

### **Conclusion**

The documentary evidence sought in the summons have not be specified nor sufficiently described as required by s.127 of the CPC. I decide that the second statement recorded on 11 August 2005 in relation to the Ogio murder be withheld from disclosure. My reasons for that decision are: first, that would further the public interest to protect the informants who might find themselves or their families in danger if their identity were to be disclosed; second, to protect the sources of information, which, if the identity were disclosed, would dry up; and third, it is irrelevant for the purposes of this case.

**Francis Mwanosalua**  
**Puisne Judge**

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<sup>3</sup> *OP.Cit pp 210 to 212*