

There were difficulties with regard to the sentence appeal.

By Memorandum of 24th April the Court noted:

"When the appellant, Mr Koilo, appeared in Court on Monday 20th April, 2009 before us he had obvious injuries to both legs and one arm. While Mr Koilo is before this Court it has an interest in his welfare. Counsel for the Public Prosecutor should therefore be in a position to report to this Court as to the circumstances under which Mr Koilo suffered these injuries when the appeal is recalled on Thursday 30th April, 2009 at 2pm. Mr Koilo is also to be present in Court at this time."

Notwithstanding this clear and explicit request for information when the matter was called again on the 30th April, the matter had to be adjourned further to this session because of the absence of all necessary information.

Further submissions were filed, but the Court resolved at the call over for this Session that on the 9th July the appellant should give sworn evidence in Court about what had happened to him on the 18th March after he surrendered himself to the police and until he was taken to the hospital with very serious injuries later that day.

We also issued summons for the Commissioner of Police, the Director of the Correctional Services and the Commander of the Vanuatu Mobile Force to be present in Court so that could hear that evidence and respond if they wished.

Rather unconventionally the Acting Attorney-General filed a document questioning the course of action which the Court proposed, but Mrs Viran Molisa Trief accepted that for the limited purpose that we were looking at issues, no objection could be raised to what was occurring.

Sam Koilo gave evidence but was not cross-examined in any way. His evidence stands before the Court as uncontroverted material as to brutal and sustained attacks at the hands of members of the V.M.F. The three gentlemen present in Court chose not to give or call evidence.



The Court adjourned the appeal further because it has been advised that there were interrelated matters about which we needed further information. First we were told that there was a request made to the Prime Minister more than two months ago for a Commission of Enquiry to be held into escapes from the Port-Vila prison and that the request has not been acknowledged or responded to in any way. We sought from the Public Prosecutor's Office information on that point.

The second issue was the question of comments which had been made from time to time that Mr Koilo may file a Constitutional Petition alleging a breach of his rights in what happened to him during the 19th March when he was in the hands of the V.M.F.

Thirdly, we were told that there was to be a charge of escaping from custody laid against Mr Koilo and others in the Magistrate's Court. It was clear that this matter should commence before we could complete the appeal before us.

We made very clear our view that because of the close interrelationship between the appeal before us and the escape, that if Mr Koilo were to plead guilty, the appropriate course of action was for the Magistrate to refer the matter to the Supreme Court and for it to decline jurisdiction and refer the matter here. The interest of justice clearly required that one court in one place at one time should deal with all related issues.

We adjourned the matter to 15th July to receive information on all three points.

When the Court convened on 15th July Mr Tevi said that there was still no information of any sort as to what the Government was intending to do about the request for a Commission of Enquiry to be set up to investigate the alleged attacks on a variety of prisoners from the ex British jail by members of the V.M.F.

Secondly Mr Kausiama told us that he had written instructions to file a Constitutional Petition and we were given an undertaking that this would be lodged in the Supreme Court within 7 days.

Finally we were informed that Sam Koilo and others had appeared in the Magistrate's Court on a charge of escaping contrary to Section 84 of the Penal

Code Act. For that offence a person is liable to a maximum term of 5 years imprisonment.

Notwithstanding the trouble we took to address counsel on both sides of the Bar table the previous week, we were informed that the Magistrate was not advised of our comments. The Prosecutor in the Magistrate's Court (who was a Correctional Services Manager with a Warrant from the Public Prosecutor to prosecute for offences under Section 84 of the Penal Code Act), merely told the Magistrate some brief facts, outlined the dates of the escape and recapture and advised that the maximum penalty was 5 years. There were no submissions made by the State as to penalty. We were told that Mr Kausiama on Mr Koilo's behalf asked the Magistrate to take into account the fact that his client had suffered injuries when he was recaptured.

The Magistrate convicted Mr Koilo, after he entered a plea of guilty and sentenced him to imprisonment of 12 months but ordered that it be served concurrently with the existing term.

It would be an under statement to say that this Court was bewildered by what had occurred.

The concurrent sentence of 12 months means no effective punishment at all. It means that the concerns we had about the interrelationship of the matters has been totally ignored and creates further problems in dealing with this appeal. Mr Koilo's interest may have been undermined in the process because as the Court indicated it was necessary in the interests of justice for all these matters to be considered together. This advice was completely ignored by everyone who has been involved in the hearing in the Magistrate's Court this week.

We can not finally determine this appeal until the Constitutional Petition has been dealt with. The appeal is accordingly adjourned further until the session of the Court of Appeal commencing on 19th October.

It is totally unsatisfactory to have an appeal adjourned over like this a second time but the acts and omissions of many people in the intervening period leave us with no option.



We have a clear anticipation that by October the Government will have announced where it stands on the Commission of Enquiry.

Progress should have been made with regard to determining the Constitutional Petition.

We should be able to get full, proper and adequate assistance as to the manner in which the escape conviction was dealt with. We realise that theoretically the State may seek to appeal the unquestionable inadequacy of the sentence imposed in the Magistrate's Court for escaping, but whether that is available will depend on the position which the representative of the State took in arguing the matter in the Magistrate's Court in the first instance.


Sam Koilo's appeal raises serious issues with regard to the administration of justice and the integrity of the penal system which demand close and anxious attention of all who have an interest in these important aspects of life in the Republic of Vanuatu.

DATED at Port-Vila this 16th day of July 2009

BY THE COURT


.....
Vincent LUNABEK CJ


.....
J. Bruce ROBERTSON J


.....
John von DOUSSA J


.....
Oliver SAKSAK J

