

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIAC.A. 7/94IN THE MATTER of The ConstitutionA N DIN THE MATTER of The Judicature Ordinance  
1961 and The Electoral Act  
1963BETWEENLEOTA LEULUAIALII ITUAU  
ALE of Solosolo, Anoamaa-i-  
Sisifo, Member of Parlia-  
mentAppellantA N DAFAMASAGA FATU VAILI of  
Fasitootai, Speaker of  
the Legislative Assembly  
of Western SamoaRespondent

Counsel: T. Malifa for appellant  
R. Drake for respondent

Hearing: 5th August 1994

Ruling: 8th August 1994

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RULING OF SAPOLU, CJ

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The appellant in this case filed an appeal on 13 July 1994 against the judgment of this Court delivered on 29 June 1994. On 14 July 1994 the Court ordered that the appeal documents should be served on the respondent for hearing within two weeks time. Counsel were also ordered to file written submissions within two weeks but before the hearing. The day before the

hearing was to take place, counsel for the appellant and the respondent saw the Court in chambers. This was on 26 July 1994. Counsel for the respondent informed the Court in chambers that the respondent was only served with the appeal documents on 25 July 1994 and she had just received those documents.

It was clear to the Court that counsel for the respondent had no time to comply with the order made by the Court on 14 July in view of the fact that the hearing was already set down for 27 July 1994. After discussions with counsel, both counsel agreed that they will both be available on Friday, 5 August. The hearing of matters raised by the appellant was then set down for 8.30am on Friday, 5 August. After the hearing on 5 August, the Court decided to reserve its ruling on the matters raised, for consideration over the weekend.

At the hearing, counsel for the appellant addressed the question of leave to appeal to the Court of Appeal to be granted by this Court. There is also in the appeal documents an application to stay execution of this Court's judgment delivered on 29 June. However this application to stay execution was not addressed by counsel at the present hearing. Counsel for the respondent opposes the request by the appellant for leave to appeal to the Court of Appeal being granted by this Court. She says that all the relevant documents filed by the appellant are intituled **"In the Court of Appeal of Western Samoa"** and addressed to the Registrar of the Court of Appeal. There is therefore no proper application before this Court seeking leave to appeal under section 54(1) of the Judicature Ordinance 1961.

It must be said at once that I accept what counsel for the respondent says. There is no application before this Court for leave to appeal. Thus

this Court cannot decide on an application which is not before the Court. It appears to me that from the appeal documents the appellant has gone direct to the Court of Appeal for leave to appeal. There is no doubt that the Court of Appeal has jurisdiction under section 64 of the Judicature Ordinance 1961 to grant special leave to appeal to that Court. Upon reading of the appeal documents that seems to be what the appellant has done. However if the appellant wants to obtain leave from this Court then a proper application should be filed and served on the respondent.

I have duly considered the respective positions of the appellant and the respondent and have come to the view that the appellant should be allowed to file a proper application for leave from this Court to appeal. That should be done not later than 4.00pm today if the appellant still wants to seek leave to appeal from this Court. The application should then be served on the respondent after filing. I must point out that the 21 day period provided under section 54(2) of the Judicature Ordinance 1961 for filing an application for leave to appeal after judgment has been delivered is now repealed by section 6 of the Judicature Amendment Act 1992/1993.

As to the question of stay of execution, that question was not raised at the hearing and there is no application before this Court for stay of execution. I leave that matter in the hands of counsel for the appellant to handle as he sees fit.

Finally, when the application for leave to appeal is filed, and served, counsel are to liaise with the Registrar for a very early hearing during a luncheon adjournment so that this Court may decide on the application for leave to appeal.

*T.M. Sapah*  
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CHIEF JUSTICE