

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

MISC. 23199

IN THE MATTER of Articles 6 & 7 of the
Constitution of Samoa

BETWEEN: **FILIPAINA FAISAOVALE,**
SIALEI FAISAOVALE,
FAAOFIA FAAFIAULA,
FATULOA TATUPU VAILI,
ROPETI SAILUPE and
FATULOA TATUPU VAILI all
of Faleatiu but currently being
remanded at Tafaigata Prison

Applicants

A N D: **COMMISSIONER OF PRISONS**

Respondent

Counsel: TRS Toailoa for applicants
Attorney General, B P Heather, and M Leung Wai for respondent

Hearing: 15, 17 & 20 July 1998

Judgment: 20 July 1998

JUDGMENT OF SAPOLU, CJ

The applicants in this case are all from the village of Faleatiu. They have been separately charged before the Magistrates Court with a number of offences. The applicant Filipaina Faisaovale is charged with three counts of arson; the applicant Sialei Faisaovale is charged with two counts of theft and two counts of arson; the applicant Faaofia Faafiaula is

charged with three counts of arson; the applicant Ropeti Sailupe is charged with two counts of arson; and the applicant Fatuloa Tatupu Vaili is charged with one count of wilful trespass and one count of being armed with a dangerous weapon.

On 1 July 1998 the charges against the applicants were called for mention before the Magistrates Court and all the applicants appeared on that day in Court. Upon application by the prosecution, the learned Magistrate before whom the charges were called remanded the applicants in custody without plea to 21 July 1998. Apparently police investigations into the incidents from which the present charges are alleged to have arisen were incomplete at that stage. However, the full reasons for the decision to remand the applicants in custody are not clear from the record of the lower Court. Perhaps, the reason for this is because there was no contest in the lower Court, as it has been in this Court, on the question of remand. It is also not clear from the affidavits filed by the applicants in this Court whether an application was made for bail in the Magistrates Court, but the written submissions for the respondent suggest that such an application was made.

Now there is no right of appeal from a bail application in the Magistrates Court to this Court. There is also no right of appeal from an order by the Magistrates Court remanding an accused in custody where no bail application was made. What seems to have happened is that counsel for the applicants on the day the charges against the applicants were called in Court had the opportunity to interview the applicants. It was on the basis of the information that he obtained from that interview that the decision was made to bring the present application before this Court. The first limb of the application is that the applicants are being unlawfully detained at Tafaigata Prison and should, therefore, be released in terms of Article 6(2) of the Constitution. The second limb of the application is that the applicants are being subjected to

inhuman treatment in terms of Article 7 of the Constitution and, therefore, should be given such treatment as would satisfy that provision of the Constitution. I will deal now with the first limb of the application.

Article 6(2) of the Constitution provides :

“Where a complaint is made to the Supreme Court that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and shall release him”.

In construing the fundamental rights provisions of the Constitution the Court adopts a ‘generous’ and ‘purposive’ approach. It is clear to me that a complaint made under Article 6(2) of the Constitution is akin to an application for the common law writ of *habeas corpus* in other jurisdictions. Whether the writ of *habeas corpus* is still available in Samoa after the Constitution does not arise for decision in this case. What we are concerned with in this case is a complaint by way of an application under Article 6(2) of the Constitution.

The crucial question is whether the applicants are being lawfully detained for, unless the Court is satisfied that the detention of the applicants is lawful, then they must be released. The basis of the application is that the police did not have reasonable cause to suspect at the time they charged the applicants that the applicants had committed an offence as required by section 11 of the Criminal Procedure Act 1972. Section 11 of that Act provides :

“Except where expressly otherwise provided by an enactment, any person who has reasonable cause to suspect that an offence has been committed may lay an information for that offence”.

So if the police had no reasonable cause to suspect that the applicants had committed an offence, then they should not have charged the applicants. That means the charges that were laid in the Magistrates Court should not have been laid. It follows that the charges upon which the Magistrates Court remanded the applicants in custody were not validly laid and therefore invalid. That being so there was no valid basis for the order remanding the applicants in custody. The detention of the applicants at Tafaigata Prison is therefore not lawful.

I have tried to clarify the basis of the present complaint by way of an application made under Article 6(2) of the Constitution. But I must point out that the question whether the police had reasonable cause to suspect that the applicants had committed an offence was not raised before the Magistrates Court so that the learned Magistrate did not have to consider that issue. That issue is now raised before this Court and I will have to deal with it.

The question whether a police officer had reasonable cause to suspect that an offence had been committed is to be determined objectively. The police officer's subjective belief that he had reasonable cause to suspect is not enough. It is for the prosecution to show on the ordinary standard of proof that the police officer had reasonable cause to suspect. See the very helpful judgment of North P in the New Zealand Court of Appeal in *Police v Anderson [1972] NZLR 233* at pp 242, 243, 244.

I turn now to the circumstances of this case as shown from the sworn affidavits filed by the applicants and by the police. It appears from the affidavits for the police that earlier this year the police received complaints from the Samoa Trust Estates Corporation at Mulifanua of the daily unauthorised slaughter and theft of the Corporation's cattles, cutting of fences, threats of violence to the Corporation's workers, and the burning of a number of houses on the

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Corporation's plantation. An assessment of the Corporation's total loss has been put at approximately \$1,408,000. Groups of masked and armed individuals were reported to be trespassing on the Corporation's plantation and have shot at the police and members of the public. There were also reports of large groups of masked and armed individuals waving guns and threatening to burn the police post at Faleolo and the Faleolo international airport. So it had been a very dangerous situation and the police were most concerned about apprehending those responsible and bringing them to justice. As a result of police investigations, which have yet to be completed, thirty three individuals, including the five applicants, have been arrested and charged. The police suspect that the applicant Filipaina Faisaovale who has been convicted in the past of two murders and is presently on parole is one of the ringleaders.

In the affidavit by police sergeant Iusitini Vaeai who laid the charges against the applicants, he says at paragraph 3 :

"I laid these charges after :

"(a) reading and considering the information in the police investigation file generally;

"(b) reading and considering in particular the statements of six separate witnesses who identified one or other of the applicants in relation to various events which occurred at "Mulifanua;

"(c) considering the actions of the individuals identified by those interviewed in their statements and considering whether their actions were unlawful;

"(d) considering all such possible charges and laying informations in relation to alleged offences and whether there was sufficient grounds or reasonable cause to suspect the individual applicants had committed the particular offence on a particular time and at a particular place;

"(e) reading the various crimes Acts and deciding whether on the evidence available the individual applicants had satisfied the elements of the particular offence".

Then in paragraph 5 of his affidavit the police sergeant goes on to say :

“After having considered the police investigation file and the evidence provided by witnesses who were interviewed by the police and the statements signed by those persons, I had reasonable cause to suspect that the individuals who are the applicants in this case had committed the offence with which they have been charged but were further implicated in a number of other charges for which at that time investigations were incomplete”.

All the applicants have in their affidavits denied the charges. The applicants Filipaina Faisaovale and Sialei Faisaovale have given reasons in their affidavits to show why the police may have mistakenly suspected that they had committed the offences with which they have been charged. And they have challenged the police to place before the Court the evidence in support of the charges. However, in the course of oral submissions by counsel the issue was put on the basis whether the police had reasonable cause to suspect that the applicants had committed an offence, and not on the basis whether the police should disclose and place before the Court their evidence to support the charges.

I turn now to determine objectively whether on the evidence the police had reasonable cause to suspect that the applicants had committed an offence. In so doing, I have to be satisfied as a matter of fact, on the ordinary standard of proof, that the police had reasonable cause to suspect; proof beyond reasonable doubt is not the required standard : see *Police v Anderson* [1972] NZLR 233 at pp 242, 249, 250.

In respect of the affidavit of police sergeant Iusitini Vaeai, it appears that the material parts are where the police sergeant deposes that six separate witnesses identified one or other of the applicants in relation to various events which occurred at Mulifanua, and, where he says

that from the evidence provided by witnesses who were interviewed by the police he had reasonable cause to suspect that the applicants had committed the offences with which they have been charged. In my view this evidence does not clearly show what events at Mulifanua are being referred to. It also does not show what acts, if any, were committed by each of the individual applicants and whether those acts constituted reasonable cause to suspect. Mere presence, without more, at the scene of an event, if it is an offence, does not necessarily show that someone has committed an offence especially as the applicants are being separately charged as principal offenders and not as secondary offenders. Furthermore, the subjective belief of the police officer that he had reasonable cause to suspect is not enough. The question for determination is not whether the police officer believed that he had reasonable cause to suspect, but whether, judging by the objective standard, the police officer had reasonable cause to suspect.

I am not satisfied on the ordinary standard of proof that the police had reasonable cause to suspect that the applicants had committed the offences with which they have been charged. The charges upon which the applicants have been detained in custody were not founded upon reasonable cause to suspect. Accordingly, I am not satisfied that the detention of the applicants is lawful and they should, therefore, be released. In coming to this decision, I am not unmindful of the danger involved in the situation at the Mulifanua plantation of the Samoa Trust Estates Corporation as deposed to by the police in their affidavits. I am also not unmindful of the duty of the police to enforce the law and to protect the safety of members of the public and public property from danger and threats of violence. However, on the evidence placed before the Court in relation to the question of reasonable cause to suspect, there is no other decision the Court can come to. I would only hope that whoever are responsible for

creating the situation at Mulifanua should realise that the law is there to be observed and obeyed.

Now, as for the second limb of the present application, Article 7, which comes under Part II of the Constitution, provides :

“No person shall be subjected to torture or to inhuman or degrading treatment or “punishment”.

There are conflicting affidavits from the applicants and from the prison and police authorities. The applicants complain that they are being subjected to inhuman treatment in the custody cells where they are detained at Tafaigata Prison. The affidavits by the prison authorities show that the applicants are not being subjected to any inhuman treatment at all. In view of the decision that I have reached on the first limb of the present application, there is no need for me to resolve this conflict in the affidavit evidence or to come to a decision on the second limb of the application.

In all then, the applicants are ordered to be released from their present detention at Tafaigata Prison.

T. P. M. Sapulu
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CHIEF JUSTICE

Solicitors:

TRS Toailoa, Saleufi, for applicants
Attorney General's Office, Apia, for respondent