JOHN MICHAEL ASIPARA -v- ATTORNEY GENERAL

High Court of Solomon Islands

(Palmer J.)

Civil Case No. **434 of 1993**

Hearing: **6 September 1994**

Judgement: **15 September 1994**

R. Teutao for Applicant

P. Afeau for Attorney General

PALMER J: The Applicant seeks by notice of Motion filed on the 1st of February, 1994, declarations on the following grounds:

(1) That there was a breach of the Applicant's legal entitlement to bail under section 23 of the Criminal Procedure Code and a breach of the Applicant's Constitutional right also to bail under section 5(3)(b) of the Constitution by the duty uniform police officers at Central Police Station and Kukum Police Station between 10th - 11th December 1992 when the said duty uniform police officers refused bail to the Applicant in circumstances where bail should have been granted according to law.

(2) That the Applicant's constitutional right to a legal representative of his own choice as enshrined in section 10(2)(d) and (e) of the Constitution was breached by the said duty officers when Mr John Wasiraro, a Solicitor was refused by the said police officers to speak to the detained Applicant and advise him on bail and other appropriate legal matters and/or to grant bail to the Applicant when sought by the said Solicitor in circumstances where bail should have been granted according to law, between 10th - 11th December 1992 at Central Police Station and/or Kukum Police Station.

(3) Compensation pursuant to sections 17 and 18 of the constitution.

THE FACTS:

The facts surrounding the issues of bail and rights to a legal representative, appear not to be in great dispute. As agreed, they are as follows.

On the evening of the 10th December 1992 at around 11.25 p.m, the Applicant who was driving vehicle registration No.A1994, collided with an electrical cable post, near the Fishing Village. There were two passengers with the Applicant at the time of the accident; one of these was Miss Carole Colville.

The police arrived not long after and took the Applicant and Miss Colville to the Kukum Police Station and later to the Central Police Station, where the Applicant was detained until the morning of the 11th December, when he was then released at about 0800 hours.

Sometime in the early hours of the morning of the 11th December, John Wasiraro, a solicitor from the Public Solicitor's Office, called in to the Central Police Station with the view to seeking bail for the Applicant, and when that was refused, sought an audience with the Applicant, but that was also refused.

THE LAW-SECTION 23 OF THE CRIMINAL PROCEDURE CODE.

Section 23 of the Criminal Procedure Code reads:

> **"When any person has been taken into custody without a warrant for an offence other than murder or treason, the officer in charge of a police station to whom such person shall have been brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate Magistrate's Court within twenty-four hours after he has been so taken into custody, inquire into the case, and unless the offence appears to the officer to be of a serious nature, release the person**

on his entering into a recognisance with or without sureties, for a reasonable amount to appear before a Magistrate's Court at a time and place to be named in the recognisance, but where any person is retained in custody he shall be brought before a Magistrate's Court as soon as practicable:

Provided that an officer of or above the rank of sergeant may release a person arrested on suspicion on a charge of committing any offence, when, after due inquiry, insufficient evidence, is in his opinion, disclosed on which to proceed with the charge."

The elements of the offence are:

(i) Whether a person has been taken into custody without a warrant for an offence, other than murder or treason; in other words, arrested and detained?

(ii) Is it practicable to bring such person before a Magistrate's Court within 24 hours? If yes, then the officer incharge may release him on bail, unless the case appears to him to be a serious one. If not, then he shall release him on bail, unless again the case seems to him to be a serious one.

(iii) Is the offence in the opinion of the Officer in charge of a serious nature? If yes, then the officer in charge has no power to release him on bail. If no, then the arrested person must be released on bail.

THE MAIN ISSUE:

The main issue on the question of whether there had been a breach of section 23 of the Criminal Procedure Code is whether the refusal of the duty police officers to grant bail

in the early hours of the morning of the 11th December, 1992, was reasonable.

THE APPLICATION OF THE LAW TO THE FACTS:

(i) Was the Applicant taken into custody without a Warrant for an offence other than murder or treason?

There appears to be no real dispute that at some point of time before the Applicant was detained in the cells, he was arrested. In the affidavit of Walter Ratu, filed on the 26th of March, 1994, at paragraph 3, he states that the Applicant had been arrested for driving whilst under the influence of liquor. He did not however, state who had made the arrest, where it was effected and when.

One of the police officers who attended the scene, also did not state when and where the arrest was effected.

In his submissions to this court, it seems that learned counsel for the Applicant chose not to take issue about this point. Rather conceding that at some stage before detention in the cells, the Applicant was arrested and then charged.

The importance of an arrest is that it commences the period of lawful detention. The importance of a charge is that it is the second matter that the police must take into account in their deliberation as to whether the arrested person should be released, with or without bail, or detained further.

What happens when an arrest has been effected? If a person has been arrested away from a police station, he/she is taken to the police station and dealt with. This would include taking the particulars of the name and residence of the arrested person, and ascertaining if there is sufficient information to charge that person. If there is, then he

should be charged. If not, then he should be released with or without bail, unless there are other grounds on which further detention is justified. This is where the issue of whether the Applicant had been charged before being placed in detention is important. If he had not been charged then reasonable grounds must be provided to justify any further detention in police custody.

As pointed out earlier on, the Applicant did not raise any issue on this point, and therefore I must accept that the Applicant was duly charged before being placed into custody.

(ii) **Is it practicable to bring such a person before a Magistrate's Court within 24 hours?**

Under this requirement, the officer in charge is required to consider whether it would be practicable to bring an arrested person before an appropriate Magistrate's Court within 24 hours after he had been so taken into custody. There is no evidence to show that the officer in charge applied his mind to this question. Rather, what is clear is that the officer in charge and duty police officers were practising a rule of thumb which says that persons arrested at night shall be detained in custody until the morning. (see affidavit of Walter Ratu filed on the 26th March, 1994 at para. 4).

Mr Teutao submits that the blanket application of this rule of thumb was wrong because in certain situations it would offend against the provisions of section 23 of the Criminal Procedure Code. He submits that the refusal to grant bail in the early hours of the morning of the 11th December, 1992 was unreasonable.

The first crucial question before this court therefore is whether there is a right to bail once an arrested person had been duly charged?

The first important point to note about section 23 is that it did not provide an automatic right to bail once the formalities of an arrest and a charge have ben completed. Instead it makes that right subject to the view of the officer in charge as to whether it appears practicable to bring such person before an appropriate Magistrate's Court within 24 hours after he has been taken into custody.

The officer in charge is required to apply his mind to this important question. Normally, the Officer in Charge should apply his mind to this question as soon as the formalities have been completed and the arrested person is detained in the cells. However, there may be practical difficulties which necessitate a detention for some hours before that question can be considered. For instance, when an arrest is made at night and it is clearly the intention of the officer in charge to bring the arrested person before a Magistrate's Court, but is unable to do so at night and so has to wait until about 7 or 8 a.m to find out if a Magistrate's Court will be available to deal with the arrested person. In such instances, the officer in charge can only make a practicable decision in the morning after due enquiries to the Magistrate's Court have been made.

Is the Rule of Thumb in accordance with the provisions of Section 23?

The rationale behind the Rule of Thumb practised it seems is that it would be unrealistic to expect the officer in charge to make up his mind at night whether it appears to him practicable to bring an arrested person before an appropriate Magistrate's Court within 24 hours. The appropriate and sensible thing to do in such cases is to detain the arrested person overnight and then make the necessaries enquiries as to the availability of a prosecuting officer and a Magistrates Court, in the morning, and any other matters that would be necessary, to have the arrested person brought before a

Magistrate's Court within 24 hours. In such instances, the detention is not unlawful, and the refusal to grant bail at night not unlawful.

However, there is a possible abuse that can arise from such a rule of thumb, and this is where, arrested persons are simply detained overnight and without any serious attempts to make the necessary enquiries to have the arrested person brought before a Magistrate's Court, he is then released in the morning. There is therefore no intention to consider if it is practicable to bring such a person before a Magistrate's Court within 24 hours. The arrested person has simply been charged, detained overnight and then released on bail in the morning.

An important point to note is that considerations for bail by the police is not restricted to any particular time of the day or night. Bail can be given at any time of the day provided that the formalities which the police normally require have been complied with, and that the officer in charge had applied his mind to the question whether it is practicable to bring the arrested person before an appropriate Magistrate's Court within 24 hours, and duly inquired into the seriousness of the charge.

The importance of the seriousness of the charge is that, that is the only criteria provided in which the police do not have the power to release on bail.

The Police practice therefore in having persons arrested at night detained in custody until the morning may be inappropriate, but not necessarily unlawful. I can accept that it may have been introduced as a rule of convenience; that experience had shown that it was more practicable to make meaningful decisions as to the requirements of section 23 of the Criminal Procedure Code, in the morning than during the night time. For example, it would be more convenient to make

enquiries as to the availability of a duty magistrate over the week-ends, in the morning, than at night.

I would suggest nevertheless that the rule of thumb practised be stopped and bail considerations be made on a case by case basis.

Was the refusal to grant bail in the early hours of the 11th or 12th December, 1992, unreasonable?

It is not disputed that the police have a discretion as to the question of bail as laid out in section 23 of the Criminal Procedure Code. Mr Teutao however submits that it must not be exercised unreasonably. The application of a blanket rule thumb he says is unreasonable. I have already dealt with this issue and therefore do not need to repeat myself.

The second point raised is that the charges originally made against the Applicant were later dropped. With respect, this makes little difference to the question whether bail should be given in the early hours of that morning or not. It is not argued that the arrest was invalid, or the charge made against the applicant, frivolous or vexatious. It is not unusual for charges to be dropped and replaced with a less serious charge, or even dropped altogether, after scrutiny by the prosecuting officers, or the Office of the Director of Public Prosecutions.

All that the police officer needs to be satisfied with is that there are reasonable grounds on which his suspicion has been based, that a cognisable offence has been committed. (see section 18(a) of the Criminal Procedure Code). There is no challenge or issue raised that the arrest was unlawful and or the detention illegal. This ground raised therefore must be dismissed.

The third point raised by Mr Teutao is that there was someone who was available and able to drive the Applicant home, if he was as alleged, drunk and not fit to drive. There is no dispute that Patrick Horiwapu was available that morning to take the Applicant home. However, his availability is not an entitlement or a right, to be released on bail. It is merely one of the considerations, which the officer in charge should asses together with any other relevant considerations before making the decision as to whether to release on bail or not.

As already pointed out, this consideration hardly featured as the officer in charge had made up his mind that the Applicant should be detained until the morning.

Mr Afeau did point out in his submissions that the affidavit evidence of the arresting officer, P.C. Lapoe, filed on the 24th of May, 1994, at paragraphs 4 and 7, showed clearly that the Applicant was under the influence of alcohol and drunk. In such a state of inebriation, the most sensible thing to do is to have the Applicant detained until the morning when he should then be in a much fitter state of mind to appreciate what charges were being preferred and any other requirements that police may want. I can appreciate the difficulties that police may have with dealing with a drunken person and choosing whether to release such a person on bail or detaining him until much later when he had sobered up. When such choices have to be considered, I am not satisfied that the actions to refuse bail, was unreasonable.

In H.W.R. Wade's 'Administrative Law' Sixth Edition, at pages 407 and 408, the learned author provides a synopsis as to standards of reasonableness and unreasonableness. I quote:

> **"The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must no usurp the**

discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority.' As Lord Hailsham LC has said, two reasonable person can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.

This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called '**Wednesbury** unreasonableness', after the now famous case in which Lord Greene MR expounded it as follows.

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of

statutory discretions often use the word unreasonable in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in **Short v. Poole Corporation** gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith, and, in fact, all these things run into one another.

Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question. But the language used in the cases shows that, while the abuse of discretion has this variety of differing legal facets, in practice the courts often treat them as distinct. When several of them will fit the case, the court is often inclined to invoke them all. The one principle that unites them is that powers must be confined within the true scope and policy of the Act.

Taken by itself, the standard of unreasonableness is nominally pitched very high: 'so absurd that no sensible person could ever dream that it lay within the powers of the authority' (Lord Green MR); 'so wrong that no reasonable person could sensibly take that view' (Lord Denning MR); 'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it' (Lord Diplock).

Applying such standards of reasonableness to the actions of the police, I am not satisfied on the balance of probability that the refusal to grant bail was unreasonable and therefore offended against section 23 of the Criminal Procedure Code.

The claim under paragraph (1)(i) must be dismissed.

Section 5(3)(b) of the Constitution

The second part of ground (1) of the Notice of Motion claims that there had been a breach of section 5(3)(b) of the Constitution as to the issue of refusal of bail. That section reads:

"Any person who is arrested or detained -

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Solomon Islands,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought

against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

The issue in this case is also whether the refusal to grant bail was unreasonable. The police clearly have the power under section 23 to retain an arrested person in custody with the view to bringing him before an appropriate Magistrate's Court within 24 hours after he has been so taken into custody. No issue has been raised that the provisions of section 23 are in conflict with section 5(3)(b) of the Constitution. Accordingly, it must be accepted that such powers exist.

The crucial words in section 5(3)(b) of the constitution are **"..... is not tried within a reasonable time...."**.

So, what is a reasonable time? If we construe section 5(3)(b) of the Constitution together with section 23 of the Criminal Procedure Code, then the period of 24 hours should be regarded as a reasonable time. On the basis that there is no conflict, I am prepared to accept for the purposes of this case that a reasonable time is, a period of 24 hours. Section 5(3)(b) therefore can be re-phrased as follows:

"... if any person arrested or detained... is not tried within (24 hours), then ... he shall be released...."

The question can then be posed; is the refusal to grant bail at about 3.00 a.m, and therefore resulting in a detention for about 5 hours until 8.00 a.m when the Applicant was then released, in breach of section 5(3)(b) of the constitution? With respect to the submissions of Mr Teutao, I am unable to so find.

There are several practical reasons why a refusal to grant bail and a detention to 0800 hours may be deemed necessary. One of those is that it would be at around 7-8 a.m that the officer in charge would be able to ascertain whether an appropriate Magistrate's Court will be available to deal with the arrested person.

The Applicant puts the early hours of his detention as on the 11th of December, 1992, which is a Friday. That would be a normal court day, and it would only seem proper that the final decision be made at around 7-8 a.m. as to whether to take the Applicant straight to the Magistrate's Court for determination of his case, or to have him released on bail.

The two police witnesses put the time as on the early hours of the 12th December, 1992, which is a Saturday. The Magistrates Courts do not open for work on Saturdays, however, there are normally duty Magistrates available over the week-ends to deal with any urgent matters. If the officer in charge decides to proceed with his case, then he will have to detain the arrested person until around 8.00 a.m. and then check if a Magistrate is available to deal with his case. If none is available, then he can exercise his discretion and release the arrested person.

Another reason why bail may not be granted is as already referred to; the state of sobriety of the arrested person.

The right to bail under the constitution is subject to the right to trial within a reasonable time. The refusal to grant bail at about 0300 hours and subsequent detention to 0800 hours cannot in my view be regarded as unreasonable. The earliest time when the police should be able to ascertain whether a trial could be held will be at around 7-8 a.m, after the necessary enquiries have been made. Only then will the police be able to ascertain if it would be possible to have

the Applicant before the Magistrate's Court that day or to release him on bail. His detention was for a mere 5 hours. But even if a trial could be arranged within that period, it would be rather foolish to allow such a trial to proceed where the Applicant had been clearly under the influence of liquor.

The reasons given earlier on inrespect of section 23 of the Criminal Procedure Code are also applicable here. Taking all those factors into account, I am not satisfied that there has been a breach of section 5(3)(b) of the constitution.

(2) CONSTITUTIONAL RIGHT TO LEGAL REPRESENTATION - SECTION 10(2)(d) and (e)

The facts:

It is not disputed that John Wasiraro, a Solicitor in the Public Solicitor's Office, did appear at the Central Police Station in the early hours of the morning and spoke with the duty officer, P.C. Ratu, and the officer in charge, Sgt. Haununu. The exact details are not clear, but the general tenor of their discussions revolved around two matters; the issue of bail, and, access to the Applicant in the cells to give him legal advice. Both were denied.

The Applicants Submission:

It is contended by Mr Teutao that the provisions of section 10(2)(d) & (e) should be construed widely to include the case of the Applicant in which he had requested the assistance of a legal counsel, after he had been charged and placed in detention. The refusal, he claims, contravened section 10(2)(d) & (e) of the Constitution.

The Law;

Section 10(2)(d) and (e) of the constitution provides:

"(2) Every person who is charged with a criminal offence -

(d) shall be permitted to defend himself before the court in person or at his own expense, by a legal representative of his own choice.

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution."

The crucial issue is whether the refusal of the duty police officers to allow John Wasiraro to speak to the Applicant after he had been charged and placed in detention, a breach of section 10(2)(d) and (e).

The position in English Law prior to 1984:

The position in English Law prior to 1984 was governed by two requirements. The first requirement is contained in the Preamble to the Judge's Rules which states, that **"every person at any stage of an investigation by the police should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the process of investigation or the administration of justice by his doing so."**

The second requirement is contained in the Administrative Directions which accompany the Rules and provide as follows:

> **" A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation or the administration of justice by his doing so."**

The effect of non-compliance of the above guidelines can be seen in the case of **Allen [1977] Crim. L.R. 163,** in which Mackenna J. exercised his discretion to exclude evidence of statements made by an accused after the police had refused to allow him to contact a solicitor. This however, is an isolated ruling, and the courts have been more prepared to apply the **'reliability'** principle, as the **'proper test'**, which provides **'that the evidence is not to be excluded because it is obtained in breach of the Rules if it is not rendered unreliable as a result'? (see the Article by John Baldwin and Michael McConville [1979] The Criminal L.R. 145 at p.147).**

<u>The U.K 'Police and Criminal Evidence Act 1984'</u>

The position in the United Kingdom is now governed by the provisions of the Police and Criminal Evidence Act 1984, in particular section 58(1). Halsbury's Laws of England Fourth Edition, Vol. 11(1) at para. 727 sets this out succinctly:

> **"A person arrested and held in custody in a police station or other premises is entitled, if he so requests, to consult a solicitor privately at any time..... If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted. In any case he must be permitted to consult a solicitor within 36 hours from the**

relevant time." The grounds for delay have also been spelled out in the act.

The Position in Solomon Islands:

What should be the correct interpretation of the provisions of para. 10(2)(d) of the Constitution? Does the right to be permitted to defend oneself before the court by a legal representative apply to a person held in custody at the police station?, or does it apply only to appearances before the court? First, what is unambiguous, from the language of that provision? An accused person is entitled to have a solicitor represent him in Court. The next question then is, where is the cut-off point to that right? If an accused has been remanded in custody and desires to have a solicitor represent him in court, can he be permitted access to a Solicitor whilst in custody for purposes of representation in court? The answer in my view, must necessarily be in the affirmative, for the reason, that the access to a solicitor prior to the actual hearing or appearance in court, is essential to that hearing. Instructions need to be given to such solicitor and legal advice received in return, before a solicitor can competently represent the accused in court. Otherwise the right of the accused will merely be a hollow right if it is to be restricted to appearances in court only. If such is the case, then unnecessary delays and prolonging of trials will be the result.

Can the situation be extended to cover the case of the Applicant?

The differences between the case of an accused person remanded in custody, and the Applicant in my view are minimal. Once an accused person has been charged, and he requests access to a solicitor for purposes of legal advice about his case, then he is entitled as a matter of right under paragraph 10(2)(d) of the Constitution to be permitted to see his

solicitor, especially when that solicitor actually appears at the police station.

A 'charge' simply means to formally indict or accuse the arrested person of an offence. Once that is completed, the rights of an accused person to be permitted to defend himself before the court by a solicitor in my view, commences. However, there may be practical difficulties which must be considered, and each case must be treated separately. For example, the availability of the solicitor to appear at the police station, say at odd hours of the night, and the fact that not all cases will warrant the immediate attendance of the solicitor requested. There may be trivial matters which the solicitor may feel should be left either to the next day or later hours of the day, or at a more convenient time and therefore may refuse to attend even if requested.

The evidence adduced in the affidavit of John Michael Asipara filed on the 10th of December 1993 showed clearly that he requested John Wasiraro, a solicitor from the Public Solicitor's Office to provide legal advice on bail, and generally about his case. As earlier stated, it was not disputed that John Wasiraro did appear at the Police Station that morning. I am satisfied that the officer in charge had no basis in law to refuse the Applicant's request for access to his solicitor, and accordingly, I am satisfied there has been a breach of section 10(2)(d) of the Constitution, and that the Applicant is entitled to compensation under sections 17 & 18 of the constitution.

Paragraph 10(2)(e) of the constitution is not applicable in my view, to the Applicant's case. That paragraph should be restricted to what actually takes place in the actual hearing itself and matters directly related to that.

COMPENSATION - SECTIONS 17 & 18 OF THE CONSTITUTION:

In assessing the quantum of damages, an important consideration is whether the Applicant has been prejudiced as a result of the refusal to permit him to have access to his solicitor and whether he has actually incurred losses. With respect, I am not satisfied that that is so. The main purpose in seeking to have John Wasiraro to see him was inrespect of bail. I have already ruled that the refusal to grant bail was not unreasonable. Therefore, the fact that the Applicant had been denied access would have made little difference to any bail application with the Officer in Charge of the police station.

As to whether any other legal advice could have been given that morning, there is no evidence to show that the Applicant had been prejudiced in the preparation and defence of his case.

As to the possible harm or injury to the Applicant's chances of success in the 1993 General Elections, that may be so, but no damages flow from this case where the detention is not unlawful and the refusal to grant bail not unreasonable so as to be in breach of the Constitutional provisions and the Criminal Procedure Code.

I also note that the refusal was not done deliberately, but more out of ignorance. Taking all the circumstances surrounding this case into account, I am not satisfied that the Applicant had incurred any losses. Nominal damages therefore will suffice. The amount of compensation is limited to $100.00.

I will allow only 50% of the Applicants costs.

(A.R. Palmer)

JUDGE