

REGINA .V. BELDEN TOATA**High Court of Solomon Islands
(Palmer CJ)****Date of Hearing: 3rd December 2004****Date of Judgment: 3rd December 2004***For the Prosecution: Robert Barry**For the Defence: Ms. Maelyn Bird*

Palmer CJ: This case was listed for trial to commence this morning but due to unavailability of sufficient Prosecutors from the Director of Public Prosecution's Office this case could not proceed today. Whilst this did not come as a surprise I was assured at the beginning of callovers in August this year that Prosecution should be in better position to service two trials by December. I guess I was a bit optimistic when accepting such assurance. I am aware there is another trial listed that was due to commence today at Gizo as well. That trial I believe will proceed as listed but not this one. This is one of those situations in which the new Director hopefully must take charge of and ensure that each case listed has a Prosecutor allocated. As the New Year approaches, with so many cases already committed to the court list for hearing, it is paramount that every legal and judicial officer must demonstrate commitment and dedication, at times sacrifice, to ensure that such trials can proceed as listed. Further delay therefore has been incurred in the hearing of this trial.

Ms. Bird has seized on this to make application for bail. Apart from the fact given that the Applicant's father is suffering from a terminal illness, proof of which has been provided in the medical report attached to the affidavit of the Applicant filed today 3rd December 2004, there is no change of circumstances and there would have been no reason to grant bail.

I need not recount the obvious circumstances as to why bail may not be granted. That process nevertheless has to be balanced with the fact that the presumption of innocence remains throughout and that there has to be a continuing balancing exercise on whether the Accused if released would abscond. The primary objection in this instance lies in balancing whether the public interest that the Defendant may abscond, commit further offence or interfere with the course of justice or witnesses, outweighs that presumption.

This Applicant has raised a matter which has drawn this court's attention to consider more carefully the question whether the discretion of the court can be exercised in the special circumstances of his case. This pertains to the medical report which diagnosed that his father is terminally ill with cancer and is currently being given palliative care at

home. In any culture family ties are some of the closest and dearest relationships that one can ever have and it would be a hard court not to be moved by an application for bail in such circumstances of-course balancing the interest of justice in all these. Whilst this court is primarily concerned with the administration of justice according to law that must always be tempered with mercy.

In the special circumstances of this case, after carefully balancing the interests of justice, I am satisfied the discretion of this court, can be exercised in favour of bail but on the following conditions:

1. That two sureties of \$500.00 each be provided; one of them being Alfred Talo.
2. That the Accused shall reside with his father at his residence or where he is currently located.
3. That he does not leave the town boundary without the court's leave.
4. That he reports weekly to the Central Police Station not later than 10.00 am each Friday until trial.
5. That he does not communicate or interfere with any of the Prosecution's witnesses.
6. That he surrenders any travel documents that he has.
7. That this case be adjourned for trial to commence on 31st January 2005 at 9.30 am in Court Room 1 (time estimate 5 days).

The Court.