

HIGH COURT OF SOLOMON ISLANDS

IN THE MATTER of the Constitution in Particular Sections 43 And 70 thereof

AND IN THE MATTER of the Provisions of the Police Act, The Preservation of Public Security and the Facilitation of International Assistance Act 2003;

AND IN THE MATTER of Legal Notices 52 of 1982 (Standing Orders of the National Parliament of Solomon Islands) and 18 and 19 of 2006 (Notice and Regulation Pursuant to the Preservation of Public Security Act

PATTERSON OTI (Representing himself and Opposition Members of the National Parliament) -v- SNYDER RINI (Representing himself and Government Members of the National Parliament), SHANE CASTLES (In his capacity as Police Commissioner of Royal Solomon Islands Police) AND JAMES BARTLEY (In his capacity as Special Co-ordinator of the Regional Assistance Mission to Solomon Islands (RAMSI))

High Court of Solomon Islands
(Brown, P.J)

Civil Case No. 153 of 2006

Date of Hearing: 26 April 2006

Date of Ruling: 26 April 2006

*Mr. Charles Ashley for the Applicant/Defendant
No appearances for the Respondents.*

RULING

ORDERS ON CHAMBERS APPLICATION FOR EXPARTE SUMMONS

Brown, J: This Chambers application relies on the material filed and seeks orders to be directed to the Police Commissioner and Mr. James Bartley (sic) (in his capacity as Special Coordinator of the Regional Assistance Mission to Solomon Islands)(RAMSI) effectively releasing "any Members of Parliament" who have been named, from attending any proceedings of the National Parliament' and as well orders prohibiting both officers from preventing any

individual from attending proceedings of the Parliament unless there are "reasonable grounds for such prohibition".

The application comes by way of ex-parte summons and without notice to the named respondents. Mr. Charles Ashley appears for the applicant. He seeks to proceed with the first application touched on above, the other may stand over to be dealt with the Originating Summons.

He says whilst not questioning the police powers of arrest (for a detained person has the right to seek bail) he does rely on the Constitutional provisions to be found in Ss.-49, 50, 51. On a reading of those sections, it is plain those sections relate to the process of Parliament and are not applicable in this case.

Mr. Ashley concedes these two individuals are in custody of the police. He argues that they should be escorted to Parliament and allowed to take their seat to take part in the proceedings of the House. But the proceedings of the House are not impeded by their absence, rather on reading the affidavit of the Honourable member, Mr. Patterson Oti, it is related to his parliamentary tactics in a proposed vote of no confidence. The business of the House is for the members of the House, sitting at the time and is unrelated to the lawful detention or otherwise of particular individuals.

It is clear from the Rules of the High Court that no provision exists for this court to make orders of such importance on a summons which the respondents have

had no opportunity to see or answer, for that "ex parte originating summons" can only relate to proceedings where no party is contemplated to be served e.g. an application for transfer of funds held in Court.

The summons then is defective in form, and for good reasons of fairness, should not be entertained, without notice to the various respondents.

The High Court Rules do make provision for urgent ex parte orders on motion (Order 55) but that Order gives discretion to the Court, if it is satisfied that "delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief". Such is not the case here, rather the opposite were I to ignore the fact both men have been arrested and charged with offences under the law of the Solomon Islands yet direct their release.

On the facts sworn to, in support of the summons, by the Honourable Member of Parliament Mr. Patterson Oti it transpires that Mr. Nelson Ne'e an elected representative for Central Honiara was arrested by Police on Sunday 23rd April 2006 and had not been sworn as a member of the House. Later, on the 24th April a second member, Mr. Charles Dausabea, the elected representative for East Honiara, was also arrested. Both these persons remain in custody charged with offences arising out of the riotous events of last week when such burning and pillaging took place about Honiara so as to justify the call by RAMSI for many more overseas police and service personnel to assist in recovering control

of the streets of Honiara, to obtain some order and endeavour to prevent further loss and damage and ameliorate a the real risk to life.

Since Parliament has been able to sit, both on Monday and Tuesday of this week this increased assistance must in no small measure be seen to have contributed to this result.

Mr. Patterson Oti says, as a Member of the "Opposition in Parliament" the arrests of those other two members of the Opposition causes concern for they have been prevented from taking their seat and performing their function as Parliamentarians. He also says that "all individuals, especially citizens should not be prohibited from attendance at Parliamentary proceedings". I make no comment on this, suffice to say however, it does put in question police power to detain in these circumstances when individuals elected and entitled to sit in the House but arrested, are charged and detained in custody, or whether such persons have some special status as such, calling into question their continued detention.

The applicant's Originating Summons, filed with the second summons which I have described, above, raises questions in relation to any directions given by the Prime Minister to the Commissioner of Police with regard to the maintenance of public safety and public order and seeks particular declarations as to the lawfulness or otherwise of the police action in arresting the two name individuals.

I also made no comment on the non-justiciability or otherwise of the Prime Ministers' acts if any, under S. 43 (4) of the Constitution or whether S. 83(2) of the Constitution will avail the applicant when Parliament has in fact convened and sat. These are moot points and should be left to argument once the various respondents have notice. For clearly the applicant makes no complain about the fact that Parliament is able to sit, rather that 2 Members, termed "Opposition Members" (obviously aligned to him) are not with him in the House. But that absence, he says related to their arrest (rather than to any un-enumerated Constitution right or freedom from detention). The right to prosecute for breaches of the law rests on the police and ultimately, the Director of Public Prosecutions. This court should be chary in what, on its face is an invitation to interfere with due process of law under the Penal Code or other appropriate legislation of Parliament creating offences.

Since Parliament has been enabled to sit, it would appear, by virtue of the security afforded its members and the Prime Minister by the RSIP, the PPF and other disciplined forces under RAMSI control, these questions may be heard by this court at a convenient time but at a time prescribed in compliance with the Rules of Court.

It is important to follow due process.

The document entitled "ex parte" summons shall be stood over to that date fixed by the Registrar for the return date for the summons for declarations, to enable all respondents who seek to appear on the summons, to do so.

THE COURT
