

HIGH COURT OF SOLOMON ISLANDS
(Mwanasalua J)

Criminal Appeal Case No. 237 of 2012

REGINA --v- NORMAL LELE, MARTIN LELE AND ROCKY KIOPALA

Date of Hearing: 19 September 2013

Date of Decision: 12 December 2013

R.B. Talasasa for the Appellant

S Lepe for the Respondent

JUDGEMENT

1. This is an appeal by the Director of Public Prosecutions under Section 45 of the Magistrates Courts Act (Cap. 20).
2. In February 2012 Norman Lele, Martin Lele and Rocky Kiopala were each charged with one count of arson of a bulldozer at Sipo concession area at Vella la Vella, Western Province.
3. Martin Lele and Rocky Kiopala were arrested on 9 February 2012 and were remanded in a cell at the Gizo Police Station. They were interviewed and caution statements were recorded from them. They were then later charged with arson under Section 319 of the Penal Code.
4. On 10 February 2012 Norman Lele reported at the Gizo Police Station. He was arrested and placed in a cell. On 11 February 2012 he was interviewed and a statement was recorded from him. He was also charged with arson under Section 319 of the Penal Code.
5. Each of them pleaded not guilty to their respective charges and were tried together in the Magistrates' Court at Gizo, Western Province, on 12

December 2012. Each of them objected to the admissibility of their respective records of interview. A voir dire was held on their caution statements to determine their admissibility. Norman Lele, Martin Lele and Rocky Kiopala elected to remain silent after the Prosecution closed its case.

6. During the opening of its case the Defence contended that: The statement of each of the accuseds was unfairly obtained; Martin Lele's caution statement was defective and inadequate because it was not properly explained; Rocky Kiopala's caution statement was defective and inadequate because it was also not properly explained; Norman Lele was not cautioned at all; and they challenged the admissibility of their caution statements on the basis of their unfairness and involuntariness under common law and under sections 169 to 172 of the Evidence Act 2009.
7. The Learned Magistrate delivered his Ruling 12 December 2012. He ruled that the statements of Norman Lele, Martin Lele and Rocky Kiopala were inadmissible. The reasons for that ruling were unfairness and involuntariness.
8. The Appellant lodged an appeal against the Learned magistrate's ruling to this court on Norman Lele's case on grounds 1 and 2 and Martin Lele and Rocky Kiopala's case on grounds 3, 4 and 5 as follows:
 1. That the Learned Magistrate erred in procedural Law to ask for submission on the voir dire at the conclusion of the first crown witness, police constable Nevol Hughes and disregard the second crown witness, police constable Samuel Logara the witnessing officer. The Learned Magistrate should have permitted the crown to fully present its case on the voir dire before making his ruling.
 2. That the Learned Magistrate erred in law when he ruled inadmissible the Record of Interview of Norman Lele on the basis of a failure to give him an opportunity to say whether or not he would prefer to have legal representation during the interview.
 3. That the Learned Magistrate erred in Law when he did not require Martin Lele and Rocky Kiopala to testify on their behalf as to the impropriety alleged against the police.

4. That in absence of evidence to support the defence case in the voir dire, the Learned Magistrate erred when he rejected the admissibility of the Records of interview of Martin Lele and Rocky Kiopala.
 5. The Learned Magistrate erred when he ruled against the admissibility of the Records of Interview of Martin Lele and Rocky Kiopala citing "the failure to accord the accused/suspect the opportunity to obtain legal advice prior to the interview, "is a fundamental omission and a denial of the accused fundament right.
9. Consideration of grounds of appeal against Norman Lele:

The prosecution had two witnesses to call on the voir dire regarding Norman Lele's case. They were the interviewing police officer and the police witnessing officer. However, the Learned Magistrate made his ruling on the admissibility of Norman Lele's statement merely after the interviewing officer had given his evidence. The Learned Magistrate disallowed the prosecution to call the police witnessing officer to give evidence. He said the second witness's evidence would not give value to the evidence of the interviewing police officer. In law, the Learned Magistrate must hear prosecution witnesses selected the voir dire. Section 196 of the Criminal Procedure Code (cap. 7) says so. The Learned Magistrate had not acted fairly according to law. The view of this court is that a criminal trial inclusive of a trail within a trial is essentially an adversarial process. In *Crapton v. The Queen* (2000) 206 CLR 161; 176 ALR 369; A Crim R 222 Gleeson CJ said (at 173; 373; 226 – 227 (191): In A common law system the adversarial procedure is bound up with notions of judicial independence and impartiality. A criminal trial is conducted before a judge (sitting with or without a jury) who has taken no part in the investigation of the offence, or in the decision to prosecute the offender, or in the framing of the charge, or the selection of the witnesses to be called on either side of the case, and whose capacity to intervene in the conduct of the trail is limited. One of the objects of a system which leaves

it to the parties to define the issues and to select the evidence and arguments, upon which they will rely, is to preserve the neutrality of the decision-making tribunal. Courts are hesitant to compromise features of the adversarial system which have implications fundamental to the administration of justice”

10. The second ground of appeal in Norman Lele’s case and the third ground of appeal in Martin Lele and Rocky Kiopala case can be considered together as they relate to the same issue of the failure to accord them the opportunity to obtain legal advice prior to the conduct of the police interview with them. The position prevailing in this jurisdiction at this present time is that there is no legislation in force guaranting a right to seek advice from a lawyer before suspects are interviewed or conduct records of interview with the police. However, it is clear that under section 10 (2) (d) of the constitution, a person charged with an offence can be represented by a lawyer of his own choice at his own costs. The arguments which Norman Lele, Martin Lele and Rocky Kiopala made in relation to the “failure to accord them opportunity to obtain legal advice prior to the interview” as a fundamental omission and a denial of their fundamental right. They are relying on sections of the Police and Criminal Evidence 1984 Act (the 1984 Act) and the Code of Practice for the Detention, Treatment and Questioning of persons by Police Officers (Code c) issued by the Secretary of State under section 66 of the 1984 Act. But only the Acts of the Parliament of the United Kingdom of general application and in enforce on 1 January 1961 have effect as part of the law of the Solomon Islands (see schedule 3 to the Constitution). The 1984 Act is different from us in that

the police can only interview an accused within 36 hours after an arrest without a lawyer.

11. The Learned Magistrate did not refer to sections 169 to 172 to the Evidence act 2009 in his Ruling. He based his Ruling on unfairness in the manner in which the records of interview were obtained from Norman Lele, Martin Lele and Rocky Kiopala, and his doubt on the voluntariness of the caution statements recorded by the Police from Norman Lele, Martin Lele and Rocky Kiopala.
12. The manner in which the Learned Magistrate acted in selecting the prosecution witness to be called and which one was not to testify; prematurely terminate the Prosecution case; and failing to publish detailed reasons for his ruling as he undertook to do in court does not appear to advance justice.

In the circumstances, this Court will set aside the Ruling on the vior dire; quash the acquittal of the Defendants and order that the matter be heard again by a differently constituted Magistrate's court.

Order accordingly.

