

R v Filimoehala

Supreme Court, Nuku'alofa

Hampton CJ

10 Cr 260/96

9 April 1997

Criminal law - trial - delays - adjournments

Practice and procedure - delay - criminal trial

The accused was charged with sexual offences. The prosecution sought to adjourn the trial because of the absence of the complainant and other witnesses.

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Held, refusing the application for adjournment.

1. The Crown and the police have a duty not only to the Court but also to the people involved in a case (and especially complainants), to maintain contact with those people about the impending trial, advise of trial dates, and issue subpoenae in good time.
2. The pre-trial callover system, otherwise, is a waste of time.
3. To allow an adjournment would result in a further 6 to 7 months delay of trial.

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Counsel for prosecution : Mr Malolo

Counsel for accused : Mr Kaufusi

Judgment

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It is in the interest of everyone in the criminal justice system, that prosecutions proceed as soon as possible. Insofar as this matter it was set down on 29th of October 1996. That means a date for trial was set 5 months ago now and it may be as Mr Malolo says, and as I accept, that the police were notified of the date. But the Crown and the Police have a duty, not only to the Court but also to the people involved, the witnesses (and complainants especially), to maintain contact with those people, inform them of dates of trial, so that the people can organise themselves and their lives well in advance, so they know when they have to appear in Court. Perhaps it is, that the Crown should look at issuing subpoenas much earlier than they do now.

In this case it appears, that this was not done until 24th of March this year. That means it was only about 3 weeks or so before trial that the request was made to subpoena witnesses. Subpoenas were issued on the 25th of March.

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It is simply not good enough at pre-trial callover to say that Crown is ready to proceed, that it has 5 witnesses, all proofed but not yet subpoenaed. And to tell the Court that the matter will proceed and will need a trial of 3 days.

Again that is a failing in the duty owed to the Court. It means that the pre-trial system is, actually, a waste of time.

Having heard through the Registry that there were difficulties about witnesses, I asked that the matter be called on before me today, so that I knew in advance what was going to happen tomorrow. I am told today that of the 5 prosecution witnesses, 3 of them are not available, 2 of them because they are out of the country, one of those 2 being the complainant.

80 There is a considerable backlog in this Court, before me somewhere between 6 to 7 months between the setting down for trial and a trial taking place; in Justice Lewis' Court, a greater period than that. I am not going to have the trial process "mucked around and I use those words deliberately in this way.

If the prosecution (that is between the Crown and the Police) cannot get their act together in 5 months than so be it. I am not going to allow further time. That would mean towards the end of this year, before this matter then was set down for trial, with no real assurance in my mind, from what has been said to me today, that the complainant is then going to be available to give evidence anyhow.

70 So the matter will proceed tomorrow, and I do not think I should make any further comment as to that. But I ask Mr. Malolo, that you report these remarks back and I, perhaps, should have them typed, so that they can be reported back officially. Because the Crown is only a part of the criminal justice system Mr Malolo, and the whole system has to be looked at, and this Court will not countenance this sort of performance in the future. I am going to draw the line. So tomorrow, we will see what sort of case you have Mr Malolo.