

**IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY**

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**CR 109 of 2009**

**R E X**

**- V -**

**POLELEI, SIMOTE**

**BEFORE THE LORD CHIEF JUSTICE**

Ms S. 'Atiola for the Crown  
Hon. Clive Edwards for the accused

**RULING**

[1] On 10 March, 2009 the accused was charged with a number of counts of embezzlement and theft allegedly committed between June 2006 and May 2008.

[2] An amended indictment containing five counts of embezzlement was filed on 21 October, 2009 and upon arraignment on 21 October, 2009 the accused, represented by Mr. Clive Edwards, pleaded not guilty and elected trial by Jury.

[3] Trial dates fixed for March and August, 2010 were vacated for reasons which are not recorded in the file.

[4] On 21 October, 2010 I allocated 8, 9 and 10 March, 2011 for trial, these dates being suitable for both Mr. Lutui who appeared for the Crown and for Mr. Edwards who was unable to take an earlier date owing to the forthcoming General Election.

[5] On 1 March, 2011 the Chief Registrar received the Crown's standard notification of intended witnesses and subpoenas were issued as requested. Summonses to 30 potential jurors were also delivered.

[6] At 12:15pm on 7 March, the day before the trial, we were notified that counsel wished to see me in chambers. At 2pm Hon. Clive Edwards appeared on behalf of the accused. Ms S. 'Atiola appeared for the Crown.

[7] Mr Edwards told me that the accused had contacted him on Friday 5 March and told him that he no longer wished to be represented by Mr Kaufusi. Apparently at some time after Mr Edwards had accepted appointment to the Cabinet, Mr Kaufusi had accepted instructions from the accused to represent him in place of Mr. Edwards. The accused told me that he had withdrawn instruction from Mr Kaufusi because Mr Kaufusi was "late".

[8] Examination of the file does not reveal that Mr. Edwards had ever notified that court that he had withdrawn from representing the accused. Neither is there any notification that Mr Kaufusi was now appearing, or had withdrawn. It is right to point out that there is, at present, no requirement in the criminal jurisdiction of the Supreme Court corresponding to Order 43 of the Supreme Court Rules.

[9] Mr. Edwards asked for one month's adjournment to enable him to find a replacement for Mr Kaufusi. Ms 'Atiola confirmed that the Crown was ready to proceed to trial on the 8<sup>th</sup>.

[10] I refused the application for an adjournment and indicated that I would give my reasons in due course. My reasons are as follows.

[11] The generally recognised right of an accused to be represented by counsel of his choice is not unconfined. If, for example, an accused cannot afford the counsel of his choice then he will have to find another to represent him; similarly if counsel of his choice is unavailable by reason of other commitments. In the present case the accused's choice was Mr Clive Edwards, however Mr Edwards has now joined government and has, as I understand, largely suspended his legal practice.

[12] Mr Edwards has in effect been unavailable to represent the accused since the General Election is December. Mr Kaufusi was chosen to replace him.

[13] I am advised by the Chief Registrar that no less than 207 criminal cases are awaiting trial in the Supreme Court. Seven of the accused awaiting trial are in custody. The cost of delivery of the



summonses to the jurors, which has already been spent, is \$1,165.00. In addition there were ancillary expenses on \$151.00.

[14] Three days were allocated to this trial. Were the trial to be adjourned again (it had been adjourned twice before with the alleged offences said to have been committed in 2007) three days of the court's time would have been wasted since none of the awaiting trials (not to speak of the awaiting Land and Civil trials) could be brought on to fill the time allocated. The sums mentioned in paragraph 13 would have been wasted at the time of very severe financial constraint.

[15] The Accused was a Senior Accounts Officer. He is clearly a man of some education. The case against him does not appear to be complicated; only 5 witnesses are to be called.

[16] When deciding to grant an application to vacate a trial date the interests of the accused have to be balanced against the public interest in the efficient administration of Justice.

[17] In my view there was no valid excuse for the late application and any prejudice to the accused resulting from his need to represent himself was outweighed by the need to have the trial disposed of without further delays. In all the circumstances the application was refused.

**DATED: 11 March, 2011**



**CHIEF JUSTICE**