

BETWEEN: Tui George Saipir

First Appellant

AND: Berry Max Jimmy

Second Appellant

AND: Public Prosecutor

Respondent

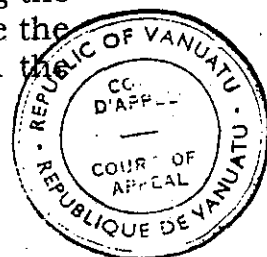
Mr Stephen Joel for the Appellants
Mr Jon Baxter Wright for the Respondent
Date of hearing: 25 October 1996
Date of Judgement: 25 October 1996

**JUDGEMENT OF THE COURT ON AN APPLICATION FOR LEAVE TO
APPEAL OUT OF TIME**

This is an application pursuant to the provisions 201 (6) of the Criminal Procedure Code. The Public Solicitor acting for and on behalf of Tui and Berri seeks leave to appeal against sentences imposed upon them in the Supreme Court in Vila on the 6th of December 1995. They each pleaded guilty to charges of Premeditated murder. Those pleas were entered in July 1995. Earlier in the week we inquired into the fact that they together with Serah Salome (who was charged with being an accessory after the fact to the same murder and who pleaded guilty at the same time) were not sentenced until after the trial of Mrs Picchi.

We have been told that there was prior to the entering of their plea some question about their legal representation which was initiated by an interest taken in the case by the Ombudsman. We are advised that in more recent times the Ombudsman's office has again taken an interest in this case.

We note that interest merely as a matter of historical record. Any action taken by this Court should not be interpreted as indicating the view of the Court that the jurisdiction of the Ombudsman include the activities of Courts. That does not appear to be consistent with the



plain words of the statute. The fact there have been involvement in this case should not be interpreted as any suggestion by this Court that there is a jurisdiction existing there for the Ombudsman to involve herself in Court proceedings.

That matter aside, we are satisfied in the particular circumstances of this case, that the interest of justice demand that these two men be permitted (if they wish to do so) to put their case before the Court. It will not provide a precedent. The number of cases where persons can come before the Court making an application for leave when they can remind the Court that the very issues which they are concerned about have in fact engaged the Court for most of the last four days will be few.


The reality of the matter is that Mrs Picchi has appealed against her conviction and sentence. The Court has reserved its decision on that appeal. The house girl Serah has appealed against her sentence. These two men who pleaded guilty are integrally involved within the issues which are before the Court.

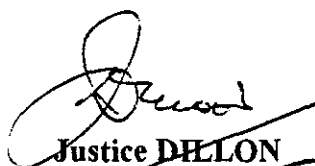
The Court assumed that they had no complaint with the sentence. However upon the basis that the Public Solicitor is able to confirm that he has personally seen them yesterday and today and they do wish to have their position reconsidered(particularly in the light of the responsible position taken by Mr Baxter Wright which does not oppose in the unique circumstances) we can see no reason to refuse leave.

Leave is accordingly granted on the basis that the Application and Grounds of Appeal are filed and served by 4pm by Tuesday next, the 29th of October 1996. Their case is to be listed for hearing by the Court on Friday next the 1st of November 1996.

The only other issue which arises is the question of representation for these men. The Public Solicitor has properly and responsibly made this application on their behalf. We are sure that he will be sensitive and vigilant about the nature of the representation of these men at the hearing next week. It is in the final analysis a matter for his office about who is instructed. No doubt he will have regard particularly to the views of the men themselves bearing in mind their prior representation in the matter. This is an issue we leave for his consideration to ensure that the merits of the appeal can properly be considered, uncontaminated by extraneous interest or activity.

***DATED AT PORT VILA this 25th day of October 1996**


Justice ROBERTSON
Judge of Appeal


Justice DILLON
Judge of Appeal


Justice MUHAMMAD
Judge of Appeal

