

NELSON . . . . . APPELLANT

A N D

BRAISBY . . . . . RESPONDENT

S.C.  
WELLINGTON.

[1934] NZLR 228

1934.  
March 27.

BLAIR, J.

Samoa Act - Practice - Criminal Offences - Power of Supreme Court of New Zealand to stay Execution and to release on Bail Appellant convicted by High Court of Samoa - Samoa Act, 1921, ss. 81, 91, 92.

Section 92 of the Samoa Act, 1921, is not limited to civil cases, and implies a power both in the High Court of Samoa and in the Supreme Court of New Zealand to grant a stay of execution in criminal cases. Sections 91 and 92, interpreted together with s. 81, give the Supreme Court of New Zealand the same jurisdiction as is given to the High Court of Samoa, including the right to release an appellant upon a conviction by the High Court from custody on bail pending the determination of the appeal.

MOTION for an order releasing appellant from custody in His Majesty's Prison at Paparua upon such terms as to bail as the Supreme Court deems just, pending the hearing of his appeal pending before that Court from convictions and sentence by the High Court of Samoa of eight months' hard labour.

P. B. Cooke, for the appellant.

C. H. Taylor, for the respondent.

BLAIR, J. (orally). I think that it is reasonably clear that this Court has power to grant bail. Section 91 of the Samoa Act, 1921, inferentially, but clearly, implies a power both in the High Court of Samoa and the Supreme Court of New Zealand to grant stay of execution, and I think there is weight in Mr. Cooke's contention that that section stands alone, and can be so treated and is not limited to civil cases. That being so, this Court has clear jurisdiction to stay execution in criminal cases, and that seems the obvious course to take in this case.

This man is appealing from sentence, and it would be the height of absurdity to let him continue serving when the Court might allow his appeal or reduce the sentence.

We come now to s. 92 which confers jurisdiction to release an appellant from custody pending determination of the appeal. The Supreme Court, which is the appellate Court, is not mentioned in the section as having power to admit to bail; but I think that s. 91 and s. 92 when interpreted along with s. 81 mean that this Court has the same jurisdiction as is given to the High Court of Samoa and necessarily has the same jurisdiction as the High Court in the matter of bail. That being so, I think this Court has power to release the appellant on bail pending appeal. I propose, therefore, to make an order partially staying execution so far as imprisonment is concerned:

and the effect of such order would be that he would be no longer held in custody. This would not affect the other part of the sentence. I understand that he has been banished from Samoa for a term of years.

The order I shall make will be twofold: stay of execution under s. 91, and release on bail under s. 92. Subsection 3 of s. 92 would then apply.

As to conditions, I do not want to make them such as he cannot comply with. I shall make the following order:-

It is ordered that execution of the sentences imposed by the High Court of Western Samoa in respect of the convictions dated the 7th day of March, 1934, and numbered respectively 601/33, 609/33, and 612/33 in the records of the said Court be and the same is hereby stayed pending the determination of the appeal herein in so far as such sentences impose terms of imprisonment; and it is further ordered that the abovenamed Olaf Frederick Nelson be released from custody pending the determination of the said appeal upon the following conditions:-

(a) That the said Olaf Frederick Nelson enter into a recognizance of bail himself in the sum of £500 and with either one surety of £500 or two sureties of £250 each, such sureties to be approved by the Registrar of this Honourable Court at Wellington.

(b) That the said Olaf Frederick Nelson surrender to the gaoler at His Majesty's Prison at Paparua within forty-eight hours of the determination of the said appeal if the same is dismissed or so dealt with as to require the undergoing of imprisonment.

(c) That the said Olaf Frederick Nelson remain in New Zealand during the period of his release under this order.

(d) That the said Olaf Frederick Nelson shall forthwith report his address to the Superintendent of Police of the District in which the said Olaf Frederick Nelson proposes to reside, and shall before any change of residence during the period of his release pursuant to this order give notice of such change to the Superintendent of Police in the District in which he is residing.

(e) That during the period of his release pursuant to this order the said Olaf Frederick Nelson shall not directly or indirectly concern himself in the printing or publishing of the New Zealand Samoan Guardian newspaper.

(f) That during the period of his release pursuant to this order the said Olaf Frederick Nelson shall not participate directly or indirectly in Samoan political affairs.

Order accordingly.

Solicitors for the appellant: Chapman, Tripp, Cooke, and Watson (Wellington).

Solicitors for the respondent: Crown Law Office (Wellington).

NOTE

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