

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CRIMINAL DIVISION)**

**CR NOS: 286-289/08,292/08**  
**739-746/08,771/08**  
**334-336/08,257/08**  
**270-271/08,**  
**736/738/08**

**R**

**V**

**NORMAN GEORGE**  
**CHARLES KORONUI**  
**CHRISTOPHER VAILE**

**Accused**

**Crown:** Mr Mike Ruffin  
Mrs Kim Saunders  
Ms Martha Henry

**Defence:** Mr Norman George in person  
Mr Charles Koronui not present  
Mr Tim Arnold for Mr Christopher Vaile

**Date of**  
**Reasons:** 12 August 2009

**REASONS OF NICHOLSON J FOR DECLINING ADJOURNMENT**  
**APPLICATION – JUDGMENT NO. 3**

- [1] When I declined Mr George's application for adjournment on 29 July 2009 I said I would give full and detailed reasons later.
- [2] The history of the hearing of this trial is set out fully in the Chief Justice's Minute No. 1 of April 2008, my directions judgment (No. 1) of 11 July 2008, and my minutes No. 1 of 30 October 2008, No. 2 of 19 November 2008, No. 3 of 30 June 2009 and No. 4 of 24 July 2009.
- [3] In summary, in April 2008 counsels' estimate of duration of trial ranged from 2 weeks on the part of the defence to 3 to 4 weeks on the part of

the Crown. At a judicial conference on 11 July 2009 I set the hearing down for 3 weeks commencing Monday 13 October 2008, to resume for the week commencing Monday 17 November 2008 if necessary. The hearing started on 13 October 2008. When during the October 2008 hearing it became obvious that counsels' estimates were inaccurate and that there was no prospect of the hearing concluding by Friday 21 November 2008, for the reasons stated in Minute No. 1 on 30 October 2008 I requested counsel to confer and advise me about a suitable 5 week period for continuation and completion of the hearing after 20 April 2009. On 19 November 2008 because of Mr Davison's commitment in the trial R v Field, I set the continuation of the hearing for 5 weeks to start on Tuesday 21 July 2008. This start date was deferred until Monday 3 August 2009 because of overrun of the Field trial.

- [4] On Friday 24 July 2009 Mr George filed a memorandum applying for the hearing to be adjourned until 'early in the New Year'. In this application Mr George said –

*"2. When I received the costing and legal fees account from Mr Davison on 15 July 2009 I contacted the source I had negotiated a year ago for an amount to cover my legal fees; my source was away in Europe.*

*3. Yesterday 22 July 2009 I received a response that he was unable to help me.*

*4. As of now, I am completely unable to continue to pay for Mr Davison to represent me, having exhausted a total of \$150,000 to pay for both Mr Koronui and I as Mr Koronui is unemployed in Auckland and attending a technical institute.*

*5. My original budget was to cover a 4 week trial."*

.....

*10. I have today applied to the Legal Aid Division of the Ministry of Justice for legal aid of \$218,000 to cover the remainder of my legal fees and trial expenses; I have attached a copy of my application to you."*

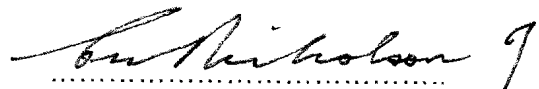
- [5] In a memorandum dated 27 July 2009 Mr Davison sought leave for he and Mrs Woods to withdraw as counsel for Mr George and Mr Koronui.
-

- [6] I heard Mr George's adjournment application in Rarotonga on Wednesday 29 July 2009. Mr George spoke in support. Mr Ruffin opposed the application on grounds stated in the Crown notice of opposition dated 28 July 2009. At the end of the hearing I granted Mr Davison and Mrs Woods leave to withdraw and declined the adjournment application.
- [7] In deciding to decline the adjournment application I took the following four main factors into account.
- [8] First, the interval between when the last hearing finished on the 20<sup>th</sup> of November 2008 and Mr George's application for adjournment, filed last Friday 24 July 2009 almost on the eve of the recommencement date of hearing. In light of the amounts of money involved and the importance of representation to Mr George and Mr Koronui, steps should have been taken much earlier to make definite arrangements for payment for Mr Davison's continued representation or instruction of alternative counsel. There was a gap of some 8 months between the adjournment on the 20<sup>th</sup> of November and the initially prescribed resumption date of 21 July 2009.
- [9] Second, the difficulty which I have as a Judge alone hearing this case retaining memory and understanding of the evidence and submissions. There already has been a time span of over 9 months since the trial started. It also has not been continuous. There have already been two sessions and to further delay resumption until next year will add to my difficulty. It is a difficulty which was anticipated and I have endeavoured to reduce it by ensuring that there is a full transcript of the evidence, and I took hand notes for my later benefit as the evidence unfolded. Adjournment until next year is likely to extend completion of the hearing by at least a further six months and this will increase the difficulty.
- [10] The third factor is the considerable disruption of further adjournment to the Court, other counsel, the other party Mr Vaile, the Police and witnesses. The normal Court programme has already been greatly affected by the priority which has been given to the hearing of this case. This has resulted in the build up of outstanding Court work, particularly criminal jury work, which it is very important to the people involved to have dealt with as soon as possible.

The programmed 3 week hearing to start 3 August 2009 will not be able to be used for jury trials and it is unlikely that any major criminal or civil trial could be arranged to be heard then.

[11] The fourth factor is that although I understand the difficulties which Mr George and Mr Koronui will have in representing themselves if they are unable to be represented by Mr Davison or suitable replacement counsel, nevertheless there is the factor that Mr George himself is a very experienced lawyer particularly in the field of Criminal Law and perhaps is the most experienced Cook Islands resident criminal lawyer. Undoubtedly he would have liaised with Mr Davison before and during the trial about challenges to the prosecution case and the best presentation of the defence case. The Courts recognize the disadvantage for even an experienced professional person to represent himself because of the emotion involved and the difficulty of being objective. This will particularly apply in the cross examination of Mr Arai. However this is a necessary consequence of the situation which has been created. So far as Mr Koronui being unrepresented is concerned, his case is closely aligned with that of Mr George as is endorsed by the fact that of Mr Davison felt able to appear as counsel for him as well as Mr George without any disqualifying conflict of interest.

[12] There was no perfect result available. Having regard to the stated factors I decided that it was in the overall interests of Justice to decline the adjournment application and I did so.



Nicholson J