

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

NO.CR.226-9/2005

BETWEEN : REX - Prosecution

AND :
1. SIONE KAFALAVA
2. JOE WHITE MASIMA
3. FELETI PAONGO
4. TAULUA TA'UFO'OU - Accused

BEFORE THE HON ACTING CHIEF JUSTICE FORD

JUDGE'S MINUTE

RE: Sione Kafalava, Joe White Masima, Taulua Ta' ufo' ou,
Feleti Paongo

[1] The above-named are facing a number of serious charges and they are due to be sentenced on the bulk of those charges on 26 May 2006. The court notes, however, that some of the accused have pleaded not guilty to other charges and these are due to go to trial in February 2007. The court is of the view that all the charges presently faced by the accused should be dealt with together and, unless the Crown is prepared to drop the outstanding charges, the proper course is to defer sentencing on all charges until after the other trials have taken place in February 2007. For reasons which will be obvious to counsel, such a delay in sentencing is most undesirable.

[2] Attention is drawn to the following statements of principle which the court considers are applicable to criminal proceedings in this jurisdiction:

[3] In Bennett (1980) 2 Cr.App.R (S) 96, the following was stated:

"It needs to be said, as firmly and strongly as possible that there is an obligation on solicitors, counsel and judges alike to do all within their power to ensure that so far as possible all outstanding charges against a defendant are dealt with in the same court, by the same judge upon a single occasion . . .

We wish to make it plain that when a solicitor and a member of the Bar knows that there are other charges against [the Accused] to be dealt with other than those before the court they should ensure that an application is made . . . to have the [Accused] . . . put back to be dealt with . . . where the other outstanding charges lie."

[4] Blackstone's Criminal Practice 1993 at paragraph D9.20 states:

"If an accused enters mixed pleas on a multi-count indictment and the prosecution are not prepared to accept those pleas, sentencing for the counts to which he has pleaded guilty should be postponed until after he has been tried on his not guilty counts."

[5] [Archbold 2001 para 7.143, after referring to Bennett states:

"Where a person has been dealt with on one occasion and is subsequently dealt with for another matter which could have been dealt with at the same time as the first matter and it is clear that had it been so dealt with, it would not substantially have affected the overall sentence, the Court of Appeal may interfere with the sentence eventually imposed if it does, in fact, it substantially to the overall burden."

The prosecutor is invited to consider the issues raised in this Minute and to advise the court by Friday 12 May 2006 as to how the Crown wishes the matter to be handled.

[Handwritten Signature] ACT

NUKU'ALOFA: 28 APRIL 2006

ACTING CHIEF JUSTICE

