

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

AC 6 of 2022  
(CR 68 of 2021)

BETWEEN:

**JOSHUA ANITEMA**

-v-

**REX**

ATTORNEY GENERAL'S OFFICE	
INITIALS: <i>Jh</i>	DATE: <i>6/04/23</i>
<input checked="" type="checkbox"/> File	<input checked="" type="checkbox"/> Website
<input checked="" type="checkbox"/> Database	<input checked="" type="checkbox"/> Social Media
<input checked="" type="checkbox"/> Email internal	<input type="checkbox"/>

Appellant

Respondent

---

## MINUTE OF ADJOURNED HEARING AND FURTHER DIRECTIONS

---

BEFORE:                      Randerson J  
                                      White J  
                                      Morrison J

Appearances:              The Appellant in person  
                                      Ms T. Vainikolo for the Respondent ✓

Date:                            30 March 2023

### WHEREAS:

- A. The Appellant in this matter was represented at the trial below by Mr Edwards SC. Mr Edwards filed the original Notice of Appeal. However, since at least December 2022, when the Notice of Appeal was amended to allege a miscarriage of justice due to incompetence of his counsel at trial, the Appellant has been represented by Mr S. Tu'utafaiva.
- B. Mr Tu'utafaiva has not complied with the directions issued in January 2023 for the appeal nor did he appear at the hearing this day. The Appellant informed the court that only the day before, Mr Tu'utafaiva advised him that he could not act for him because his practising certificate had expired.
- C. The Appellant applied for an adjournment of the hearing. Mr Anitema considered that if an adjournment was granted he would be able to arrange an alternative Counsel.
- D. The Crown did not oppose the application.

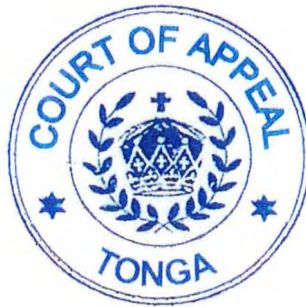
**DIRECTIONS:**

1. The hearing of the appeal is adjourned to 10 July 2023, on an estimate of one to two days.
2. The hearing will take place by AVL.
3. The Crown and Mr Edwards SC are to confer about providing an affidavit in response to the affidavit of the Appellant sworn 14 October 2022.
4. Mr Edwards SC is to file that affidavit by 28 April 2023.
5. In his affidavit, Mr Edwards is to respond with particularity to the matters in the Appellant's affidavit of 14 October 2022 including:
  - (a) whether Mr Edwards took or obtained a proof of evidence from the Appellant or obtained any written instructions from him prior to the completion of the trial;
  - (b) if such proof of evidence or written instructions were obtained, copies of those documents are to be annexed to the affidavit but if none is now available Mr Edwards should depose to what happened to such documents to the best of his knowledge;
  - (c) if a proof of evidence or written instructions were obtained but is no longer available or if Mr Edwards had oral instructions he should set out to the best of his recollection the substance of the instructions he received from the Appellant including with respect of any of the topics referred to by Lord Chief Justice Whitten at paragraphs 142 and 173(a) of the reasons for verdict; and
  - (d) except to the extent covered by the above directions, Mr Edwards is to give his reason or reasons for not producing written instructions at the trial as referred to by Lord Chief Justice Whitten at paragraph 192 of his reasons.
6. If Mr Edwards' affidavit is not filed by 28 April 2023, the Crown is to subpoena Mr Edwards to give evidence at the hearing of the appeal on the adjourned date.
7. Leave is reserved to Mr Edwards to apply to this Court by 14 April 2023 if he wishes to raise any issues so far as these directions relate to him.
8. Notice of any intention to cross-examine any of the deponents is to be given by

the Appellant and the Respondent no later than seven days prior to the commencement of the hearing.

9. The Crown is to confer with the Registrar to ensure that full copies of the transcript of evidence from the trial, the addresses of Counsel during the trial and all exhibits are provided in the appeal book for the hearing of the appeal.
10. The Appellant, through his lawyer, or on his own account if he has no lawyer, must file submissions on the appeal by 16 June 2023.
11. The Crown may file supplementary submissions by 30 June 2023.
12. If the Appellant is unable to arrange alternative Counsel prior to the hearing of the appeal on the adjourned date, then he will need to represent himself.

NUKU'ALOFA  
30 March 2023



A handwritten signature in blue ink, appearing to read "M. H. Whitten".

M. H. Whitten KC LCJ

PRESIDENT

for and on behalf of the  
presiding Justices