

SIOSIUA POHIVA
Appellant

V

CROWN
Respondent

BEFORE THE HON MR JUSTICE SHUSTER
THE APPELLANT IN PERSON
MISS ANNIS FINAU FOR THE RESPONDENT
JUDGMENT DELIVERED-12th SEPTEMBER 2008

JUDGMENT AND RULING

The Appellant appeals a decision of the Magistrate in criminal case no. 2/2008 in which a Magistrate made an order that the appellant pay a Fine of \$500.00 within one week and his two sureties were ordered to pay \$500 each within two weeks. A Notice of Appeal was dated 14th March 2008 when the Appellant also filed an Affidavit on that same date concerning case-CR376/07

GROUND OF APPEAL

The accused Siosiu Po'oi Pohiva:- in the above criminal case appeals to the Supreme Court-that a court order dated 7th March 2008 at the Magistrates Court be set aside-based on the following grounds.

1. That the accused had failed to appear in Court in relation to the above named case which was scheduled for the 4th and 5th March 2008 due to the confusion over the dates of appearing of his court cases.
2. That the accused has other major cases pending with claims of about \$1.7 millions, thus confusing the accused with particular respect to matters of date, hence his inability to appear in court.
3. That the accused had obtained a sick leave certificate, as he was sick at the time, but he had only conveyed the sick note to his office of employment-but not the Magistrate.
4. That the accused was put in a prison cell at around 6pm on Wednesday 5th March 2008 and remained overnight and was told that he would see Magistrate Salesi Mafi the following morning.
5. That the accused was not able to see Magistrate Salesi Mafi the morning of Thursday 6th and was told to be put back in jail and was not released until the following morning Friday 7th 2008.

6. That the accused finally appeared in court and was initially ordered by Magistrate Salesi Mafi to pay \$500 fine immediately and for his two bailers to pay \$500 each within two weeks.
7. That the accused respectfully appealed to Magistrate Salesi Mafi for more time to pay the fine and was granted a week.

There were sixteen further grounds of appeal which were quite eloquently set out in the Notice of Appeal-but which I do not intend to rule upon.

The case was first listed for hearing on Friday 5th September 2008 at 09.30.

- On 5th September 2008- having read the Notice of Appeal and the affidavit of the Appellant- the court informed the Appellant-it wished to see a copy of the medical sick note which the Appellant claimed to have submitted to his workplace.
- The court adjourned the case for a week for the document to be obtained and produced

On the hearing date Friday the 12th September 2008 the case was called-the Appellant produced a letter from The Ministry of Health- dated 9th September 2008 which states as follows:-

To whom it may concern

Please be advised that the above named person was seen by me in the outpatient on the 3rd March 2008 in the morning. He presented with multiple sores on his axilla and malaise and generalised weakness. After examining him I concluded that he was suffering from Axilla abscess and viral illness. He is allergic to penicillin so I prescribed him and equivalent antibiotic and paracetamol and also a sick sheet for three days. Unfortunately the sick sheet was lost and hence is the letter to prove that he was sick that day and came to the Hospital and as a result acquired a sick leave. Signed Dr Siaki Ela Fakanka- Medical Office Vailoa Hospital

The Court asked the Prosecution-if they conceded the medical report covered the operative Preliminary Inquiry dates of the 4th and 5th March 2008-and the prosecution agreed.

ACCORDINGLY

THE ORDER MADE BY THE MAGISTRATE DIRECTING

- [1] THE APPELLANT PAY A FINE OF \$500- IS QUOSHED**
- [2] THE ORDER DIRECTING THE SURITES TO PAY \$500 EACH WITHIN TWO WEEKS- IS ALSO QUOSHED**
- [3] NO ORDER IS MADE FOR COSTS- BECAUSE THE APPELLANT WAS HELD IN CUSTODY FOR THREE DAYS BEFORE BEING PRODUCED IN COURT.**



Shuster J