

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

**CR NO'S 308-312/2021
113-115/2021**

PAUL RAUI ALLSWORTH

v

**HENRY PUNA
&
MARK BROWN**

Hearing date: 15 March 2021

Counsel: Mr N George for prosecution
Messrs K Raftery QC & B Marshall for defendant (114-115/2021)
Messrs K Raftery QC & T Arnold for defendant (114-115/2021)

Decision: 15 March 2021

DECISION OF HUGH WILLIAMS, CJ

[10:51:29]

[1] At the commencement of this trial by private prosecution objections have been raised by the defendants to the contents of part at least of a number of the witness statements delivered as part of disclosure. The nature of the objections has largely been on issues of relevance and the expression by some of the witnesses of their views on legal matters which are for the Court to decide.

[2] The events of the trial and the issues which are relevant centre largely around the period between June and July 2018 following the last General Election in the Cook Islands held on 14 June 2018. Although this prosecution has had a somewhat tortuous journey to this point there are a number of statements in the various witness briefs which have been delivered which relate to events well beyond the relevant period around which the evidence revolve.

[3] The first witness to which objection is taken is that of Tupuna Rakanui who was Clerk of the Parliament as well as holding other positions in Parliament for a lengthy period. Working off the witness statement:

- (a) Paragraphs 1 to 9 are acceptable and admissible.
- (b) In paragraph 10 Mr Rakanui refers to practices of Parliament. Those, according to Mr George, counsel for the informant, are not codified but will form part of the evidence in this trial. As a result of that, paragraph 10 can stand.
- (c) Paragraphs 11 and 12 relate to legal matters and should not be in Mr Rakanui's evidence. Presumably at some stage submissions will be made concerning the Remuneration Tribunal Order to which he refers.
- (d) Paragraph 13 is a matter of Mr Rakanui's opinion and possibly of Parliamentary practice. Given his extensive experience in Parliament, paragraph 13 can stand as he is entitled to express an opinion.
- (e) Paragraph 14 expresses a view about legal matters and should be deleted.
- (f) Paragraphs 15 and 16, similarly with paragraph 13, express Mr Rakanui's opinion on matters where he has extensive experience and those paragraphs can stand with the weight to be determined in due course.
- (g) Paragraphs 17 through to 20 express Mr Rakanui's opinion on issues which are relevant for determination in this trial. Those paragraphs are deleted.
- (h) Paragraph 21 expresses Mr Rakanui's opinion, and in the sense that the words "no Clerk of Parliament" should be replaced by his opinion that he would not allow the use of the travel privileges, the paragraph can stand.

[4] Turning to the witness statement of the informant Mr Allsworth:

- (a) Paragraphs 1 to 4 can stand.
- (b) Paragraph 5 through to 14 inclusive are irrelevant to the matters in issue in this proceeding and are deleted.
- (c) Paragraphs 15 to 17 can stand, although the weight to be accorded to that evidence is to be later determined.
- (d) Paragraphs 18 through to 25 add little to the evidence but they are matters which are known as part of the history of these two private prosecutions and can stand.
- (e) Paragraph 26 is irrelevant and is deleted.
- (f) Paragraph 27 is historical and can stand.
- (g) Paragraphs 28 and 29 are historical. They add little but can stand.
- (h) Paragraphs 30 onwards are expressions of opinion including matters directly for determination in this case and the whole of Mr Allsworth's brief from and including paragraph 30 onwards are deleted.

[5] In the witness statement of Mr Beer, a former Member of Parliament who was unsuccessful in the 14 June 2018 election:

- (a) Paragraphs 1 to 7 of his brief can stand.
- (b) In paragraphs 8, 9 and following he speaks of an approach by a reporter following the election and his suspicions in that regard. Those are irrelevant to the matters in issue in this proceeding and while paragraph 8 can stand, paragraphs 9 to 13 inclusive are deleted.

- (c) Mr Beer can give in evidence the contents of paragraph 14, 15, 16 and 17 provided that in due course the basis for the views he express are given in evidence.
- (d) Paragraphs 18 to 22 inclusive express views on the matters in issue in this case and are deleted.

[6] The next witness statement is Mr Teariki Heather who was a Member of Parliament up until the 2018 General Election. While it may turn out not to be an issue of great moment the whole of Mr Heather's statement can stand.

[7] Similarly the statement by Mr Kiriau Turepu, who was similarly a Member of Parliament up until the 2018 General Election can stand.

[8] The next statement is that of Commissioner Tetava. His statement is unsigned and incomplete. It deals only with the complaint from Mr Allsworth and given the remarks already made concerning the irrelevance of Mr Allsworth's view in that regard the evidence in Commissioner Tetava's statement is irrelevant, but he may wish to give evidence on other matters of which we are currently unaware.

[9] There is no statement from Commissioner Matapo. From Mr George's description all he is being called to do is to say that he executed the search warrant granted at an earlier stage of these prosecutions and obtained text messages from Vodafone for the period 14 June to 5 July 2018. He will produce those text messages. There is no reason to rule that evidence out and the production of the text messages one would have thought is uncontentious and should be a matter of agreement.

[10] Mr Raftery drew attention to the fact that there are two sets of charges in this case alleging conspiracy under the Crimes Act, s 280, and specific offences under s 64(2)(d)(1) of the Ministry of Finance and Management Act 1995-96 ("MFEM Act"). Mr Raftery draws attention to the United Kingdom practice, that where an

indictment contains substantive counts and related conspiracy counts the practise is that the prosecutor is to be required to elect on which charges to proceed.¹

[11] Mr George, put to that election, has decided to proceed with the conspiracy charges. The MFEM Act charges will be appropriately dealt with at the end of the trial.

[12] The final matter requiring noting at this point is that the late Nandi Glassie, a former Member of Parliament and Cabinet Minister, also has filed a declaration dated 3 March 2020. Objection was taken by the defence to certain passages in that deposition and it has now been agreed that the declaration will be accepted up to and including paragraphs 1 to 23 inclusive, and paragraphs 25, 27 to 33. The first section of paragraph 33 can remain – “I strongly and forcefully state that I did not sign that Cabinet Submission” – all the rest from the remainder of paragraph 33 to the end of the declaration is irrelevant and inadmissible.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ

¹ *Criminal Practice Directions*, October 2015, para 10(a)(4) which seems to be the practice reflected in *Adams on Criminal Law in New Zealand*, para CA 310.14 and the authorities there referred to.