ISIRELI LEWENIQILA v STATE (HAM0031 of 2004S)

HIGH COURT — MISCELLANEOUS JURISDICTION

SHAMEEM J

26 May, 2 June 2004

Practice and procedure — applications — motions — whether hearing should be adjourned — whether separate trial necessary — whether trial stayed due to delay — whether better particulars appropriate — whether there was abuse of process — whether offences time-barred — whether information defective — Constitution of the Republic of Fiji s 28(1)(j) — Criminal Procedure Code s 121(c) — International Covenant on Civil and Political Rights Arts 15, 15.1, 15.2 — Penal Code (Cap 17) ss 3, 5, 50, 54, 65 — Public Order Act (Cap 20) ss 5(b), 6, 6(b).

Isireli Leweniqla (the Applicant) was charged with several offences relating to taking an oath to commit a capital offence. The State filed new information in which leave was granted. As a result of the filing of the new information, the defence submitted that the accused needed more time to prepare for trial and sought an adjournment.

Counsel for the Applicant filed a motion for several preliminary applications and the prosecution opposed all the applications. The applications raised the following issues: (a) the hearing of the trial should be adjourned; (b) there should be a separate trial for the fourth accused; (c) the trial should be stayed because of inordinate and unexplained delay in the filing of charges; (d) the prosecution should provide better particulars of the alleged engagement, oath and treason; (e) the information should be quashed on the ground of abuse of process; (f) the offences are time-barred because of the time limitation on the offence of treason; (g) the information is defective because the death penalty is no longer available in respect of treason offences. The prosecution opposed the application.

Held — (1) Based on the two informations, the new offences have the same evidence in respect of the same allegations and acts. Despite the fact that counsel for the Applicant, Mr (Sharma) claimed that the preparation of his defence has now gone to waste due to the revision of the charges his position stays unaltered regardless of the new information. There was no substantial distinction in his approach in regard of either information nor was any prejudice discovered. Thus, there was a need to proceed to trial as quickly as possible as the case involved events which were already 4 years in existence.

(2) The Applicant took the liberty to apply for a separate trial only for the purpose of making the first and second accused as witnesses in his defence. He intended to call the second accused to raise the issue of legal professional privilege regarding a document seized from the second accused while he intended to call the first accused to present evidence of his intention when he officiated the ceremony. However, these were not reasons sufficient to have a separate trial because: (a) the trial will not be a short one, the witnesses will be called twice to give evidence and there would be costly administration of justice as each accused will be tried for 1 month each; (b) if the Applicant's trial commences ahead of the other two accused (first and second accused), they will not be required to adduce evidence which would incriminate them; (c) the intention of the persons officiating the ceremony was irrelevant to the elements of the offences charged; and (d) the Applicant did not dispute the contents of the written oaths when they were shown to him during the police interview. Thus, an order for separate trial was not in the interest of justice as the Applicant cannot be said to have been prejudiced or embarrassed in his defence by being jointly tried.

(3) The defence did not allege that there was systemic delay after charge. Instead, the defence claimed that the delay was attributable to the prosecution for charging the accused 3 years after the commission of the offence. While at common law, only under exceptional circumstances were stays granted stays may be granted under exceptional circumstances.

However, the case of the Applicant was not considered as an exception because the delay of 3 years occurred when Fiji experienced a most turbulent time politically and legally and was therefore not excessive. The affidavit of Josaia Naigulevu detailing the difficulties experienced by the police and the DPP's Office was also taken into account. The delay in charging the accused was caused by intense political uncertainty and partly a result of inadequate resources and insufficient and inexperienced staff in times where there were considerable demands on both resources and staff. In these circumstances, the court said, the application for stay on the basis of delay cannot stand.

(4) While the prosecution amended the information and presented additional evidence a month before the trial, the amendments did not fundamentally change the nature of the case nor did it change the acts constituting the charges. Thus, the application "for further and better particulars" frequently made in a civil proceeding was misconceived in the criminal proceeding.

(5) There was an abuse of the process when the prosecution misused or manipulated the processes of the court resulting to a deprivation of the right to defend. The prosecution has the discretion to file charges and the court cannot interfere with that discretion unless there was an abuse of process. In this case, no sufficient ground of abuse of process occurred. Further, there was no evidence to prove that an offence of treason was committed. Moreover, an offence under s 5 or s 6 of the Public Order Act is not considered a lesser offence in relation to s 50 of the Penal Code. Thus, applying the case of *R v Jones*, the court ruled that "it is not an abuse of the process per se, to lay a less serious charge when the time limitation on the more serious charge has expired".

(6) Offences under the Public Order Act have no time limit but as to treason, there exists a 2-year time limit. This only means that in the absence of a statutory time limit, no time bar exists in respect to these offences. In the present case, whether there was treason was impossible to ascertain without hearing the evidence. However, even if there was evidence of treason, the offences on the information are not time-barred.

(7) Counsel for the Applicant submitted that the information was defective and should be quashed because he was retrospectively charged with an offence which was already abolished. While death penalty was already abolished in Fiji for the crime of treason, the offences under the Act still exist. It was only the description of the penalty for treason that was changed.

Applications dismissed.

Cases referred to

R v J [2003] 1 WLR 1590; [2003] 1 All ER 518; [2002] EWCA Crim 2983; *Re O'Boyle* (1990) 92 Cr App Rep 202; *State v Silatolu* (HAM0002/2002); *State v Savu* [2002] FJHC 73, applied.

Apaitia Seru v State [2003] FJCA 26; *Attorney-General's Reference (No 1 of 1990)* [1992] QB 630; [1992] 3 All ER 169; *Attorney-General's Reference (No 2 of 2001)* (2002) 1 Cr App Rep 24; *Bullivant v Attorney-General (Vic)* [1901] AC 196; *Dubai Alumunium Co Ltd v Al Alawi* [1999] 1 WLR 1964; [1999] 1 All ER 703; *Ventouris v Mountain* [1991] 1 WLR 607; [1991] 3 All ER 472; *Darmalingam v State* (2000) 2 Cr App Rep 445; *Montgomery v HM Advocate* [2003] 1 AC 641; *Flowers v R* [2000] 1 WLR 2396; *Rogers v R* (1994) 181 CLR 251; 123 ALR 417; *R v Saraswati* (1989) 18 NSWLR 143; *Lewis v R* [1998] WASCA 166; *R v Gibbons* (1918) 13 Cr App R 134; *Moevao v Department of Labour* [1980] 1 NZLR 464; *Williams v Spautz* (1992) 174 CLR 509; 107 ALR 635; *Polyukhovich v Commonwealth* (1991) 172 CLR 501; 101 ALR 545; *R v Bailey* (1924) 18 Cr App Rep 42; *R v Lake* (1976) 64 Cr App Rep 172; *R v Moghal* (1977) 65 Cr App Rep 56; *R v Blight* (1903) 22 NZLR 837; *R v Central Criminal Court; Ex parte Randle* [1991] 1 WLR 1087; [1992] 1 All ER 370; (1990) 92 Cr App Rep 323; *R v Dutton* [1994] Crim LR 910; *R v Jenkins* [1998] Crim LR 411; *R v Cox & Railton* (1884) 14 QBD 153; *R v Eriemo* [1995] 2 Cr App Rep 206; *R v Hoggins* 51 Cr App Rep 444; *R v Hibberd* [2001] 2 NZLR 211; *R v Norman*

[1915] 1 KB 341; *R v King* [1897] 1 QB 214; *R v Latif* [1996] 2 Crim App Rep 92; *R v O* [1999] 1 NZLR 347; *R v Pieterson* [1995] 2 Cr App Rep 11, cited.

Ludlow v Metropolitan Police Commissioner [1971] AC 29; [1970] 1 All ER 567, considered.

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D. Sharma for the Applicant

M. Tedechi for the State

Shameem J.

10 The trial in this case is scheduled to commence on 15 June 2004. Information was filed on 15 February 2004. Charges had been laid in May 2003. The original information read as follows:

FIRST COUNT

Statement of Offence

15 *TAKING AN UNLAWFUL OATH TO COMMIT A CAPITAL OFFENCE*: Contrary to Section 5(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code Cap 17 (as it was at 20th May, 2000)

Particulars of Offence

JOPE NAUCABALAVU SENILOLI, VILIAME VOLAVOLA, PECELI RINAKAMA, ISIRELI LEWENIQILA, VILIAME SAVU & RAKUITA
20 VAKALALABURE on the 20th day of May, 2000 at Veiuto, Suva in the Central Division, not being persons compelled to do so, took an oath to commit an offence punishable by death, namely treason.

ALTERNATIVE COUNT

Statement of Offence

25 *TAKING AN UNLAWFUL OATH TO ENGAGE IN A SEDITIOUS ENTERPRISE*: Contrary to Section 6(b) of the Public Order Act, Cap 20 read with Section 65 of the Penal Code, Cap 17.

Particulars of Offence

RATU JOPE NAUCABALAVU SENILOLI, VILIAME VOLAVOLA, PECELI RINAKAMA, ISIRELI LEWENIQILA, VILIAME SAVU & RAKUITA
30 VAKALALABURE on the 20th day of May, 2000 at Veiuto, Suva in the Central Division, not being compelled to do so, took an oath to engage in a seditious enterprise.

All accused persons pleaded not guilty to the charges and the matter was set for pre-trial conference for 24 May 2004. On that day, state counsel declared his
35 intention to file a new information. The new information reads as follows:

FIRST COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT A CAPITAL OFFENCE: Contrary to Section 5(b) of the Public Order Act, Cap 20 read
40 with Section 50 of the Penal Code, Cap 17 (as it was at 20 May 2000).

Particulars of Offence

JOPE NAUCABALAVU SENILOLI on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said JOPE NAUCABALAVU SENILOLI to commit an offence punishable by death, namely treason.

45 *ALTERNATIVELY*

SECOND COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT AN OFFENCE NOT PUNISHABLE BY DEATH: Contrary to Section 6(b) of the Public
50 Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17.

Particulars of Offence

JOPE NAUCABALAVU SENILOLI on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said JOPE NAUCABALAVU SENILOLI to commit an offence not punishable by death, namely treason.

THIRD COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT A CAPITAL OFFENCE: Contrary to Section 5(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17 (as it was at 20 May 2000).

Particulars of Offence

RAKUITA VAKALALABURE on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said RAKUITA VAKALALABURE to commit an offence punishable by death, namely treason.

ALTERNATIVELY

FOURTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT AN OFFENCE NOT PUNISHABLE BY DEATH: Contrary to Section 6(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17.

Particulars of Offence

RAKUITA VAKALALABURE on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said RAKUITA VAKALALABURE to commit an offence not punishable by death, namely treason.

FIFTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT A CAPITAL OFFENCE: Contrary to Section 5(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17 (as it was at 20 May 2000).

Particulars of Offence

VILIAME VOLAVOLA on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said VILIAME VOLAVOLA to commit an offence punishable by death, namely treason.

ALTERNATIVELY

SIXTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT AN OFFENCE NOT PUNISHABLE BY DEATH: Contrary to Section 6(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17.

Particulars of Offence

VILIAME VOLAVOLA on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said VILIAME VOLAVOLA to commit an offence not punishable by death, namely treason.

SEVENTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT A CAPITAL OFFENCE: Contrary to Section 5(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17 (as it was at 20 May 2000).

Particulars of Offence

ISIRELI LEWENIQILA on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said ISIRELI LEWENIQILA to commit an offence punishable by death, namely treason.

ALTERNATIVELY

EIGHTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT AN OFFENCE NOT PUNISHABLE BY DEATH: Contrary to Section 6(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17.

Particulars of Offence

ISIRELI LEWENIQILA on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said ISIRELI LEWENIQILA to commit an offence not punishable by death, namely treason.

NINTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT A CAPITAL OFFENCE: Contrary to Section 5(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17 (as it was at 20 May 2000).

Particulars of Offence

PECELI RINAKAMA on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said PECELI RINAKAMA to commit an offence punishable by death, namely treason.

ALTERNATIVELY

TENTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT AN OFFENCE NOT PUNISHABLE BY DEATH: Contrary to Section 6(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17.

Particulars of Offence

PECELI RINAKAMA on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said PECELI RINAKAMA to commit an offence not punishable by death, namely treason.

ELEVENTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT A CAPITAL OFFENCE: Contrary to Section 5(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17 (as it was at 20 May 2000).

Particulars of Offence

VILIAME SAVU on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said VILIAME SAVU to commit an offence punishable by death, namely treason.

ALTERNATIVELY

TWELFTH COUNT

Statement of Offence

TAKING AN ENGAGEMENT IN THE NATURE OF AN OATH TO COMMIT AN OFFENCE NOT PUNISHABLE BY DEATH: Contrary to Section 6(b) of the Public Order Act, Cap 20 read with Section 50 of the Penal Code, Cap 17.

Particulars of Offence

VILIAME SAVU, on the 20th day of May 2000 at Veiuto, Suva in the Central Division, not being a person compelled to do so, took an engagement in the nature of an oath purporting to bind the said VILIAME SAVU to commit an offence not punishable by death, namely treason.

It was not suggested by any of defence counsel that the State did not have the power to file a new information and leave was granted to file it. However all defence counsel submitted that the accused needed more time to prepare for trial on the basis of the new information, and sought an adjournment.

Counsel for the fourth accused declared his intention of making several other preliminary applications, and he was ordered to make those applications by motion, on 25 May 2004. He did so, and his applications may be summarised thus:

(1) the hearing of the trial should be vacated;
(2) the fourth accused should be separately tried;
(3) the trial should be stayed because of inordinate and unexplained delay in the laying of charges;
(4) the prosecution should provide better particulars of the alleged engagement oath and treason;
(5) the information should be quashed on the ground of abuse of process;
(6) the offences are time-barred because of the time limitation on the offence of treason;
(7) the information is defective because the death penalty is no longer available in respect of treason offences.

The motion is supported by the affidavit of Isireli Leweniqila. The prosecution opposes all applications, and filed the affidavit of Josaia Naigulevu, to address, in particular the applications in respect of delay and abuse of the process. I deal with all applications in one ruling. I note also that at the time of the writing of this ruling, the accused persons Ratu Rakuita Vakalalabure and Mr Peceli Rinakama are unrepresented. They were originally represented by Mr Kitione Vuataki. However, Mr Vuataki's name features in the caution interviews of some of the accused persons, and counsel for the fourth accused has declared his intention of calling Mr Vuataki as his witness. It is unfortunate that this fact, no doubt known to defence counsel as soon as disclosure was effected, was not disclosed to the court until I asked about it. It is also unfortunate that Mr Vuataki, having agreed to the pre-trial conference date, absented himself from the conference. He has now been informed that he cannot appear as counsel in this case. I have assumed for the purposes of these applications that all accused persons support them and endorse the submissions made by Mr Sharma for the fourth accused.

Adjournment

It is evident, on a reading of both informations, that the new offences alleged are laid on the basis of the same evidence in respect of the same allegations and in respect of the same acts. Although Mr Sharma submitted that the preparation of his defence has now gone to waste because of the amendment of the charges, in the course of the same submissions, he also said that he continues to dispute the legality of the oaths taken and the capacity of the persons officiating to take the oaths. Indeed, his position remains unaltered despite the new information — although he does not dispute the unlawful takeover of parliament in May 2000,

he disputes the presence of his client at the "oaths" ceremony, disputes the legality of the oath or engagement, and disputes that there was a link between the ceremony and treason.

With respect therefore, I am unable to discover any substantial difference in his approach in respect of either information, and therefore to discover any prejudice.

I have read the statements attached to the notice of additional evidence served on the defence on 25 May 2004. I am unable to detect any significant difference in the prosecution case as a result of the disclosure. Indeed, Waisea Tabakau's revelation about the seizure of the written "oaths" is also on the original bundle of disclosed statements in his statement dated 1 February 2001.

I informed all counsel that if any one of them was taken by surprise by any additional material, I would consider ordering the prosecution to refrain from leading the new evidence until counsel had a chance to properly study the material. As it happens, the SVT minutes of meetings, which were only disclosed on 25 May, will now not be led by the prosecution at all.

The trial in this case will relate to events which are now 4 years old. In the light of the application of the accused that they are prejudiced by the delay in this case, I consider that it is in their interests that we should proceed as quickly as possible to trial.

The application for adjournment is dismissed.

Separate trial

There can be no doubt that where offences are founded on the same or similar facts, they may be joined in one information: s 121(c) of the Criminal Procedure Code. Nor can there be any doubt that where defendants are alleged to have committed different offences on the basis of the same transactions or facts, they may be jointly charged on one information. Thus, a thief and a receiver may be charged together and be tried together (on separate counts) and secondary and principal offenders may be tried in one trial. In this case, the facts on which the charges are based are the same, there being no evidence, which is inadmissible against other accused. Caution interviews are of course only admissible against the maker of the interviews, and this rule of evidence is always the subject of a direction to the assessors. Although Mr Sharma submitted that much of the evidence on the statements is irrelevant in respect of the fourth accused, since he disputes the context in which the alleged oaths or engagements were taken, I accept that the bulk of the evidence also becomes relevant in respect of the fourth accused. Of course, the relevance, and admissibility of individual pieces of evidence will be dealt with in the course of trial.

The only basis for the application for separate trial is therefore that the fourth accused wishes to call the first and second accused as witnesses in his defence.

As a matter of law, before trial or at any stage of the trial, an order for separate trial can be made where the court is of the view that an accused person may be prejudiced or embarrassed in his defence by being jointly tried.

In this case the evidence which the fourth accused wishes the second accused to give on his behalf, is an explanation of the circumstances in which the written version of the oaths were found in his possession, at the solicitor's office at which Ratu Vakalalabure worked. Mr Sharma says that he will allege that search and seizure were unlawful because the documents were covered by solicitor-client privilege, and that the use of the documents will constitute a breach of that privilege.

The fourth accused also wishes to call the first accused to examine him as to his intentions when he allegedly officiated at the "oath-taking" ceremony.

It is a matter of some surprise to me, that this application is made at the eve of the trial. Although Waisea Tabakau's statement was disclosed only on 25 May, as I have already said, the circumstances of the seizure of the written oaths were disclosed to the defence months ago. I also note that the evidence of the form of the alleged oaths will be led (if permitted) from three sources, the oral evidence of eyewitnesses, video footage from the news media, and the written forms of the oath which is the subject of the application for separate trials. I note therefore that the substance of the document objected to, is not the source of any claim of legal professional privilege in so far as it appears to come from other sources. I note also that the fourth accused was interviewed by the police and that he is recorded to have agreed to the contents of the written oath shown to him. He further said that he had not taken nor received any legal advice about the alleged oath. His counsel says that this interview record is not disputed.

The general rule is that the discretion to order separate trials is a wide one, and it must be exercised judicially: *R v Gibbons* (1918) 13 Cr App R 134. Some of the relevant factors in the exercise of the discretion were considered by Lord Pearson in *Ludlow v Metropolitan Police Commissioner* [1971] AC 29; [1970] 1 All ER 567 who said in relation to the English Indictments Act 1915:

> The judge has no duty to direct separate trials under section 5(3) unless in his opinion there is some special feature of the case which would make a joint trial of the several counts prejudicial or embarrassing to the accused and separate trials are required in the interests of justice. In some cases the offences charged may be too numerous and complicated (*R v King* [1897] 1 QB 214; *R v Bailey* (1924) 18 Cr App Rep 42) or too difficult to disentangle (*R v Norman* [1915] 1 KB 341) so that a joint trial of all the counts is likely to cause confusion and the defence may be embarrassed or prejudiced. In other cases objection may be taken to the inclusion of a count on the ground that it is of a scandalous nature and likely to arouse in the minds of the jury hostile feelings against the accused.

In *R v Moghal* (1977) 65 Cr App Rep 56, the English Court of Appeal said that it is only in exceptional cases that two or more defendants who are jointly charged on one information should be separately tried. In *R v Lake* (1976) 64 Cr App Rep 172, the Court of Appeal said that there are powerful public reasons for this principle. First, it is desirable that the same treatment should be returned against all those who committed the offence, so that inconsistencies in such treatment can thereby be avoided and second because of the saving of public time and public expenses.

In *R v Pieterson* [1995] 2 Cr App Rep 11, halfway through a joint trial, one of the accused asked for separate trial on the ground that he wished to call his co-defendant as his witness. The co-defendant had not given evidence on his own behalf. The trial judge refused to sever the trial and an appeal against his decision was dismissed. Similarly in *R v Eriemo* [1995] 2 Cr App Rep 206 the court said (obiter) that a defence of duress by a co-accused was not, on its own, a sufficient justification for separate trial and that the interests of justice may dictate that defendants be tried together so the whole truth may be put before the jury.

In *R v Hoggins* 51 Cr App Rep 444, two defendants, jointly charged, blamed each other for the alleged murder. They appealed against their convictions on the ground that the trial judge should have ordered separate trials. The appeal was dismissed on the ground that the nature of the defence was only one of the factors which ought to be taken into account and that the interests of the public in the

proper administration of justice must also be considered. Thus the interests of witnesses who would be forced to give evidence twice should also be considered.

In *Re O'Boyle* (1990) 92 Cr App Rep 202, separate trial should have been ordered, according to the English Court of Appeal because a co-defendant wished to cross-examine the appellant on the contents of his interview, which interview had been ruled inadmissible. A separate trial may therefore be appropriate where the nature of the defence will give rise to unusual prejudice especially in the cross-examination of defendants by the prosecution.

In this case, the fourth accused does not seek to blame the second accused in his own defence. Indeed his wish is to call the second accused on his own behalf to raise the issue of legal professional privilege in respect of a document seized from the second accused. In respect of the first accused, he wishes to call him to give evidence of his intention when he allegedly officiated at the ceremony. In all the circumstances, this is not a sufficient reason to sever the trial. First, this will not be a short trial and the same witnesses would be required to give evidence at least twice. If all the accused were to make similar applications, they would each be tried for 1 month each. The cost to the administration of justice would be immense.

Second, if the fourth accused's trial precedes the first and second accused's, the first and second accused could not be compelled to give any evidence which incriminated them, especially with their own trials pending. Third, I am not persuaded that the intentions of the persons officiating at the alleged ceremony, or indeed were present during the ceremony has any relevance to the elements of the offences charged.

Finally, the alleged written oaths were shown to the fourth accused during his police interview and he did not dispute the contents of it. Nor did he raise privilege. On the contrary he said he had not consulted any lawyer before taking the oath. Legal professional privilege is a manifestation of the right to legal confidentiality, which attaches to confidential written or oral communication made between a legal advisor and his/her client in connection with the giving of legal advice and in connection with or contemplation of, legal proceedings. The privilege depends on the existence of a lawyer/client relation when the lawyer acquired the information.

The privilege does not extend to communications which are made for the purpose of obtaining advice on the commission of a crime (*R v Cox & Railton* (1884) 14 QBD 153; *Bullivant v Attorney-General (Vic)* [1901] AC 196), the solicitor's knowledge of the unlawful purpose is irrelevant, and documents obtained in contravention of domestic or foreign law cannot be privileged (*Dubai Alumunium Co Ltd v Al Alawi* [1999] 1 WLR 1964; [1999] 1 All ER 703). Thus a document is not privileged simply because a lawyer holds it. A document is only privileged if it was made for the purpose of litigation: *Ventouris v Mountain* [1991] 1 WLR 607; [1991] 3 All ER 472. Similarly copies of documents are only privileged if the copies were made for the purpose of litigation and the original is not in the control of the party claiming privilege. If the original is not privileged, the copy is not privileged. Lastly, privilege can be waived by the client at any time as long as such waiver is informed.

These are relevant matters to be considered in exercising a discretion to exclude material claimed to be privileged. In the circumstances, I see no particularly compelling reason why the second accused needs to give sworn testimony. Indeed, there appears to be a great deal of oral evidence on the disclosed material, explaining the circumstances of the drafting of the document

in question. Such evidence does not appear to be covered by privilege and I am not persuaded that the second accused needs to give evidence on behalf of the fourth accused as an integral part of his defence, to explain the circumstances of the drawing up of the disputed document.

5 For these reasons, I find that it is not in the interests of justice to order separate trial for the fourth accused.

Delay

It is not in dispute that the High Court has inherent powers to stay criminal 10 proceedings on the ground that there has been an abuse of the process *either* because the prosecution has manipulated or misused the process of the court so as to deprive the accused of a protection under the law or to take unfair advantage of a technicality *or* because the accused is prejudiced in the conduct of his case by delay: *Attorney-General's Reference (No 1 of 1990)* [1992] QB 630; 15 [1992] 3 All ER 169 (*Attorney-General's Reference (No 1 of 1990)*).

That inherent power must be exercised in Fiji, in the context of s 29(3) of the Constitution which states that every person charged with an offence has the right to have the case determined within a reasonable time.

In this case the alleged offences were committed in May 2000. Charges were 20 not laid until May 2003. The proceedings were transferred to the High Court in February 2004 and a trial date set for 15 June 2004. It is not alleged by the defence that this is a case of systemic delay after charge. The delay is, says the defence, attributable solely to the prosecution, in that the laying of charges was not effected until 3 years after the event.

25 The Court of Appeal in *Apaitia Seru v State* [2003] FJCA 26 (*Seru*), quashed convictions in an appeal where delays in the court system led to trial 5 years after charges were laid. In that case, the court referred to a number of cases in New Zealand, where charges were brought years after the event, particularly in sexual cases, and applications for stay were dismissed. Thus in *R v O* 30 [1999] 1 NZLR 347, 14 years had lapsed between the date of the last of the offending and the date of the charge, and an application for stay was dismissed. The Court of Appeal in *Seru* distinguished between pre-charge delay which generally did not lead to a stay except in exceptional circumstances, and where there was evidence of prejudice, and systemic post-charge delay.

35 This approach is consistent with the common law position on stay applications on the ground of delay. Thus in *Darmalingam v State* (2000) 2 Cr App Rep 445, in relation to a provision of the Constitution of Mauritius that every person charged with a criminal offence has the right to a "fair and public hearing within a reasonable time by an independent and impartial tribunal", it was held that the 40 "reasonable time" guarantee applied where as a result of inordinate delay the defendant was prejudiced in the deployment of his defence and that any delay between arrest and final disposal of the appeal was relevant.

This is not to say that pre-arrest delay is irrelevant. However, where there is substantial pre-arrest delay, a stay should only be granted where it is impossible 45 for the defendant to be given a fair trial: *Attorney-General's Reference (No 2 of 2001)* (2002) 1 Cr App Rep 24 (*Attorney-General's Reference (No 2 of 2001)*). The defendant must show the court that he/she is prejudiced by the delay to the extent that a fair trial is no longer possible.

In *Flowers v R* [2000] 1 WLR 2396 (*Flowers*), a decision on a provision of the 50 Jamaican Constitution, the privy council held that the right to trial within a reasonable time is not an absolute right, and must be weighed against the public

interest in the attainment of justice. The privy council took a different view in *Montgomery v HM Advocate* [2003] 1 AC 641, in relation to Art 6 of the European Convention on Human Rights, saying that the right to trial within a reasonable time was an unqualified right. However, the Court of Appeal in *Attorney-General's Reference (No 2 of 2001)*, obviously preferred the view expressed in *Flowers* saying that a stay should only be granted where the accused could not be given a fair trial.

In considering whether or not the delay is unreasonable, and whether it is in the public interest to grant a stay, relevant factors are the length of the delay, the reasons for the delay and the prejudice to the accused. In relation to delay, there is some delay which will lead to a presumption of prejudice: as there was in *Seru*. In relation to valid reasons for delay, missing witnesses, a heavy court back log or lack of resources are relevant. Also relevant, in relation to prejudice, is the length of any pre-trial custody, any anxiety, adverse publicity suffered by the accused and the ability of the accused to prepare his/her defence.

At common law, stays are granted only in the most exceptional circumstances (*Attorney-General's Reference (No 1 of 1990)* and even a 20-year delay in bringing a prosecution was held not to be an abuse of the process in *R v Central Criminal Court; Ex parte Randle* [1991] 1 WLR 1087; [1992] 1 All ER 370; (1990) 92 Cr App Rep 323. In recent months, stays have been granted in the Lautoka High Court for post-arrest delay. However no stay, to my knowledge, has been granted in Fiji in a case where there has been delay in the investigation process.

In *R v Dutton* [1994] Crim LR 910, there were substantial pre-arrest delays because of the death of potential witnesses, changes in crime scenes, loss of notes and the absence of medical evidence. The English Court of Appeal held that in such cases there is a burden on the defence to establish serious prejudice, and that a stay should be exceptional even where the delay was unjustified. Archbold (2003, at [4.71]) points out that a rare example of a successful application for stay on the ground of pre-arrest delay was the case of *R v Jenkins* [1998] Crim LR 411 which involved a 28-year delay, inconsistencies in the evidence of two sisters alleging sexual offences dating back to a time when they were 5 or 6 years old, and the lack of any adequate explanation for the delay.

I do not consider that this case falls into the "exceptional" category. The delay of 3 years before charge, at a time when Fiji was experiencing a most turbulent time politically and legally, is not excessive. I have read the affidavit of Josaia Naigulevu, detailing the difficulties experienced by the police and the DPP's office in that period of time, and I consider that the affidavit explains much of the delay. Although I see no reason why charges could not have been laid notwithstanding any ruling on the validity of the immunity decree (because the matter would have been ruled upon by whichever judge was hearing the case), I accept that the laying of charges in a period of intense political uncertainty brings with it inevitable difficulties and delay. Lastly I note that any office of the DPP, depends on effective staffing and resources to prosecute. I accept on the basis of the affidavit filed that the delay in laying charges has been at least partly a result of inadequate resources and insufficient and inexperienced staff, at a time when there were considerable demands on both resources and staff.

The defence has not shown any prejudice in the preparation of the defence for trial. I accept the affidavit of Isireli Leweniqila that he has been affected in his life and his career as a politician by the late laying of the charges. However he has

not pointed to any specific prejudice in his defence, on the basis of which I might be able to conclude that it would be impossible to conduct a fair trial in his case.

For these reasons this application for stay on the basis of delay is dismissed.

Better disclosure

The application "for further and better particulars", an application frequently made in civil proceedings, is misconceived in a criminal proceeding. The only question is whether the charges and the disclosed statements give to the defence sufficient information with sufficient particularity to meet their defence.

In the course of submissions at the hearing of these applications, I was left in no doubt as to the nature and particulars of the charge, and I was left with the impression that the defence was similarly aware of the nature of the prosecution case. It is unfortunate that the prosecution decided to amend the information, and file additional evidence 1 month before the date set for trial. However, as I have said, the amendments do not fundamentally change the nature of the case, nor do they allege some other act which was not the subject of the original charges.

This application is also dismissed.

Abuse of the process

The crux of this application is that the prosecution should be stayed because they have chosen to proceed with a less serious charge because the time limitation on the more serious charge of treason has now expired.

The State's position is that it is by no means agreed that the charge of treason could have been laid on the evidence, and that even if that were the case, it is not an abuse of the process because the charges now laid are not necessarily lesser offences and in any event, in law proceeding with less serious offences does not, on its own, constitute an abuse of the process.

As I have already set out in this judgment, an abuse of the process refers, inter alia, to the prosecution misusing or manipulating the processes of the court with the result that the defendant is deprived of a legitimate defence. It can also refer to the use of criminal proceedings for an improper purpose (*Williams v Spautz* (1992) 174 CLR 509; 107 ALR 635) but that type of alleged abuse is not alleged here.

A consideration of whether criminal proceedings should be permanently stayed on the ground of abuse of process requires first a decision as to whether the prosecution's conduct was in fact vexatious, oppressive and unfair, and second a decision as to whether such conduct will bring the administration of justice into disrepute: *Moevao v Department of Labour* [1980] 1 NZLR 464.

State counsel referred me to the decision of the High Court of Australia in *Rogers v R* (1994) 181 CLR 251; 123 ALR 417, a case in which the appellant was tried on four counts of armed robbery. Three confessional statements were ruled inadmissible after a voir dire, and the appellant was acquitted on two out of the four counts. Subsequently the appellant was charged on another indictment, and the Crown sought to tender the confessional statements ruled inadmissible at the earlier trial. The appellant sought a permanent stay of proceedings on the ground that the new trial would involve a re-canvassing of the voluntariness of the confessions. The High Court found the prosecution to be an abuse of the process and stayed the trial.

In *Lewis v R* [1998] WASCA 166 (*Lewis*), the Supreme Court of Western Australia considered whether a charge of conspiracy to corruptly give a secret commission should be stayed when a charge for the substantive offence of giving

a secret commission, was subject to a time limitation and the need to obtain the consent of the Attorney-General. The Crown argued that the conspiracy charge was the most logical on the facts of the case, and that they preferred it out of choice and not by default.

5 The court held that the laying of charges is a matter for prosecutorial discretion, and that the court should not interfere with that discretion unless there were strong grounds for finding an abuse of the process. The court found that no such grounds had been made out, and that in any effect the time limitation had not operated to prevent a charge on the substantive offence.

10 In *R v Saraswati* (1989) 18 NSWLR 143 (*Saraswati*), the accused was charged with committing an act of indecency with a girl under the age of 16 years. In the course of the prosecution the Crown led evidence of full sexual intercourse. Prosecution for unlawful carnal knowledge had a time limitation of 12 months and the charge was laid after the expiry of that time. The Court of Criminal 15 Appeal held that preferring a lesser charge on facts which disclosed a more serious offence was not an abuse of the process, Hunt J saying (at 145) that if the legislature had not seen fit to extend the time limit to less serious offence, then it was not the business of the courts to interfere. On appeal to the High Court, the 20 convictions were set aside on the ground that the evidence at the trial failed to prove the offence charged, and that an act of indecency did not include an act of carnal knowledge.

In *R v J* [2003] 1 WLR 1590; [2003] 1 All ER 518; [2002] EWCA Crim 2983 (*R v J*), the English Court of Appeal considered a case where the prosecution 25 charged the appellant with indecent assault when the facts of the case disclosed unlawful sexual intercourse with a girl under 16. The latter offence was time-barred. The question was whether the lesser charge was an abuse of the process. The court referred to *Saraswati* and to the decision of the New Zealand Court of Appeal in *R v Blight* (1903) 22 NZLR 837 (*Blight*). In the New Zealand 30 case, the Court of Appeal held (by majority) that where the lesser offence charged (in that case an indecent assault) was either identical to the full offence of unlawful carnal knowledge (which was time-barred) or was a step taken in the course of committing the offence, then the time bar applied to the lesser offence. The English Court of Appeal declined to adopt the same reasoning. Potter LJ 35 said:

> Leaving aside the question of limitation, the bringing of a prosecution and the selection of an appropriate charge lies within the discretion and the responsibility of the Crown, and, in the event of a charge being bought under one or other of ss 6 and 14, it is prima facie the duty of the Court to decide the matter according to whether or not 40 the ingredients of the substantive offence have been proved.
>
> … The court nonetheless reserves to itself a residual and discretionary power to stay criminal proceedings as an abuse of the process, which power it will exercise in two broad categories: where it concludes that, by reason of a particular situation which has arisen, either the defendant cannot receive a fair trial or, regardless of that question, it 45 would be unfair for him to be tried at all.

The court held that while it accepted that the defendant was deprived of a protection under the law (the time limitation), it did not accept that this loss of protection arose from a misuse of process by the prosecution. Nor did the preferring of the lesser charge amount to an “affront to the public conscience” 50 (Steyn LJ in *R v Latif* [1996] 2 Crim App Rep 92 at 101), nor was it contrary to the public interest, nor did it undermine the criminal justice system.

In this case, it is not established that the evidence in the case will in fact prove the offence of treason. As I see it, an offence under s 5 or s 6 of the Public Order Act is not necessarily a lesser offence in relation to s 50 of the Penal Code. For the purposes of this ruling I adopt the definition of treason set out by Gates J in *State v Savu* [2002] FJHC 73 and by Wilson J in *State v Silatolu* (unreported, HAM0002/2002) (*Silatolu*). In particular, I adopt the following passage from the decision in *Silatolu* (at 12):

> Applying this Court's conclusion as to what is treason by the law of England to the statutory provision which is treason in Fiji — an offence "against the State's authority" — this Court concludes that any person (in Fiji) who is proven to have intended to "levy war" against the State of the Republic of Fiji or its government and who is proven to have done something, by any overt act or acts, such as conspiring to take over (by force) the Parliament and the government, the taking and detaining as hostages of senior parliamentarians, involvement in an armed insurrection, and the like, being acts which, if done in England, would be guilty by the offence termed treason in Fiji.

The affidavit of Josaia Naigulevu does not explicitly concede the evidential possibility of laying the more serious charge. Thus the dicta in *Blight*, *Saraswati* and *R v J* are not strictly applicable. I cannot discount the possibility however that the evidence will disclose the more serious offence. If that situation arises, then in accordance with the practice of the Fiji courts, and with s 3 of the Penal Code, I adopt the reasoning of the English Court of Appeal in *R v J*, and consider that it is not an abuse of the process per se, to lay a less serious charge when the time limitation on the more serious charge has expired. Further, I do not consider that the defence has shown, on a balance of probabilities (Potter LJ in *R v J*) that it would be impossible for the accused to be given a fair trial because a lesser charge has been preferred.

This application, is also dismissed.

Time bar

Section 50 of the Penal Code provides:

> Any person who compasses, imagines, invents, devises or intends any act, matter or theory, the compassing, imagining, inventing, devising or intending whereof is treason by the law of England for the time being in force, and expresses, utters or declares such compassing, imagining, inventing, devising or intending by publishing any printing or writing or by any overt acts or does any act which if done in England, would be deemed to be treason according to the law of England for the time being in force, is guilty of the offence termed treason and shall be sentenced to death.

Section 54 of the Penal Code provides:

> A person cannot be tried for treason, or for any of the felonies defined in sections 51, 52 or 53, unless the prosecution is commenced within two years after the offence is committed.

Section 5 of the Public Order Act provides:

> Any person who—
> (a) administers, or is present at or consents to the administration of, any oath, or engagement in the nature of an oath, purporting to bind that person who takes it to commit murder or any offence punishable by death; or
> (b) takes any such oath or engagement, not being compelled to do so,shall be guilty of an offence and shall be liable on conviction to imprisonment for life.

Section 6 of the Public Order Act provides:

Any person who—

(a) administers, or is present at, or consents to, the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the following ways:

(i) engage in any mutinous or seditious enterprise;

(ii) to commit any offence other than murder not punishable by death;

(iii) to disturb the public peace;

(iv) to be a member of any association, society or confederacy formed for the purpose of doing any act as aforesaid;

(v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for the purpose;

(vi) not to inform or give evidence against any associate or confederate or other person;

(vii) not to reveal or discover any unlawful association, society or confederacy or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(b) takes any such oath or engagement not being compelled to do so, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding seven years.

There is no time limit for the offences under the Public Order Act. There is a 2-year time limit for treason.

In his affidavit, the Director of Public Prosecutions said as follows:

> I cannot now say when the possibility of an alternate charge to treason arose. I believe that it was my Deputy Director who first proposed it as an alternative to treason. The charges under Ss 5 and 6 of the Public Order Act were well and truly available on the evidence. The S 5 charge had a penalty which was discretionary — but up to life imprisonment. This was less than the death penalty applicable in May, 2000 to treason but the same as the penalty for treason after the amendment to the Penal Code in February 2003. At the time this charge was laid against these accused, the penalty under S 6 was the same as that for treason.

Implicit in the affidavit is that the offences were seen, not as a lesser offence, but as an alternative charge with no time limit.

The question is whether, as counsel for the fourth accused submits, the time limitation also applies to offences under s 5 of the Public Order Act. My review of the decisions of the Supreme Court of Western Australia in *Lewis*, the NSW Court of Appeal in *Saraswati*, the English Court of Appeal in *R v J* and the New Zealand Court of Appeal in *Blight* are applicable to this issue. In particular, *Blight* was in fact about whether a time limitation provision in respect of the more serious offence of carnal knowledge applied to the lesser offence of indecent assault in respect of which there was no statutory time limit. The case was not specifically about abuse of process, but about whether the prosecution was time-barred.

This decision was followed in *R v Hibberd* [2001] 2 NZLR 211 (*Hibberd*), an appeal in relation to a prosecution involving 32 offences of sexual misconduct with boys. Most of the charges pre-dated the 1986 amendments to the Crimes Act 1961 effected by the Homosexual Law Reform Act 1986. There was a time bar on prosecutions for anal intercourse. The appellant argued that the time bar also applied to prosecutions for indecent assault which evidentially had included acts of anal intercourse. The Court of Appeal agreed, saying that where the indecent assault included touching connected with anal intercourse, the 12-month time

limit applied. Where however there was indecent assault, which was separate from the act of anal intercourse, the time bar did not apply. All depended on the facts of the case.

Of course, in *Blight* and *Hibberd*, the point was raised on appeal, when all the evidence had been led. In this case, I do not know whether the evidence led will disclose the offence of treason and whether therefore *Blight* and *Hibberd* will have any relevance to the case. The State certainly makes no concession that treason is even available on the facts. The charge merely alleges that the engagement was in the nature of an oath which purported to bind the accused to commit treason. Treason itself is not necessarily implied. Treason requires proof of an intent to levy war against the government. No such intent need be proved under the Public Order Act offences.

In the circumstances I make the following findings. First, that in the absence of a statutory time limit, no time bar exists in respect of the offences under the Public Order Act. Second, that whether treason was available on the facts of the case (but is time-barred) is impossible to ascertain without hearing the evidence. Third, that even if evidence of treason is led, in addition to the offences charged, the offences on the information are not time-barred. In respect of this last finding, I prefer the decision of the English Court of Appeal in *R v J*. I also consider that any evidence led in the course of any trial, tending to prove the commission of offences not included in the information, may be the subject of a ruling that such evidence has no probative value, and clear prejudicial effect. It will be for the prosecution to show relevance and probative value.

The offences are not time-barred.

The reference to the death penalty

Counsel for the fourth accused submits that the wording of the charge has the effect of retrospectively charging him with an offence which no longer exists, and that the information is therefore defective and should be quashed.

It is not disputed that the death penalty has now been abolished in Fiji for treason. The question is whether it is no longer possible to charge any person under s 5 of the Penal Code, simply because there is no longer any offence "punishable by death".

The prosecution submits that the reference to death is not a penalty provision "but rather a reference to the kind of oaths or engagements to commit illegal acts which come within the purview of the section". The State says that the prosecution can prosecute for offences which have now been abolished or narrowed as long as the offence existed at the time of commission.

When the offence was first created by statute, it could have applied to a number of offences, then punishable by death. Murder is specifically mentioned, but it could have applied for instance to genocide. It appears that the only sensible way to read the section now, after the abolition of the death penalty is to read it as "offences previously punishable by death". I do not consider that such a reading gives the charge retrospective effect because the act alleged to have been committed is the taking of the oath or engagement. The reference to the death penalty is only a description of the other offences to which the s 5 offence relates. Clearly, the offences under the Act still exist, only the description of the penalty of the related offence (that is, treason) has changed.

The general principle of law which prohibits retrospectivity in criminal law, has no application here, because on 19 May 2000, the offence existed, as indeed did the death penalty for treason.

Section 28(1)(j) of the Constitution provides that every person charged with an offence has the right "not to be found guilty in respect of an act or omission unless the act or omission constituted an offence at the time it occurred, and not to be sentenced to a more severe punishment than was applicable when the offence was committed".

This right derived from Art 15 of the International Covenant on Civil and Political Rights. Article 15.1 provides:

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

And Art 15.2 states:

> Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.

The general principles of law in relation to retrospectivity in relation to the Australian Constitution, were discussed by the Australian High Court in *Polyukhovich v Commonwealth* (1991) 172 CLR 501; 101 ALR 545, a case about the validity of the War Crimes Act as amended by the War Crimes Amendment Act 1988. The 1988 amendment provided that an Australian citizen or resident was retrospectively guilty of an indictable offence if he or she had committed a war crime in Europe during World War II. A majority of the High Court (Mason CJ, Dawson, Toohey and McHugh JJ) held that the legislation was valid, and that the Commonwealth of Australia could pass the legislation in accordance with its powers over external affairs under the Constitution. The dissenting judges found the Act to be invalid for different reasons, but Brennan J found that it was invalid because it breached "a principle which is of the highest importance in a free society, namely that criminal laws should not operate retrospectively".

Section 28(1)(j) of the Fiji Constitution guarantees the right to this principle. However, it does not apply in this case. There is no dispute that at the time of the alleged offending, the offence charged existed. It is not in dispute that at the time of the alleged offending, treason carried with it, the death penalty. Nor is it in dispute that the penalty under s 5 of the Penal Code remains unaltered by the abolition of the death penalty.

Consequently, there is no breach of s 28(1)(j) of the Constitution. However I consider that the words of the particulars of the charge might be more happily worded to read "an offence punishable by death at the time of the commission of the offence namely treason". It follows also, that as a result of this ruling, the prosecution must proceed on one count against each accused and forgo the alternatives. To that extent, the submissions of Mr Sharma, in his further submissions, succeed.

Conclusion

All applications made by motion are dismissed. However an amended information must be filed by midday on 3 June 2004 and served on all accused persons.

Applications dismissed.