

REGINA -v- ROSE KENEKENE

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Criminal Appeal No. 290 of 2003

Date of Hearing: 18th November 2004.

Date of Judgment: 24th November 2004.

R.B. Talasasa for the Crown.

K. Anderson for the Respondent.

JUDGMENT

Kabui, J: Before I delivered this judgment, I informed the Crown Prosecutor, Mr. Talasasa, that this Court had no jurisdiction to determine the appeal because no appeal was afoot in this case. I said the reason was that I discovered during the writing of my judgment that the appeal and sanction to appeal were both out of time in terms of section 285(1) of the Criminal Procedure Code Act (Cap. 7) "the CPC." Furthermore, I said that there was nothing on the record to show that any enlargement of time had been applied for and obtained before filing the appeal out of time. Mr. Talasasa conceded these two points. However, he argued that this Court should allow enlargement of time. I refused to do this for two reasons. First, there had already been a time lapse of nineteen months since the opportunity to seek an enlargement of time arose after the lapse of fourteen days to appeal under section 285(1) of the CPC. Secondly, an enlargement of time could not be applied for from the bar table without filing affidavits and seeking an adjournment to make that application. Mr. Talasasa did not seek an adjournment to apply for enlargement of time and to file affidavits. Since the discovery I made was in the course of writing my judgment after hearing this appeal, I need to deliver my judgment on that basis to bring the appeal to an end. I begin by saying that this appeal had been sanctioned by the former Director of Public Prosecutions under section 283(1) of the Criminal Procedure Code Act (Cap. 7) "the CPC." The Respondent had been charged with committing offences, contrary to sections 341(1) and 343(1) of the Penal Code Act (Cap. 26) "the Code" but was acquitted on 21st March 2004 by the learned Magistrate sitting in Honiara. There had been eleven counts of forging the signature of her husband a number of times on the ANZ withdrawal forms and eleven counts of uttering them with the result that she obtained money from account number 4090751 amounting to more than \$3,350.00. There were twenty two counts altogether. On arraignment, she

pleaded not guilty to all the charges laid against her and was later acquitted on all the charges at the end of her trial.

Grounds of appeal.

The grounds of appeal were filed on 8th April 2003. Basically, there are two grounds of appeal. First is that the learned Magistrate erred in law in that the acquittal was against the weight of the evidence. Secondly, that the learned Magistrate erred in fact in that the acquittal was contrary to the fact that the Respondent had admitted forging her husband's name.

Appeal must be within fourteen days from the date of the decision being appealed.

The Respondent was acquitted on 21st March 2003. The Director of Public Prosecutions gave his sanction to the appeal on 8th April 2003. The Magistrate Court stamp shows that the appeal was received on 9th April 2003. My calculation shows that the appeal was lodged on the eighteenth day from the date of the acquittal. The appeal seemed to have been out of time. There is no evidence to show that that time limit had been extended under the proviso to section 285(1) of the CPC either by the Magistrate or the High Court. An excluded day under section 55(2) of the Interpretation and General Provisions Act (Cap. 85) being a public holiday is excluded from the computation of time. The Schedule to the Public Holidays Act (Cap. 151) stipulates that Good Friday, the day after Good Friday and Easter Monday of every year are public holidays. In the year 2003, Good Friday fell on eighteenth day in April, 2003 in Solomon Islands according to the local calendar for 2003. I do take judicial notice of this fact. As the Court record does show however that no extension of time had been sought by the then Director of Public Prosecutions, this appeal can be simply dismissed on the basis of being out of time. (See *R. v. Faulkner* (No. 2) [1983] SILR 282, *DPP v. SIMEON* (No.1) [1985/86] SILR 118 and *Regina v. Ataban Tropa*, Criminal Appeal No. 9 of 1991) (unreported). In fact, the appeal was four days out of time by 9th April 2003 and no enlargement of time had been applied for and obtained. This is the end of the matter. The Court has no jurisdiction to consider anything as there is no appeal on foot. The appeal is dismissed.

F.O. Kabui
Puisne Judge