

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

MISC. 23169

BETWEEN: POLICE

Informant

A N D: TUAOPEPE FELIX WENDT

Defendant

Counsel: G J Judd QC (of the New Zealand bar) and
T K Enari for defendant
G Latu for informant

Hearing: 13 July 1998

Decision: 14 July 1998

DECISION OF SAPOLU, CJ

After giving due consideration to the submissions by counsel on both sides, the authorities cited by counsel for the defendant, and the circumstances of this case, I have come to the view that I will not order a permanent stay of the proceedings against the defendant or dismiss the charges against him.

However, in view of the exceptional circumstances of this case which have an international flavour, the provisions of Article 9 of the Constitution as to the right to a

fair trial, and the authorities cited by counsel for the defendant, I have decided to make the following orders :

(1) The informant is to provide to the defendant particulars of the overt acts to be relied upon by the informant at the trial as making the defendant guilty of the offences of conspiracy to defraud with which he is charged by 4.00pm on Thursday, 16 July 1998. These particulars are to include particulars as to time, place, and circumstance in respect of the aforesaid charges.

(2) The informant is to advise the defendant by 4.00pm on Thursday, 16 July 1998:

(a) Whether the passports were issued in Samoa,

(b) Whether the prosecution will attempt to prove that the passports were issued by "the people of Samoa",

(c) Whether the prosecution will attempt to prove that the passports were issued personally by the Head of State or by the Prime Minister as the case may be,

(d) Whether the prosecution will attempt to prove that any of the passports were ever used in Samoa and, if so, when and by whom.

(3) The informant is to provide to the defendant copies of statements of all witnesses proposed to be called at the trial by 4.00pm on Monday, 20 July 1998.

(4) The informant is to provide to the defendant copies of all documentary exhibits proposed to be produced at the trial no later than 4.00pm on Wednesday, 23 July 1998.

To be fair to counsel for the informant, I must say that his submissions correctly reflect what has been the practice in respect of pre-trial disclosure or non-disclosure of witnesses' statements by the prosecution in a criminal trial. However, having heard the submissions from counsel for the defendant, in particular his submissions on the right to a fair trial as provided in Article 9 of the Constitution, and given the exceptional circumstances of this case, I have decided to depart in this case from what has been the practice in respect of pre-trial disclosure and make the aforesaid orders.

T. M. Sapala
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CHIEF JUSTICE