

**IN THE SUPREME COURT OF SAMOA**

**HELD AT APIA**

**BETWEEN: POLICE**

**Informant**

**A N D: FAAMOANA FISO @  
LEVI FISO of Vaitele-  
uta & Vaitoomuli, Savaii**

**Defendant**

**Counsel: F Tufuga & M Tuatagaloa for Informant  
Defendant in person**

**Hearing Date: 20 August 1998**

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**ORAL DECISION OF JUSTICE YOUNG**

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Levi Fiso also known as Faamoana Fiso is charged with cultivation of cannabis and possession of cannabis.

The information were laid in March 1995. It is not possible for me today to detail the chronology of the events over the last three and a half years. But they appear as far as delay is concerned to involve at least the following:

Firstly, the defendant has been granted legal aid. Counsel first instructed through the legal aid system Mr Malifa has left for overseas. He appears to have

done so and left Mr Fiso to a degree in the lurch at least in the early days of the charge.

Secondly, further attempts seem to have been made to get an alternative legal aid counsel. Ultimately Mr Enari was appointed.

Thirdly, there was an occasion in 1997 where the prosecution sought to delay this trial because of the unavailability of an Analyst. The Analyst had been required or had been requested by defence counsel no doubt to prove the substance was cannabis.

Most recently the case was called in early August at a mention hearing. While the crown and counsel for the defendant were present the defendant was not. That seems to be through no fault of his own. No-one told him of the hearing date. Legal aid counsel then sought leave to withdraw as counsel. That application was granted.

Mr Fiso appears today before me without counsel. It appears again without fault on his side. It would not therefore be proper for me to allow the prosecution to proceed today because Mr Fiso wishes to have legal representation and he has not, as I have said through no fault of his own.

The Constitution requires that all accused appearing before the Courts are not unreasonably delayed in the hearing of their cases.

On any test three and a half years to try a modest criminal charge is well beyond any delay that could be reasonable to try an accused. Further delay would be caused if I adjourn the case today for Mr Fiso to have proper legal representation.

Without consenting counsel for the crown does not argue to the contrary in terms of the constitutional issue today. I am therefore satisfied that there has been a breach of Mr Fiso's constitutional rights to a trial not unreasonably delayed. On that ground therefore those informations would be dismissed.



Justice Young