



HIGH COURT OF AUSTRALIA

7 December 2011

JULIAN RONALD MOTI v THE QUEEN

[2011] HCA 50

Today the High Court held that further prosecution of charges against Mr Julian Moti should be stayed as an abuse of process because Australian officials facilitated his deportation from Solomon Islands to Australia knowing that his deportation was, at that time, unlawful under Solomon Islands law.

Mr Moti was an Australian citizen at all material times. He was Attorney-General of Solomon Islands between September 2006 and December 2007 with a suspension between October 2006 and July 2007.

On 3 November 2008 Mr Moti was charged with seven counts of engaging in sexual intercourse with a person under the age of 16 years whilst outside Australia contrary to s 50BA of the *Crimes Act* 1914 (Cth). All counts related to one complainant and were alleged to have occurred in 1997. Four counts alleged conduct in the Republic of Vanuatu; the other three counts alleged conduct in New Caledonia.

The complainant and members of her family who might be called to give evidence as prosecution witnesses gave statements to the police. The Commonwealth Director of Public Prosecutions advised the police that there were reasonable prospects of conviction. Australian authorities took steps towards securing Mr Moti's return to Australia, in particular, by making two requests in 2006 to the Solomon Islands Government for Mr Moti's extradition which were refused.

Subsequently, between February 2008 and November 2009, the Australian Federal Police made payments of approximately \$67,500 to the complainant and \$81,600 to her family ("the payments"). The payments followed repeated statements by the complainant and her father to the effect that the complainant would not participate any further in the prosecution of Mr Moti unless she and her family were brought to Australia and given "financial protection". The payments were said to be made to provide for the "minimal daily needs" of the complainant and her family and, for part of the time, to provide accommodation in Vanuatu. The family were said to be unable to support themselves because the publicity given to the charges against Mr Moti adversely affected their ability to earn income.

On 20 December 2007 there was a change of government in Solomon Islands. On 21 December 2007 a warrant for Mr Moti's arrest was issued in Brisbane. On 22 December 2007 Mr Moti applied for an injunction restraining his removal from Solomon Islands. This was refused. The judge noted that there were proper legislative procedures for initiating deportation which governed Mr Moti's rights and which would give him the opportunity to respond. Specifically, the Solomon Islands *Deportation Act* provided that a person on whom a deportation order was served could apply to the High Court, within seven days of service of the order, for review of the order and that deportation was only lawful if the person had not applied for review within that time or if, on review, the order was not set aside.

On 22 December 2007 the Solomon Islands cabinet resolved to remove Mr Moti to Australia. On 24 December 2007 a deportation order in respect of Mr Moti was published in the *Solomon Islands Gazette*. A further application by Mr Moti for orders restraining his removal was dismissed on 24 December 2007, but another application on 25 December 2007 succeeded.

The Acting High Commissioner of Australia in Honiara was of the opinion that Mr Moti had seven days in which to appeal to the High Court before he could lawfully be deported. The Acting High Commissioner conveyed that opinion to her superiors in Canberra. Despite this, her superiors authorised Australian officials in Solomon Islands to supply travel documents relating to Mr Moti knowing that those documents would be used to deport Mr Moti before his deportation was lawful. Mr Moti was removed to Australia on a flight on 27 December 2007.

The primary judge in the Supreme Court of Queensland stayed further prosecution on the ground that the payments were an abuse of process but rejected Mr Moti's arguments based upon the circumstances of his deportation. The Court of Appeal set aside the stay ordered by the primary judge, holding that there was no abuse of process on either ground. Mr Moti appealed to the High Court by special leave.

The High Court held by majority that further prosecution of the charges would be an abuse of process because of the role that Australian officials played in Mr Moti being deported to Australia. The Court rejected the proposition that the payments were an abuse of process.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*