

Julian Moti prepares High Court challenge to Australian government's politically motivated charges

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Former Solomon Islands' Attorney General Julian Moti is preparing a High Court challenge to the Australian government's politically motivated attempt to prosecute him on statutory rape charges.

Moti's counsel, led by Ian Barker QC, has applied for special leave to appeal a ruling issued last July by the Queensland Supreme Court of Appeal that reinstated the charges. The Appeal court's decision overturned the permanent stay of proceedings issued by the Queensland Supreme Court in December 2009, barring any prosecution on the grounds that extraordinary payments made by the Australian Federal Police (AFP) to the family of the alleged victim had brought "the administration of justice into disrepute" and were "an affront to the public conscience".

The application for the High Court appeal is likely to be heard in the next few weeks. If successful, a date will be nominated for Moti to present his case before Australia's highest court.

Initial High Court application documents tendered by Moti's counsel provide an overview of some of the critical political and legal issues raised by the Australian government's sustained vendetta against the international and constitutional lawyer.

Allegations that Moti had sexually abused a 13-year-old girl were first levelled against him in Vanuatu between 1997 and 1999. The charges, however, were thrown out of court, with the magistrate describing the attempted prosecution as "unjust and oppressive" due to the absence of evidence and glaring inconsistencies and contradictions in the alleged victim's statements. Local prosecutors did not appeal the decision and the issue was closed—until late 2004, Patrick Cole, then Australian High Commissioner to the Solomon Islands, dredged up the allegations as a means of preventing Moti from being appointed to the position of Solomons' attorney general. The subsequent AFP investigation served as the means for removing Moti from the Solomon Islands and the destruction of his legal career throughout the South Pacific. Canberra's unrelenting pursuit of Moti formed part of its provocative regime change campaign in 2006-07 against the Solomons' government of Manasseh Sogavare, waged to defend Australia's neo-colonial Regional Assistance Mission to the Solomon Islands (RAMSI).

Moti's counsel states, in its summary of argument to the High Court: "This case raises novel questions of fundamental importance for the administration of criminal justice in this country... The power of the courts to relieve against the misuse of executive power and safeguard individuals from oppression and vexation is essential to the maintenance of the integrity of the courts."

The document reviews the specific grounds warranting a permanent stay of proceedings, beginning with the issue of the AFP's "witness" payments. In February 2008, Australian police began paying monthly sums of \$A1,290 to the alleged victim's brother, \$480 to her father, and \$2,475 to her mother. These payments were made while the family continued to live as normal in Vanuatu, where the minimum monthly wage was just \$240. As time went on, even more money was handed over to prevent the family from carrying out its repeated threats to withdraw cooperation with the AFP.

Exactly how much was paid remains unclear. In issuing her initial Queensland Supreme Court ruling, which quashed the attempted prosecution, Justice Debra Mullins said that the alleged victim's parents and brother received a total of \$81,639 between February 2008 and November 2009, while other documents indicated that they received \$50,940 in 2008 and \$66,468 in 2009. Moreover, according to an article in the *Age* published last November, "payments to the complainant and her family have reached at least \$300,000, double what was revealed in court last year".

Moti's counsel notes that "without disclosure of the documentation evidencing the payments, the applicant is not in a position to resolve these discrepancies". The document goes on to point out that the payments, "made in the context of a politically motivated prosecution", went far beyond the supposedly "subsistence" level of assistance.

Moti's lawyers explain: "The political motivation behind the investigation of the applicant was regarded by the Court of Appeal as irrelevant to whether the witness payments brought the administration of justice into disrepute ... [but] the right-thinking person would correctly perceive [a] link between the political genesis of the prosecution, the means by which the applicant was brought to the jurisdiction, and the extraordinary payments being made to keep the prosecution on foot."

Counsel also rebuts the grounds given by the Queensland Supreme Court of Appeal for the reinstatement of the charges against Moti—namely that the AFP payments, "while made beyond existing guidelines, were not illegal", and that the AFP could not be said to have procured evidence, because the "witnesses" only began receiving money after they made their statements to the investigating police.

Responding to the latter argument, Moti's counsel notes that the initial ruling explicitly recognised that the payments aimed to ensure the alleged victim's family "remain willing to give evidence against the applicant".

Moreover, it continues: “The impropriety of the means being employed to sustain the prosecution raised the question of the integrity of the administration of justice. It cannot be said that the payments which induce initial cooperation are improper, while payments which secure ongoing cooperation, whatever the circumstances and whatever the price, are not.” On the issue of the legality of the AFP’s actions, counsel maintains that the real issue, correctly identified in the initial ruling quashing the prosecution, was the “underlying propriety” of the payments, and that a breach of common law or statutory provisions could not be regarded as a necessary precondition for an abuse of process.

Moti is also seeking to have the High Court re-examine the several specific grounds of his permanent stay application that were rejected by both the Queensland Supreme Court and Supreme Court of Appeal—above all, relating to the legality of his removal from the Solomon Islands in December 2007 and subsequent arrest in Australia.

On December 13, 2007, the Sogavare government was finally ousted through a parliamentary no-confidence motion after a protracted destabilisation campaign waged by the Australian government and RAMSI personnel. Almost immediately, the new government stripped Moti of his attorney general’s post, and on December 27 he was forcibly removed from his home, bundled onto an aeroplane, and flown to Brisbane where he was immediately arrested at the airport by waiting AFP officers. These so-called “deportation” proceedings went ahead in violation of a local magistrate’s court ruling specifically prohibiting Moti’s deportation. Moreover, they breached the Solomons’ Deportation Act, which provides for a seven-day appeal period.

Moti’s counsel argues that Australian government personnel were closely involved in the “deportation” at every stage. It is an established common law precedent that courts refuse to try anyone brought to their jurisdiction in disregard of proper legal procedure, through a process involving the collusion or connivance of the executive authorities of the country in which the defendant is to be prosecuted. Moti has long argued that his removal from the Solomons was not a deportation but rather an “unlawful rendition” and “disguised extradition”.

Moti’s summary argument to the High Court states: “The Australian authorities knew in advance of the plan to deport the applicant in breach of his rights, and were aware that the purpose was to deny the applicant recourse to the courts.” Government personnel “assisted in the applicant’s unlawful rendition” by arranging travel documentation for Moti and the Solomons’ police officers who escorted him, arranging and paying for these officers’ accommodation in Australia, and in coordinating Moti’s arrest in Australia, with Australian operatives in Honiara providing constant updates on Moti’s flight details to their awaiting counterparts in Brisbane.

Moti’s counsel argues that both the Queensland Supreme Court and Supreme Court of Appeal appeared to insist on “active involvement *resulting in or causing* the deportation before an abuse of process could arise”. This test is “erroneous”, the High Court application maintains, because the established criterion of “connivance” means acquiescence, or the turning of a blind eye—“the Australian authorities certainly did this ... it is apparent that the formal requests for extradition that were sent were a thin veil for their underlying connivance”.

These “formal requests” were coordinated at the highest levels in Canberra. Fourteen days before Moti was extracted from the Solomons, then Prime Minister Kevin Rudd declared “we have activated our extradition arrangements with the government of the Solomon Islands”

and that “international extradition arrangements should proceed unimpeded and that will remain our position”.

In reality, AFP officers and diplomatic officials in Honiara were highly conscious of the fact that deportation provided the best means of getting Moti to Australia in the shortest possible time. In October 2006, when the pursuit first began, the director of the extradition unit of the Australian attorney general’s department wrote in an email: “we were hopeful that Moti’s alleged immigration offences in the Solomons would result in his deportation back to Australia—this would be preferred over lengthy extradition proceedings”.

By December 2007, discussion via diplomatic cables and AFP memos was more circumspect—apparently a result of repeated warnings by its legal advisers that the Australian government should not appear to be directly involved in a disguised extradition. AFP agent Peter Bond, for example, had intended to accompany Moti on the plane from Honiara to Brisbane, but was instructed not to do so since this would potentially compromise the “deportation”.

Bond nevertheless played an active role in the events surrounding Moti’s extraction from Honiara on December 27, 2007. He participated, for instance, in several meetings on the pending deportation involving Solomons’ government officials; at one of these, the Solomons’ permanent secretary for immigration instructed police to “ignore any court orders” Moti possessed. In the same meeting, a private lawyer, Gabriel Suri, expressed his opinion that the Deportation Act’s provision for a seven day appeal period would not be violated if Moti were deported before then, because Moti could issue an appeal from Australia. This was clearly absurd. Yet on the morning of December 27, Peter Bond unreservedly assured Solomons’ deputy police commissioner Peter Marshall that the government’s “legal advice” was that Moti’s deportation was lawful. The Bond-Marshall conversation, Moti’s counsel maintains, “was a particularly important piece of evidence in light of the Court of Appeal’s finding that the Australian government had ‘rigorously abstained from expressing any view on what the Solomon Islands government proposed’.”

Moti’s counsel also argues that Justice Debra Mullins erred in not issuing a finding of fact as to whether a Solomons’ immigration official was correct in his recollection that Peter Bond had told him, on the morning of December 27: “do it quickly [i.e., arrest Moti] because the plane would be waiting”. Bond told the court that he “did not recall” saying this, but repeatedly refused to deny the incident. “No finding to FA [federal agent] Bond’s credibility was made, despite this being put in issue,” Moti’s High Court application explains. “The words attributed to FA Bond conveyed approval of the imminent unlawful arrest, and would amount to connivance and encouragement”.



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