

GENERIC  
TRANSLATION

Judges of the High Court :

Judge Claudio de Jesus Ximenes.....Presiding  
Judge Jose Maria Calvaro Antunes.....  
Judge Jacinta c. Da Costa.....Minutes Reporter

Case No. 16/03

Pertaining to

Beny Ludji as appellant/appeal applicant

Versus

Prosecutor as respondent

The Council of Judges of the High Court did receive documents/papers of this appeal, also read the appeal memory conveyed by the Defense Counsel dated 18 April 2003 which in essence rejected the decision by the Investigative Judge dated 7 and 10 April for his client named Beny Ludji.

1. Applicant is the suspect/defendant Beny Ludji. The application to appeal was executed by the applicant to counter the decision by the Investigative Judge dated 7 April 2003 and 10 April 2003 in which the Investigative Judge issued the order to carry out arrest and detention of the suspect/defendant Beny Ludji as set out in the letter which can be viewed on page 7 with regards to this case and on 10 April the Investigative Judge confirmed the detention and reaffirmed the initial detention of the suspect/defendant. The applicant requested the High Court to : Cancel/nullify the decision of the Investigative Judge dated 7 April 2003 and the decision on 10 April 2003 and to order the immediate release of the the suspect as his detention was illegal . This was because it was heard by the Investigative Judge after exceeding the 72 hour statutory time frame as stipulated by the law. The respondent i.e the Prosecutor, in this instance, did not issue a written counter memory.

2. The High Court conceded to a hearing of this case as appellant submitted it in compliance with conditions as stipulated in Section 23 subsection (1) and (2) UNTAET Regulation 30/2000 as amended with UNTAET Regulation 25/2001.

3. The High Court conducted its hearing on 7 July 2003 and listened to both parties where the main items were the appellant reaffirming his appeal memory, and the respondent i. e the Prosecutor submitting his oral argumentation in court in which in principle confirming the decision of the Investigative Judge of the Dili District Court.

4. The Court does not concur with the principles for appeal in this case. We do concur that in its incipient stage the Court i.e the Investigative Judge did make his decision in accordance with the law and prevailing facts. Elaborated hereunder are the grounds for the appeal's rejection.

5. Prevailing/existing facts in this case correlated to the process of the arrest and detention of the suspect/defendant are described as follows:

- That on Monday 7 April 2003 the suspect/defendant Beny Ludji was already detained/in custody as per detention order issued by the Investigative Judge i.e Constancio Barros Basmery dated 7 April 2003 as recorded on page 7 of this case.
- On Thursday 10 April 2003 the appellant Beny Ludji was heard by the Investigative Judge i.e. Constancio Barros Basmery as recorded in pages 69 – 73 of this case.
- At the end of hearing concerned it was decided to reaffirm/confirm the detention of the suspect/defendant Beny Ludji which meant to extend Beny Ludji's initial detention period on the grounds Beny Ludji had committed a crime against humanity and strong initial evidence existed the suspect/defendant Beny Ludji committed this crime (page 73 of this case).

6. Argumentations/Reasons set forth by the appellant in this appeal is that Beny L Ludji had been in detention illegally for 72 hours, and therefore Beny Ludji had to be released from detention.

This Court has assessed all arguments submitted by the Prosecutor and the Defense Counsel pertaining to the circumstances with regards to the circumstances of the detention of the suspect/defendant Beny Ludji and after the facts which had been proven, the Court is of the opinion in this case it was not known, that from 4 April 2003 until 7 April 2003, whether or not the suspect /defendant had already been detained, and if he had already been in custody the Court had no knowledge as to what case it was. Consequently according to this Court, in this case, the suspect/defendant Beny Ludji was only detained on 7 April 2003, and only subsequently heard by the Investigative Judge on 10 April 2003 and therefore still within the stipulated statutory time frame of 72 hours as regulated in Section 20.1 Regulation 30/2000 which was amended with Regulation 25/2001. The hearing on 10 April 2003 had not exceeded the statutory 72 hours. Hence the decision by the Investigative Judge on 10 April 2003 reaffirming the detention and confirming the initial detention of the suspect/defendant Beny Ludji is legal/according to law.

7. Based on above mentioned arguments the High Court decided the incipient court decision is legal as the detention of the suspect/defendant in this case in on the grounds of a detention summons on 7 April 2003 and the suspect/defendant Beny Ludji had been

heard by the Investigative Judge on 10 April 2003; consequently decision concerned was based on the law in accordance with Section 20.1 Regulation 25/2001. Therefore the applicant's arguments in appeal are rejected.

8. Based on above mentioned arguments the High Court decides the Investigative Judge's decision dated 7 April and 10 April 2003 is legal as it was executed within 72 hours as stipulated by law, and hence the suspect/defendant's detention was not an illegal detention. As a consequence from all the above mentioned deliberations, this Court made the decision to reaffirm/confirm the incipient Court decision and reject all the arguments submitted by the appellant and declared the suspect/defendant not subject to paying costs as he is in detention and therefore has no sufficient means to pay.