

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CRIMINAL DIVISION)**

**CR 203/2004**

**POLICE**

**V**

**UPOKOTEA TIATOA**  
**Defendant**

Mr Elikana for Police  
Mr George for Defendant  
Date of decision: 9 July 2004

**DECISION OF GREIG, CJ**

The Accused is charged with murder and burglary. The events occurred allegedly on the 28<sup>th</sup> of March 1997. The Accused applies for bail which unusually has been held in open Court. I at once make an order that there will be no publication whatsoever of the reasons that I am now giving on this application.


Mr George has sought bail on a number of grounds including the convenience of counsel in preparing the case, the ability of the Accused to get back to work and to life with his partner and his other friends and the overall presumption of innocence. The considerations for dealing with bail applications are well known. I just note, as has been cited to me, the case of *Hubbard v Police* in which Chilwell J. stated a number of the grounds which are of relevance. Murder is the most serious offence in the criminal code. Once upon a time in my experience bail was never granted on a charge of murder but I accept that the general principle should apply taking into account however the seriousness of this offence. The length of remand in custody is also relevant; the trial is likely to

take place this year and it seems to me that there is no real ground for objection on that fact.

The Accused presents with a number of previous convictions and that I think is another matter that needs to be taken into account overall. It is unlikely in the extreme that he will commit another murder but it is clearly a possibility that he will commit some further offence of some kind. The victim which under the law includes the deceased's family and the views of the victim are to be taken into account. There is opposition in that quarter to bail.

Lastly there is the question of strength of the case for prosecution. I want to say as little as possible about that because the trial is still to take place. I did however have some knowledge about this in sentencing a person who was charged with the burglary involved. That information indicates to me that there is some strength in the prosecution case. It is not a case therefore where the person comes before the Court apparently totally innocent without any association or involvement in the matter.

Taking account of all the matters that have been put before me, bail is refused and I just repeat my Order suppressing the publication of any of the details of the reasons or the submissions that were made in this matter.

  
**CHIEF JUSTICE**