

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: 221 of 2014

BETWEEN: **EPELI RUIVADRA**
Applicant

AND: **STATE**
Respondent

Counsel: **Applicant in Person**
Mr. Aman Datt for Respondent

Date of Hearing: **21 November 2014**
Date of Ruling: **24 November 2014**

RULING

1. This is an application for stay of proceedings.
2. The applicant is charged before the Magistrate Court of Ba with another on one count of Aggravated Robbery in case No. 312/14. He is also charged before the Nadi Magistrate Court with one count of Theft and one count of Criminal Intimidation in case No.534/14.
3. The particulars of the offences are that the applicant with another stole a vehicle in Nadi on 14.6.2014 and went to Ba in the same vehicle and committed the Robbery in Ba.
4. This application was filed on 15th September 2014. The grounds for application are:

- (i) That it is evident that there will be actual and apparent prejudice in the applicant's defence case.
- (ii) That the alleged offence actually originated from Nadi (14th June 2014 at about 10.50 p.m.) where a vehicle registration FS 845 was alleged to have been stolen as per allegation and later the same was alleged to be used in another offence in Ba. (15th June 2014 at about 12.00 a.m. to 12.30 a.m.)
- (iii) That if this matter (criminal case No. 495/14) proceeds to trial before the originating offence the applicant will directly be prejudiced in his defence.
- (iv) That the applicant humbly requests this honourable court that this matter (criminal case No.495/14) be temporarily stayed awaiting the trial and the conclusion of the originating offence.

5. Both parties have filed written submissions. I have carefully considered those.

6. The principles for stay of prosecution are settled in Fiji. In **Mohammed Sharif Sahim v. State**[2007] FCA 17/07, the Court of Appeal when reviewing the law on criminal trial delay held that:

*"...it was well settled since **Apaitia Seru and Anthony Fredrick Stevens v. The State** **Crim. App. AAU 0041/42 of 1995 S** that where the delay was unreasonable, prejudice to the accused could be presumed. This court in that case adopted the approach of the majority of the Supreme Court of Canada in **R v. Morgan** [1992] 1SCR and New Zealand court of appeal in **Martin v. District Court at Tauranga** [1995] 2 NZLR 419 that stated:*

"The general approach to a determination as to whether the right has been denied is not the application of a mathematical or administrative formula bur rather by a judicial determination balancing the interests which the section is designed to protect against factors which either inevitably lead to delay or are otherwise the cause of the delay. As I noted in Smith (R v Smith (1989) 52 CCC (3D) 97), (I)t is axiomatic that some delay is inevitable. The question is, at which point does the delay become unreasonable? ...While the court has at times indicated otherwise, it is now accepted that the factors to be considered in analyzing how long is too long may be listed as follows:

- (i) *The length of delay*

- (ii) *Waiver of time periods*
- (iii) *The reasons for the delay, including:*
 - (a) *Inherent time requirements of the case;*
 - (b) *Actions of the accused;*
 - (c) *Actions of the Crown;*
 - (d) *Limits on institutional resources, and*
 - (e) *Other reasons for the delay, and*
- (iv) *Prejudice to the accused."*

7. In **Johnson v State** [2010] FJHC 356;HAM 177.2010 (23 August 2010), Hon. Mr. Justice D. Goundar stated:

*"...The circumstances in which abuse of process may arise are varied. In **R v Derby Crown Court, exp Brooks** [1984] Cr. App. R.164, Sir Roger Ormrod identified two circumstances in which abuse of process may arise:*

"...It may be abuse of process if either

- (a) *The prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or*
- (b) *On the balance of probability the defendant had been, or will be, prejudiced in the prosecution of or conduct of his defence by delay on the part of the prosecution which is unjustifiable: for example, not due to the complexity of the inquiry and preparation of the prosecution case, or to the action of the defendant or his co-accused or to genuine difficulty in effecting service."*

8. His lordship further quoted Justice Pain's remarks from **State v Rokotuiwai** [1998] FJHC 196 identifying the factors which needs to be considered in deciding whether delay is reasonable or not:

".. The length of the delay, the reasons for the delay, the actions of the defendant, the actions of the prosecutor, availability of legal and judicial resources, the nature of the charge and prejudice to the defendant may be relevant."

9. The applicant has failed to show on balance of probabilities that he will be prejudiced by taking any of these case for trial. The applicant is charged with different offences and prosecution has to prove elements of each charge beyond reasonable doubt. The applicant will have the opportunity to cross examine each witness in both cases. There is no material that he would suffer serious prejudice to the extent that no trial could be held.
10. In Nalawa v State CAV 0002/09 (13 August 2010) the Supreme Court of Fiji laid down the following principles may now be stated as basic to common law.

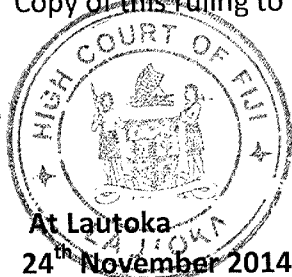
“(i) even where delay is unjustifiable a permanent stay is the exception and not the rule.

(ii) where there is no fault on the part of prosecution, very rarely will a stay be granted.

(iii) No stay should be granted in the absence of any serious prejudice to the defence so that no fair trial can be held and

(v) On the issue of prejudice, the trial court has process which can deal with the admissibility of evidence if it can be shown there is prejudice to an accused as a result of delay

11. A stay proceeding is an exceptional remedy, and will only be used if other remedies are not available to deal with the justice of the case.
12. Applying the above principles, I do not find merit in any of the grounds on which the application for stay is founded. The application for stay of the prosecution is, accordingly, disallowed and dismissed.
13. Copy of this ruling to be send to the learned Magistrate.



At Lautoka
24th November 2014

Solicitors : Applicant in person

Office of the Director of Public Prosecutions for Respondent


Sudharshana De Silva
JUDGE