

IN THE HIGH COURT OF FIJI

CRIMINAL JURISDICTION

AT LAUTOKA

CRIMINAL CASE: HAC 01 OF 2015

BETWEEN : STATE

AND : 1. MOHAMMED SHAHEED KHAN
2. ETHAN KAI

Counsel : Mr. Deleany with Ms. S. Kiran for Prosecution
Mr. Iqbal Khan for 1st Accused
Mr. J. Peluso with Mr. A. Singh for 2nd Accused

Date of Hearing : 17th of August 2015

Date of Ruling : 18th of August 2015

RULING

1. The learned counsel for the first accused person makes this application seeking an order to discharge the third named assessor from this hearing. His application is founded on two main grounds. The first ground is that the said assessor is an ex- special constable in the Fiji Police Force. The second ground is that two daughters of the said assessor are presently employed as court officers at the Lautoka High Court Registry. One of them has been involved in the *voir dire* hearing of this case as a court clerk.
2. Having stated his objection, the learned counsel for the first accused submitted that the presence of the said assessor in this hearing would

prejudice the accused persons. The learned counsel for the second accused person informed the court that he also has this same objection based on the same grounds as advanced by the learned counsel of the first accused person.

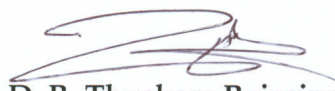
3. The learned counsel for the prosecution objected this application on the ground that mere reason of his past employment should not be a ground of disqualification as an assessor.
4. Section 204 of the Criminal Procedure Decree has stipulated the applicable procedure of preparation of list of assessors. Section 206 has provided the list of persons who are exempted to be served as assessors.
5. According to Section 206 (n) of the Criminal Procedure Decree, Members and civilian staff of Fiji Police Force are exempted from servicing as an assessor. However, the exemption has not been extended to retired or ex- members of discipline services or the Fiji Police Force. Hence, it appears that the past employment of this assessor does not automatically disqualify him in serving as an assessor. Under such circumstances, the court is required to consider whether a fair minded and informed observer, having considered the facts, would conclude that there is a real possibility that the tribunal is biased. (**R v Khan and Others (2008) 3 All ER 502, Porter v Magill (2002) 1 All ER 465**).
6. Apart from the ground that he is an ex-police officer, the learned counsel for the accused persons did not make any specific reasons or grounds in order to establish that his past employment would prevent him in discharging his function fairly and impartially as an assessor. In the absence of such information or evidence, I find the first ground of this application has no merit.

7. I now turn onto the second ground of this application. The assessor's relationship with the court clerk, who was involved in the voir dire hearing was not brought to my attention until this application was made. The said court clerk is a daughter of the assessor and was actively involved in the court administration as an interpreter and a clerk during the voire dire hearing.
8. In view of the reasons discussed above, it is my opinion that her involvement in this proceedings as a court clerk during the voire dire hearing and her father's subsequent involvement as an assessor in this hearing, would allow a fair minded and informed observer to conclude that there is a real possibility that the tribunal is biased.
9. Both learned counsel for the accused persons informed the court that their objection is only to focus on the discharge of this particular assessor. They specifically submitted that the defence is willing, and have no objection to proceed with the remaining four assessors.
10. Accordingly, I discharge the third name assessor from this hearing.



At Lautoka

18th of August 2015


R. D. R. Thushara Rajasinghe
Judge

Solicitors : Messrs Iqbal Khan & Associates for First Accused,
Aman Ravindra- Singh Lawyers for Second Accused,
Office of the Director of Public Prosecutions