

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 47 OF 2014

STATE

-v-

1. PENI YALIBULA
2. MIKAELE TURAGANIVALU
3. RUSIATE TEMO ULUIBAU
4. ULAIASI QALOMAI
5. TEVITA QAQANIVALU

Counsel: Mr. J. Niudamu for the Prosecution
Ms. V. Narara for 1st Accused
Ms. S. Nasedra for 2nd Accused
Ms. P. Chand for 3rd Accused
4th Accused in absentia
5th Accused in Person

Date of Ruling: 25th May, 2016

RULING

- [1] The Respondent with four others are charged with two counts of Act with intent to cause Grievous Harm one count of Aggravated Robbery and one count of Damaging Property.
- [2] After *voir dire* proceedings were concluded, 2nd accused absconded forcing the court to

vacate the trial as the Prosecution was not ready to proceed to trial in the absence of the 2nd accused.

- [3] A bench warrant was issued to arrest the 2nd accused. Sometime later, 2nd accused was arrested. But the Prosecution was still not ready and wanted to file an amended information to add another accused as the 5th accused.
- [4] Bail Applications filed by the 2nd and 4th accused who is the Respondent in this application was refused by this Court. Having refused the said bail application, Court decided to expedite the matter. Having considered the application for a speedy trial and the plight of the Respondent in remand, Court advanced the trial date already fixed for August, 2016.
- [5] When the trial date was fixed, Respondent was present in Court.
- [6] Respondent had number of cases pending before the Magistrates of Court at Nadi for which he was in remand. Bail applications filed by the Respondent in those cases in the Magistrates Court had been allowed by the Resident Magistrate apparently without having any knowledge of the status of the High Court Case.
- [7] Respondent was fully aware that his bail application filed in this Court was not allowed. Despite that knowledge he furnished bail in the Magistrates Court and somehow managed to secure his release from remand prison.
- [8] Respondent failed to appear on the trial date with the full knowledge of the rescheduled trial date. Bench warrant was issued and the trial was postponed for today.
- [9] Applicant, filing this application supported by an affidavit, moves that the Respondent be tried *in absentia*.
- [10] The Constitution of the Republic of Fiji 2013 under Article 14(2) (h) specifically provides for trial *in absentia* which states:

Every person has a right

(h) to be present when being tried, unless-

(i) the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend; or

(ii) the conduct of the person is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence;

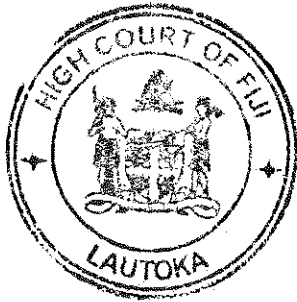
[11] The Respondent was aware of this case and the trial date when he 'escaped' from remand custody. Remand Committal Warrant had been issued by this Court for him to be produced before this Court. He failed to appear in court on the day fixed for trial. Warrant was issued to arrest him. State has not been able to execute the warrant.

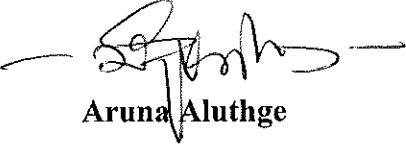
[12] The Respondent is charged with four others who are awaiting speedy disposal of this case. There are number of eye witnesses and their memory will fade away with the passage of time. Prosecution is greatly prejudiced if the trial is further delayed. Long delay would cause irreparable damage to the Prosecution and to the justice system. The general public will lose confidence in the system.

[13] Considering Article 14(2) (h) of the Constitution of The Republic of Fiji, I allow the application by the Prosecution for the respondent to be tried *in absentia*.

[14] I am mindful that facts that Respondent's right to a fair trial have to be safeguarded at the trial *in absentia* even though he is not present at the trial. Assessors shall be clearly warned not to hold the absence of the Respondent against him. I would advise the prosecution to disclose all the evidence against him on relevant material facts and highlight evidence advantageous to the Respondent in my summing up to the assessors. I

will also warn the assessors that the absence of the accused is not an admission of guilt and adds nothing to the prosecution case. I will also take steps to expose weaknesses of the prosecution case in the summing up.




Aruna Aluthge
JUDGE

AT LAUTOKA

On 25th May, 2016

Counsel: Office of the Director of Public Prosecution for State
Office of the Legal Aid Commission for 1st, 2nd and 3rd Accused
5th Accused in Person