

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL MISCELLANEOUS NO: HAM 05 OF 2017

BETWEEN:

LUKE MACU

APPLICANT

AND:

STATE

RESPONDENT

Counsel : Applicant in Person
Mr. A. Vavadakua for Respondent

Hearing : 01 March, 2017

Ruling : 03 March, 2017

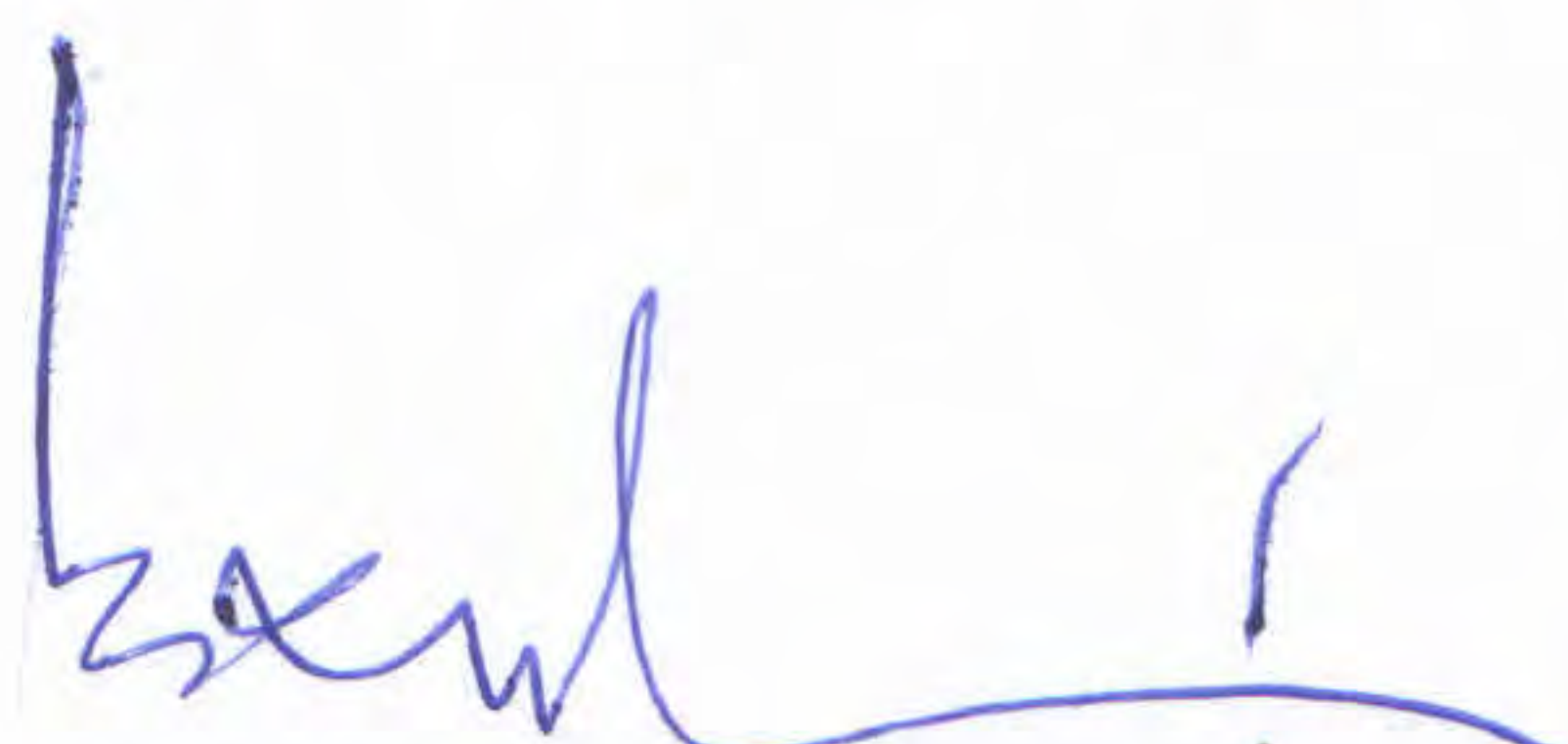
RULING

- [1] The applicant Luke Macu applies for bail pending trial.
- [2] The applicant is accused of Rape of his 13 year old daughter. It is submitted by the applicant that he was in remand since 5th January 2017. He states that he is a farmer and this is his first application for bail. He further states that he is the sole breadwinner of his family and he wish to support his wife, who looks after the welfare of their 4 children. He also states that he has apologised to his wife and

daughter and "they want me to be with them as part of the family". He offers his wife as a surety.

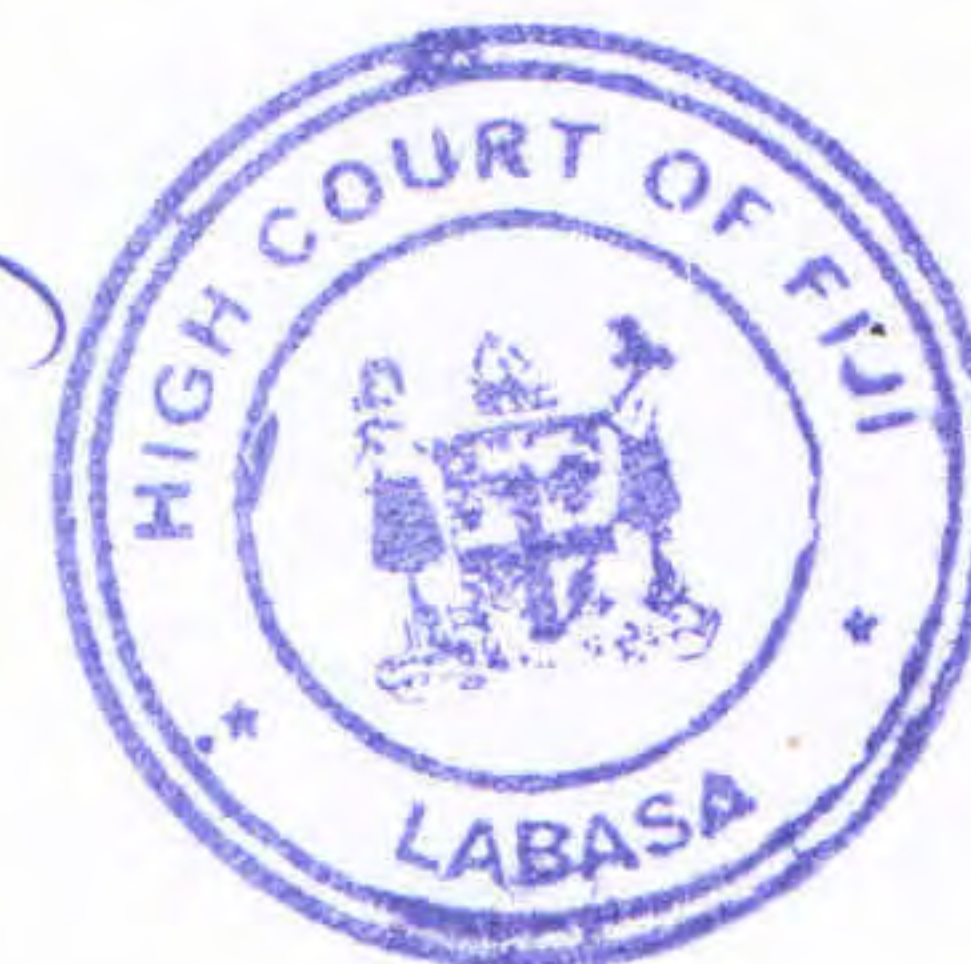
- [3] In the event of this Court considering his application for bail favourably; he voluntarily undertakes to relocate himself to live in his farm house.
- [4] The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in Court to answer charges laid against him.
- [5] In terms of Section 3(3) of the Bail Act, there is a presumption in favour of the granting of bail to a person, but a person who opposes the granting of bail may rebut the presumption. The Respondent, submits that the charge levelled against the applicant is of a domestic nature and therefore presumption in favour of bail is displaced. They also relied on the fact that the complainant is his biological daughter. Therefore, there is a greater likelihood of interference with her if the applicant is released on bail.
- [6] In terms of Section 17(1) of the Bail Act the Court must take into account the time the person may have to spend in custody before trial, if bail is not granted. Court can impose strict bail conditions so that the accused appears in court to face charges, and also that the accused does not interfere with the witnesses.
- [7] Connected substantive matter of the applicant HAC 2 of 2017 is to be mentioned on 27th March 2017 to record the plea of the applicant.
- [8] It appears from the copy of the proceedings before the Magistrates Court at Labasa, that the applicant was produced before it on 5th January 2017 and was remanded in custody. He has spent almost eight weeks in remand.
- [9] Even if the presumption in favour of bail is displaced by the fact that the applicant is concerned with a domestic violence offence, this Court is vested with discretion to consider bail. The objection raised by the Respondent is based on the strong likelihood of interference with the prosecution witnesses.

- [10] Section 19(1)(c) of the Bail Act 2002 provides for grounds for refusal to grant bail, if the Court is of the opinion that applicant would endanger the public interest or protection of the community more difficult. In relation to this application concern on protection of community is irrelevant. In relation to endangering public interest limits to interference with the prosecution witnesses.
- [11] Concerning the objection by the Respondent of the possible interference with the prosecution witnesses, it has to be noted that already the applicant has enticed his wife to stand surety and his daughter to accept an "apology" as he claims. The Respondent's concerns that if bail is granted there exists a greater likelihood of the applicant's interference with the victim and possible prosecution witnesses, are therefore well justified, since the application already had his "apology" accepted by his daughter.
- [12] It is the considered view of this Court that the presumption in favour of the applicant is therefore, is displaced as this is a domestic violence situation. Imposition of strict conditions under Section 22 of the Bail Act, would not address the Respondent's concerns. Considering the circumstances urged by the applicant, this Court decided to refuse his application for bail.
- [13] Accordingly the application is refused and bail is denied by this Court.
- [14] The applicant has 30 days to appeal to Court of Appeal.



ACHALA WENGAPPULI

JUDGE



At Labasa

03 March, 2017

Applicant : In Person
Solicitor for the Respondent : Office of the Director of Public Prosecution, Labasa