

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**

**CRIMINAL MISCELLANEOUS CASE NO. HAM178 OF 2017**  
**(Magistrates' Court Case No. 727 of 2017)**

**BETWEEN:**           **JONE MASIREWA**

**APPLICANT**

**AND:**                 **THE STATE**

**RESPONDENT**

**Counsel:**           **Applicant - In Person**  
                              **Mr A Singh for the Respondent**

**Date of Hearing:**    **27 December 2017**

**Date of Ruling:**    **29 December 2017**

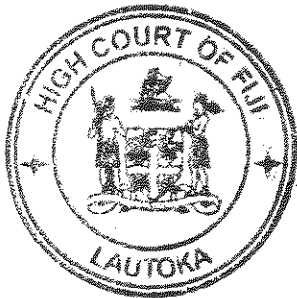
**RULING**

- [1] This is an application for a review of refusal of bail by the Magistrates' Court.
- [2] On 15 September 2017, the applicant was charged with burglary and theft, which he allegedly committed in August 2017. He was arraigned on the same date. He elected to represent himself in the Magistrates' Court. The prosecution objected to bail on the ground that the applicant had previous convictions for similar offences and that it was not in the public interest to release the applicant on bail. The applicant had thirty-seven previous convictions since 22 September 1999. On 29 June 2005, the applicant was sentenced to 5 years' imprisonment for a spate of burglary and theft. The Magistrates' Court accepted the State's submission that the chances of re-offending while on bail was high and refused bail.

- [3] On 18 September 2017, the applicant made a written application for bail. The State opposed the application. On 16 October 2017, the learned Magistrate in a written ruling refused the application. The learned Magistrate found that the applicant is a flight risk based on his history of absconding.
- [4] This application for a review was filed on 30 October 2017. The applicant's main ground for a review is that the learned Magistrate erroneously made the finding that the applicant is a flight risk because of his previous history of absconding bail. The applicant submits that he is currently charged with absconding bail but has never been convicted of the offence.
- [5] The State opposes the application and relies upon the affidavit of DC Jone. DC Jone states that the applicant has two pending cases of absconding bail in the Nadi Magistrates' Court. Both cases are set down for trial on 8 January 2018. Apart from absconding charges, the applicant is facing five other charges ranging from aggravated burglary to criminal trespass in the Magistrates' Court.
- [6] The Bail Act 2002 (the Act) provides for two avenues to challenge a bail decision. Section 31 (1) of the Act states that all bail decisions are appealable to the High Court. Section 30 (3) of the Act states that the High Court may review any decision by a magistrate in relation to bail. Section 30 (10) of the Act states that a review is a rehearing and the Court may receive evidence before making a decision on bail. The key distinction between an appeal and a review is that on appeal the decision on bail is considered for errors in the exercise of discretion by the lower court, while on review, the decision on bail is considered afresh.
- [7] In the present case, the applicant justified invoking the review procedure on the ground that he had exhausted the appeal procedure and was unsuccessful. However, there is no record that an appeal was ever filed in this matter. In my judgment the review procedure is unavailable if the bail decision could have been appealed. As was said by Scott J in *Abhay Kumar Singh v State* Miscellaneous Application 1/2004 (23 June 2004) that 'review is only available where, for one reason or another, the appeal procedure cannot be resorted to'.

[8] Even if this was an appeal, I am not convinced that there is an error in the exercise of discretion of the learned Magistrate, refusing bail because of the appellant's previous history of absconding bail. There is no requirement that an accused has to be convicted of the offence of absconding bail before he is assessed to be a flight risk based on a history of absconding bail. The applicant absconded bail twice and currently, he is facing two charges of absconding. That is sufficient to indicate that he has a history of absconding bail to be assessed a flight risk.

[9] For these reasons, the application for a review of bail is refused.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Applicant In Person

Office of the Director of Public Prosecutions for the Respondent