

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAM 208 OF 2017 & HAM 209 OF 2017

BETWEEN : ETUATE RULADE

APPLICANT

AND : THE STATE

RESPONDENT

Counsel : Applicant in person
Mr. A. Singh for Respondent

Date of Judgment : 5th January, 2018

JUDGMENT

1. The Applicant filed this Notice of Motion for Bail Review pursuant to section 30 (3) and (7) of the Bail Act, making an application to review the following bail rulings, that;
 - i) The bail ruling delivered by the learned Magistrate of Nadi in Criminal Case No 414/2016,
 - ii) The bail ruling delivered by the learned Magistrate of Nadi in Criminal Case No 577/2016 on the 19th of January 2017

iii) The Appeal Judgment delivered by the High Court in HAA 16 of 2017 on the 17th of May 2017,

Criminal Case No: 414/2016

2. The Applicant has been charged in Criminal Case No 414/ 2016 in the Magistrates' court of Nadi for one count of Falsification of Document, contrary to Section 160 (1) (a) of the Crimes Act and one count of Attempt to Obtain Financial Advantage by Deception, contrary to Section 44 (1) and 318 of the Crimes Act. He was first produced in the Magistrates' court on the 18th of May 2016, where the learned Magistrate had granted him bail. However, the Appellant has failed to appear on the next date, that was 20th of June 2016. The court has issued a bench warrant accordingly. According to the record of the proceedings in the Magistrates' court, the Appellant had appeared in court on the 4th of August 2016, where the court has cancelled the bench warrant. There is no record, whether the Applicant was remanded for this matter on the 4th of August 2016. There is no such order made into that effect on the 4th of August 2016 or any other subsequent date until the Applicant filed this notice of motion on the 23rd of October 2017.

3. Irrespective of no remand order or cancelation of bail, the learned Magistrate had conducted a hearing for bail on the 17th of November 2016 and adjourned the matter till 22nd of December 2016, for his ruling on bail. However, the learned Magistrate has never pronounced such a ruling on bail. Instead, he had conducted another bail hearing on the 2nd of October 2017 and adjourned the matter till 16th of October 2017 for the ruling on bail. Once again, the learned Magistrate has failed to pronounce any ruling on bail so far.

4. Meanwhile, the hearing of the substantive charges has taken place on the 28th of November 2017 and the matter has adjourned till 12th of January 2018 for the ruling on no case to answer.
5. Accordingly, it is clear that there is no order to cancel the bail of the Applicant an order to remand him in custody in respect of Criminal Case 414/2016. Moreover, there is no bail ruling delivered by the learned Magistrate in this matter, despite conducting two bail hearings. Therefore, there is no bail ruling before this court to review it pursuant to Section 30 (3) of the Bail Act.

Criminal Case No: 577/2016

6. The Applicant has been charged with two counts of Obtaining Financial Advantage by Deception, contrary to Section 318 of the Crimes Act in Criminal Case No 577/2016. He was first produced in the Magistrates' court in Nadi on the 23rd of June 2016. He has been remanded in custody since then as the court refused to grant him bail on the 18th of August 2016 and 19th of January 2017 respectively.
7. Aggrieved with the said bail ruling dated 19th of January 2017, the Applicant had appealed to the High Court against the said bail ruling. The High Court in its judgment dated 17th of May 2017, refused and dismissed the appeal. The Applicant in this notice of motion now request the court to review the said bail ruling dated 19th of January 2017 and the judgment of the High Court, dated 17th of May 2017.
8. It is obvious that this court has no jurisdiction to review any judgment or ruling delivered by the High Court. If the accused wishes to appeal against the said

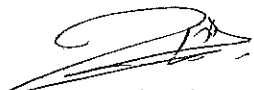
judgment of the High Court, he should have filed an appeal to the Fiji Court of Appeal.

9. The next issue is whether this court has jurisdiction to review the said bail ruling dated 19th of January 2017 pursuant to Section 30 (3) of the Bail Act, when the High Court has already determined the correctness of the said ruling, exercising its appellate jurisdiction pursuant to Section 31 of the Bail Act.
10. Justice Gounder in **Jone Masirewa v The State (Criminal Miscellaneous Case No Ham 178 of 2017)** has discussed the distinction between bail review and appeal, where his lordship held that;

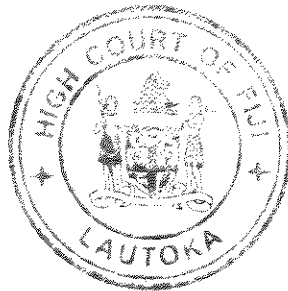
“The Bail Act (the Act) provides for two avenues to challenge a bail decision. Section 31 (1) of the Act states that all bail decisions are appealable to the High Court. Section 30 (3) of the Act states that the High Court may review any decision by a magistrate in relation to bail. Section 30 (10) of 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.

*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 restored to”.*

11. In view of the above observation made by Justice Gounder in **Masirewa (supra)** the Applicant is not entitled to make this application to review the said bail ruling dated 19th of January 2017, as he had already exhausted the appeal procedure against the said bail ruling pursuant to section 31 of the Bail Act. Accordingly, this court has no jurisdiction to review the said bail ruling pursuant to Section 30 (3) of the Bail Act.
12. In conclusion, I refuse this Notice of Motion and dismiss it accordingly.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.


R. D. R. Thushara Rajasinghe
Judge

At Lautoka
5th January, 2018



Solicitors : Office of the Director of Public Prosecutions