

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO. HAM 63 of 2018
[High Court Criminal Case No. HAC 92 of 2018)

BETWEEN : **LEDUA TIKOTANI**

AND : **THE STATE**

Counsel : **Ms L Manulevu for the Accused**
Ms S Lodhia for the State

Date of Hearing : **2 May 2018**

Date of Ruling : **15 May 2018**

BAIL RULING

- [1] The accused seeks bail pending trial. He is charged with one count of aggravated burglary and one count of theft and is represented by legal aid counsel. The allegations arose on 23 January 2018 at Nabua. It is alleged that the accused broke into Subrail's Furniture Shop and stole electronic items to a total value of \$12,647.00.
- [2] The State opposes the application for bail on the grounds specified in the affidavit of the investigating officer.
- [3] The Bail Act 2002 governs the principles in respect of bail. The overarching principle is that an accused is entitled to bail unless it is not in the interests of justice to grant bail (s 3(1)). There is also a presumption in favour of the granting of bail but that presumption is displaced if the accused has previously breached a bail undertaking or a bail condition. The primary consideration to grant bail is the likelihood of the

accused appearing in court to answer the charge (s 17 (2)). Regard must also be made to the time the accused may have to spend in custody before trial if bail is not granted (s 17(1)). Reasons are required for refusing bail. Bail may be refused for either one of the following circumstances outlined in section 19 (1):

- (a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
- (b) the interests of the accused person will not be served through the granting of the bail; or
- (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.

- [4] In assessing section 19(1) circumstances, the court must have regard to the factors outlined in section 19(2).
- [5] The accused is from a disadvantaged background. In his caution interview, the accused said he was 29 years old, unemployed and resided at Lot 1 Volavola Street, Narere. He made a full confession in his caution interview and some of the stolen items were recovered after information provided to police by the accused.
- [6] In 2011, he was convicted of house breaking and theft and sentenced to 18 months imprisonment. In the same year, he was fined for forfeiture of bail bond. In 2013, he was sentenced to 32 months imprisonment for an offence of serious assault. Apart from this case, the accused has other pending charges in the Magistrates' Court as follows:
- 1. CF 1668/17 - escaping from lawful custody
 - 2. CF 1663/17 – indecently annoying a person
 - 3. CF 247/18 – damaging stolen property

- [7] The maximum penalty prescribed for aggravated burglary is 17 years' imprisonment and for theft is 10 years' imprisonment. If convicted, the accused may be declared a habitual offender and subjected to a long prison sentence in order to protect the community. Since the accused has previously breached a bail condition and is facing an escape from lawful custody charge, the presumption in favour of the granting of bail is displaced. The prosecution case is strong and due to his lack of community ties, I am satisfied that the accused is unlikely to turn up for his trial. The potential punishment if convicted may also operate as a disincentive for the accused to appear for the trial. For these reasons, bail is refused. Since bail has been refused, the case will be assigned a priority trial date by the end of 2018. The accused will remain in custody on remand pending trial.



A handwritten signature in black ink, appearing to read "Daniel Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Legal Aid Commission for the Accused
Office of the Director of Public Prosecutions for the State