

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

Criminal Miscellaneous Case No. 93 of 2017

SAVENACA MILLER

VS

STATE

Counsel : Ms. J. Singh (L.A.C.) for the Applicant
Mr. S. Seruvatu for the State.

Date of Hearing : 6 February 2018
Date of Judgment : 9 February 2018

JUDGMENT
(Permanent Stay)

- 1.] The applicant applies that proceedings against him in the Court below at Nadi be stayed permanently.
- 2.] He is charged with another for the offence of Aggravated robbery in which it is alleged that they robbed Yu Ying of 5 bottles of alcoholic spirits and 4 bottles of white wine all to the value of \$390.
- 3.] The applicant first appeared in the Nadi Magistrates Court on the 25th October 2011 as a juvenile. Up until today no preliminary hearing has been fixed for the voir dire proceedings, let alone a date fixed for the trial on the general issue.

- 4.] The applicant submits that in waiting nearly 7 years to have his matter heard, he is prejudiced in his defence; one witness already having died and one unable to be located.
- 5.] The Constitution of the Republic of Fiji (2013) by section 14(2)(g) provides the right of an accused person
“to have the trial begin and conclude without unreasonable delay”.
- 6.] This Court must therefore determine if the delay is unreasonable by examining the court record below and applying the considerable relevant case law to events shown in that record.
- 7.] The Supreme Court reviewed the case law on permanent stay in the case of ***Tevita Nalawa*** CAV 0002/09 (13 August 2010) and adopted the following principles :
 1. Even where delay is unjustifiable a permanent stay is the exception and not the rule
 2. where there is no fault of the prosecution , very rarely will a stay be granted
 3. no stay should be granted in the absence of any serious prejudice to the defence so that no fair trial can be held; and
 4. on the issue of prejudice, the trial Court has processes which can deal with the admissibility of evidence if it can be shown there is prejudice to an accused as a result of delay.
- 8.] The Court noted that in the case of ***Apaitia Seru*** (2003) FJCA a delay of 4 years 10 months prejudice was assumed.
- 9.] The Supreme Court thereafter stated that the following factors were relevant in assessing the question of delay;

- the length of delay
- the reason for delay
- whether the accused had asserted his right to a speedy trial
- the extent of any prejudice.

Importantly, the Court stated

“At all times the Court must take into account local circumstances such as Fiji’s limited resources and particularly those available to the administration of justice”

Analysis

10.] Blame for the extraordinary delay in this case cannot be attributed to any one party. On occasions the accused persons were not produced in Court, on one or two occasions the Magistrate was not available for some reason.

Twice the matter was adjourned for the accused to obtain legal advice and far too often the case was mentioned with nothing noted to have happened.

11.] A hearing date for the trial within a trial has been fixed 6 times and vacated each time, with the next hearing date for the voir dire fixed for the 29th May 2018. A hearing date for the trial itself will presumably be in the far future. .

12.] This Court is aware of the difficulties faced by the Magistrates in Nadi. It is one of our busiest courts with only three Magistrates to deal with the excessive case load. That might well explain why adjournments of the case were for long periods. For example on the 18th November 2013 the applicant’s co-accused asked for a new set of disclosures and the case was adjourned for mention again on the 5th August 2014 some 9 months in the future.

- 13.] Adjournments of this length of time are unacceptable.
- 14.] This Court is aware of the absence of complaint by either accused below with regard to the delay in their trial, but nevertheless the delay is inordinate and unreasonable, and prejudice to the defence must be assumed.
- 15.] Regards must be had to the right of accused persons to be tried without delay; a right enshrined in the Bill of Rights in the Constitution (2013).
- 16.] The Court orders that the proceedings below in Criminal Case No. 922 of 2011 (Nadi) be permanently stayed.



P.K. Madigan

Judge

At Lautoka

9th February 2018