

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 300 OF 2017S

STATE

VS

1. NACANIELI BAKATA
2. JOSIA DOBUI
3. ILAITIA VUIVUDA

Counsels : Mr. E. Samisoni for State
Accused No. 1 in Person
Ms. N. Mishra for Accused No. 2
Accused No. 3 in Person

Hearings : 1 and 22 June, 13 July and 10 August, 2018

Ruling : 14 September, 2018

**RULING ON PROSECUTION'S APPLICATION TO CONSOLIDATE SUVA HIGH COURT CRIMINAL
CASE HAC 300 OF 2017S AND LAUTOKA HIGH COURT CRIMINAL CASE HAC 021 OF 2018L**

1. On 1 June 2018, the prosecution indicated to the court that Accused no. 1 and 2 were facing two similar "aggravated robbery" charges in Lautoka High Court Criminal Case No. HAC 021 of 2018L. The prosecutor said, they were intending to consolidate that case with the present case, and bring the same to Suva. Accused no. 1 verbally objected to the prosecution's intention. He said, if the same is done, he would be denied his right to a fair trial. He said, the police were fabricating the cases against him and the allegations against him were not true.
2. On 22 June 2018, the prosecution filed a notice of motion and an affidavit in support, asking that Suva High Court Criminal Case No. HAC 300 of 2017S be consolidated with Lautoka High Court Criminal Case No. HAC 021 of 2018L. They said, the consolidation would save the

court time and resources. They said, the Accuseds would not be prejudiced. They said, the consolidation would mean one trial instead of two. They said, both Accused no. 1 and 2 were involved in the two cases, and they allegedly committed the offences in company of each other, and the series of offences allegedly occurred 6 days apart. Copies of the application were served in court on each Accuseds.

3. Accused no. 1 asked for 2 weeks to respond. Accused no. 2 made no comments. Accused no. 3 said, the Lautoka case does not concern him. The matter was adjourned to 13 July 2018 for Accused no. 1 and 2 to reply. On 13 July 2018, Accused no. 1 was not ready with his reply. Accused no. 2 said, he did not object to the consolidation. The matter was again adjourned to 10 August 2018 for Accused no. 1's reply. On 10 August 2018, Accused no. 1 gave his reply. He said, the state's cases on the two files are different, that is, the dates are different, the complainants are different and the alleged crime scenes are different. He said, he would be prejudiced if the cases were tried together. He said, consolidation would not save time. He said, the court may pre-judge his case and the police are making up the allegations against him. Accused no. 2, through his counsel, did not object to the consolidation.
4. The law on the consolidation of cases are clear. Section 60 of the Criminal Procedure Act 2009, reads as follows:

"...60. The following persons may be joined in one charge or information and may be tried together-

- (a) persons accused of the same offence committed in the course of the same transaction;*
- (b) persons accused of an offence and persons accused of -
 - (i) aiding or abetting the commission of the offence; or*
 - (ii) attempting to commit the offence;**
- (c) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character; and*
- (d) persons accused of different offences committed in the course of the same transaction..."*

5. I had carefully listened to the parties' submissions on 1 and 22 June, the 13 July and 10 August 2018 hearings. I had carefully considered the papers they had submitted to court. I had taken judicial notice of the matters contained in Suva High Court Criminal Case No. HAC 300 of

2017S and Lautoka High Court Criminal Case No. HAC 021 of 2018L files. In my view, the applicable law on the facts of this case appear to be section 60(c) of the Criminal Procedure Act 2009, which reads as follows:

"...The following persons may be joined in one charge or information and may be tried together –

(c) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a serious of offences of the same or a similar character;..."

6. On the particulars of offences in counts 1 and 2 of the information in Lautoka High Court Criminal Case No. HAC 021 of 2018L, it was alleged that Accused No. 1 and 2 committed aggravated robberies on two complainants on the same date, that is, 9 September 2017 at Sigatoka in the Western Division. Properties worth \$35,756 were allegedly stolen by the two accuseds from the complainants. In the particulars of offence in count no. 1 and 2 of the information in Suva High Court Criminal Case No. HAC 300 of 2017S, it was alleged that both Accused No. 1 and 2 and another committed an alleged aggravated robbery on a complainant in Navua in the Central Division on 15 September 2017, that is, 6 days after the alleged aggravated robberies in Lautoka High Court Criminal Case No. HAC 021 of 2018L. Sigatoka and Navua are close to each other. In any event, both cases are now being tried in the High Court of the Republic of Fiji. Whether the High Court sits in Suva, Lautoka or Labasa, or anywhere else in Fiji, it is still the High Court of Fiji, and by virtue of its jurisdiction, capable of trying any serious criminal offence anywhere in Fiji.
7. The terms of section 60(c) of the Criminal Procedure Act 2009 allows the High Court to try accused people who allegedly commit aggravated robberies, or other serious criminal offences, in Suva, Lautoka, Labasa or anywhere else in Fiji, as long as the case falls within the terms of section 60(c) of the Criminal Procedure Act 2009. This will catch people who commit serious crimes in Suva, then move to the Western Division or Northern Division, to commit similar offences. In fact, these type of activities had been happening in the past. Section 60(c) of the Criminal Procedure Act 2009 enables the prosecution to bring all the cases either in Suva, Lautoka or Labasa to be tried together in any High Court in Fiji, so long as the terms of section 60(c) abovementioned are satisfied.
8. In my view, the present case is an example. Accused no. 1 and 2 were allegedly involved in robberies in Sigatoka on 9 September 2017. Six days later, they were allegedly involved in

another robbery in Navua. In my view, the accuseds allegedly committed offences that form or a part of a series of offences of the same or similar character. Pursuant to the terms of section 60(c) of the Criminal Procedure Act 2009, the cases can be tried together, whether or not they were committed in the Central, Western, Eastern or Northern Division, so long as they "form or a part of a series of offences of the same or similar character".

9. Because of the above, I allow the prosecution's application to consolidate Suva High Court Criminal Case No. HAC 300 of 2017S and Lautoka High Court Criminal Case No. HAC 021 of 2018L. The consolidated file will be Suva High Court Criminal Case No. HAC 300 of 2017S.

10. Before I finish with this case, it is hoped that the prosecution will move towards the consolidation of similar cases existing in the four Divisions in Fiji. This approach will assist in the case management in the High Court of the Republic of Fiji. It will also result in the disposal of serious criminal cases within a reasonable time, a constitutional right of the accused.



Solicitor for State	:	Office of Director of Public Prosecution, Suva
Solicitor for Accused No. 1	:	Accused No. 1 in Person
Solicitor for Accused No. 2	:	Legal Aid Commission, Suva
Solicitor for Accused No. 3	:	Accused No. 3 in Person