

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**IN THE WESTERN DIVISION**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO.: HAM 06 OF 2019**

**KELEPI RATU**

**v**

**STATE**

<b>Counsel:</b>	<b>Ms Vulimainadave</b>	<b>For Applicant</b>
	<b>Ms Naibe</b>	<b>For Respondent</b>

**Date of Hearing:** 25 Mach 2019

**Date of Ruling:** 09 April, 2019

**BAIL RULING**

1. The Applicant Kelepi Ratu made an application to this Court on the 27 December 2018 under the heading of "Review of the Appeals on Bail decisions". The Applicant has made the application in person.
2. To comprehend the nature of the application I have perused the substantive file where the Applicant is indicted for aggravated robbery and for resisting arrest. It appears that the Applicant has made two previous bail applications and the High Court has refused them.
3. The Applicant has referred to Section 30 of the Bail Act and has discussed the provisions relating to bail review. The Applicant has also referred to the Constitution of Fiji, Universal Declaration of Human rights and he has also quoted some paragraphs relating to the rights of remand prisoners. Apart from

his submissions on those matters, the only submission he has mentioned in his application which specifically relates to this case is the following:

“That it is with the above stated reason and with my poor family background and status that I humbly request this honorable Court to seriously consider my application and to review of the appeals on bail decisions currently imposed”.

4. As it appears that the Applicant has misconceived the concept of bail review, first I will briefly outline the laws relating to bail review.
5. Section 30 of the Bail Act provides for review and appeals on bail decisions.

- (1) A Magistrate may review any decision made by a Police Officer in relation to bail.*
- (2) A Magistrate may review a decision made by another Magistrate, including a reviewing Magistrate, in relation to bail.*
- (3) The High Court may review any decision made by a Magistrate or by a Police Officer in relation to bail.*
- (4) The Court of Appeal may review any decision made by the High Court in relation to bail.*
- (5) The Supreme Court may review any decision of a Magistrate, the High Court or the Court of Appeal, in relation to bail.*
- (6) A court may not review a decision under this Part if the court is prohibited from making a decision in relation to the grant of bail by any other written law.*
- (7) A court which has power to review a bail determination, or to hear a fresh application under section 14 (1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application.*
- (8) The power to review a decision under this Part in relation to an accused person may be exercised only at the request of –*
  - (a) the accused person;*
  - (b) the police officer who instituted the proceedings for the offence of which the person is accused;*

- (c) *the Attorney-General;*
- (d) *the Director of Public Prosecutions; or*
- (e) *the victim of the offence.*

- (9) *The power to review a decision under this Part includes the power to confirm, reverse or vary the decision.*
- (10) *The review must be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review.*
- (11) *The regulations may limit the powers of review conferred by subsections (1), (2) and (3).*

6. In *Masirewa v State* [2017] FJHC 956; HAM178.2017 (29 December 2017) Justice Goundar observed;

“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”.

7. Therefore, it is very clear that bail review is available only if there was no opportunity for appeal.
8. In *Inoke Gadre v State* [2018] FJHC 1154; HAM103.2018 (5 December 2018) Justice Aluthge highlighted that:

“[11] 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. Masirewa (supra).

[12] It’s important to realize that the scope of an appeal will be limited because the appellate court is only interested in learning if the court below exhibited an abuse of its discretion. This means that one can expect an

appellate court to uphold the original bail decision unless it is obvious that it was erroneous, unreasonable, or arbitrary. If the appellate court determines that the bail decision appears to be supported by facts and the law, then the bail determination will not be changed.”

9. The State has opposed the bail application stating that the Applicant has not exhausted the remedy of appealing the bail ruling and there is no change of circumstances submitted by the Applicant.
10. It appears that the Applicant was initially granted bail on the 09 October 2015 in HAM 168 of 2015. Later on 17 October 2018 the High Court has revoked his bail as he has failed to give a reasonable explanation for his non-appearance in Court for a long period of time.
11. The Applicant has made two bail applications prior to the present application after his bail was revoked. The first application had been filed on the 02 November 2018 and the High Court has refused his bail application. Again on the 23 November 2018 he has made a bail application which was refused by the High Court on the 19 December 2018.
12. The Applicant has not appealed the said two refusals of bail applications. It is very clear that the Applicant had the opportunity to appeal those decisions; instead he has chosen to make the present application for review.
13. As it was mentioned before, a Court will not entertain an application for bail review if the Applicant has not exhausted the appeal procedure. The law is very clear pertaining to bail reviews. The Applicant has not appealed against any of the orders made previously refusing bail. Therefore, this application for bail review is not a tenable application.
14. In any event, I have considered whether he has submitted any evidence to show that there is any change in circumstances. However, the Applicant has not submitted any such evidence to Court as well.
15. Further, it appears that when the Applicant was initially released on bail he has not attempted to appear in Court regularly. The Applicant has been warned a number of times and it can be seen that bench warrants had been issued on him in number of occasions. Finally, he has absconded Court for a long time before he was arrested by the Police. The prosecution has submitted that the Applicant

already has three pending cases. The substantive matter relating to this application (HAM 168 of 2015) is already fixed for hearing for 10-14 June 2019. It is very clear that the Applicant has a habit of absconding bail. I have reasons to believe that he may not appear in Court if bail is granted, given his previous conduct.

16. For the above mentioned reasons, I do not see any merits in this application. Therefore, the application filed by the Applicant on the 27<sup>th</sup> of December, 2018 under the heading of "Review of the Appeals on Bail decisions" is dismissed.



**Rangajeeva Wimalasena**  
**Acting Judge**

**At Lautoka**  
**09<sup>th</sup> April, 2019**

**Solicitors: Office of the Legal Aid Commission for Applicant**  
**Office of the Director of Public Prosecution for Respondent**