

IN THE HIGH COURT OF FIJI
AT LABASA
MISCELLANEOUS JURISDICTION

Criminal Miscellaneous Case No. HAM 22 of 2018

VILIAME NATABU

Applicant

THE STATE

Respondent

Counsel : Mr. F. Vosarogo for the Applicant
Ms. D.Rao for the State

Date of Hearing : 15 April 2019

Date of Judgment : 26 April 2019

JUDGMENT

1. The Applicant applies for a stay of proceedings in the Magistrates Court at Savusavu.
2. He was originally charged in that Court in 2006 with the following Counts:
 1. Rape contrary to section 149 of the then Penal Code
 2. Criminal Intimidation contrary to section 330 of that Code
 3. Sexual assault contrary to section 154(1) of the Penal Code.
3. The applicant had been originally arrested on these charges in 2004 but was subsequently released. He was brought back before the Court on the 6th November 2006.

4. The trial has progressed in the lower Court under the presidency of not one but five Resident Magistrates in that jurisdiction.
5. The matter has had a very unfortunate history: part hearings, applications for no case to answer, applications to start hearings *de novo*, and this application for stay.
6. One very perturbing delay to proceedings was that an application for no case to answer made on the 2nd April 2013 was not ruled on by the learned Magistrate until 27th April 2016, some **three years** later.
7. The proceedings are still afoot with a new Magistrate in Savusavu agreeing to hear the case *de novo* and where he has set a new trial date of 12 to 14 August 2019, a date a few months short of 13 years since proceedings were first launched.

The Law

8. The law regarding stay is well settled in Fiji and is premised on the decision of the House of Lords in ***Connelly v D.P.P.*** [1964]AC1245 where Lord Devlin said that the Courts have an **“inescapable duty to secure fair treatment for those who come or are brought before them”** and where Lord Morris said that the Court has a **“general and inherent power to prevent abuse of process which includes the power to safe guard an accused person from oppression or prejudice”**.
9. The Supreme Court of Canada has provided us with extremely helpful pronouncements on the issue of delay.
10. In ***R v Jewitt*** [1985] 2 SCR 128 it was said that a stay of proceedings can be granted as a **“residual discretion in a trial court Judge to stay proceedings where compelling an accused to stand trial**

would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court process through oppressive or vexatious proceedings”

11. It has long been held that one ground leading to a stay of proceedings is that the delay would cause prejudice to the accused in his defence and he would be called on to provide evidence that would show on the balance of probabilities that he be so prejudiced.
12. Moreover further than that it has been held by the Fiji Court of Appeal that prejudice could be **presumed** because of the length of the delay and the history of the case: (see **Seru and Stephens** AAU 0041/42 of 1995)
13. The Canadian and New Zealand Appellate Courts have made the same finding (**R v Morin** [1992 1 SCR and **Martin v District Court of Tauranga** [1995]2 NZLR419)
14. The Constitution of the Republic of Fiji 2013 stipulates in the Bill of Rights by s.14 (2)
(2) Ever person charged with an offence has the right--
(g) to have the trial begin and conclude without reasonable delay.
15. Obviously a Court hearing an application such as this will have to determine whether the length of delay is reasonable or not and in determining that question will have recourse to the wealth of case law on the interpretation of the phrase.

16. In the Privy Council case of **Mungroo** [1991 1 WLR 1351, it was said:
- “the right to a trial “within a reasonable time” secures first, that the accused is not prejudiced in his defence by delay and secondly, that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.”.*
17. Thirteen years is an extremely long time to be facing the uncertainty and anxiety of ones fate - thirteen years without progress being made. This Court has of course read the entire Court Record of proceedings and finds that the delay has in no way been occasioned by the prosecution and only to a limited extent by Defence Counsel not appearing and the applicant being absent for a short period.
18. The torporific lassitude of the judicial officers who have been in control of this case is embarrassing to the adjudication of justice in Fiji.
19. The Supreme Court of Canada’s **“fundamental principles of justice which underlie the community’s sense of fair play and decency”** have been breached as has the right to a trial without delay enshrined in s.14 (2)(g) of the Constitution.
20. For the breach of these rights, for the presumed prejudice occasioned to the accused by the delay and to preserve the integrity of our judicial processes, the trial in the Court below is **stayed**.


P.K. Madigan
Judge.



At Labasa
26 April 2019