

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an application to vacate
the trial dates.

[MISCELLANEOUS JURISDICTION]

SANJAY LAKHAN

Applicant

CASE NO: HAM. 265 of 2020
[HAC 160/2020]

Vs.

STATE

Respondent

Counsel : Mr. A. Singh for the Applicant
Mr. N. Sharma for the Respondent

Ruling on : 06 November 2020

RULING

1. When this case was called on 16/09/20, the trial in this case was fixed from 09/11/20 to 13/11/20. Case was then fixed for Pre-Trial Conference on 16/10/20.
2. On 16/10/20 Mr. S. Gosai who appeared for the applicant made an application to withdraw as counsel stating that the accused wants to retain a different counsel, Mr. A Singh. The accused conformed same.
3. Mr. Gosai was then allowed to withdraw as counsel for the accused and Mr. Singh marked his appearance.


4. Mr. Singh then informed the court that he wants to make an application to vacate the trial date stating that there is a need for a psychiatric evaluation to be conducted on the accused.
5. When the trial dates have been fixed in a case and if a different legal practitioner wishes to take over the role of the defence counsel replacing the former, it is implicit that the new counsel should be able to proceed with the trial on the dates already fixed.
6. However, it was pointed out to Mr. Singh that the defence he is contemplating on taking does not appear to be relevant to the charge the applicant is facing, nevertheless, if he wants he is free to make a proper application to have the trial vacated.
7. This application has been filed accordingly. The Respondent-State objects to this application.
8. In the affidavit deposed by the applicant in support of the application the main reason for seeking the present trial dates to be vacated has been explained as follows;

“THAT my lawyer has advised me that my case is one in which a psychiatric evaluation and evidence collection of a month of mental torture, harassment and inhumane behaviour towards me by the complainant and a police officer is vital for my defence.

THAT I have been informed and I verily believe that I will be accorded a fair trial and for this I need time to prepare for my defence before this Honourable Court.”
9. The applicant is charged with two counts of act with intent to cause grievous harm. Given that the offences the applicant is charged with amounts to domestic violence offences, the presumption in favour of the granting of bail is displaced and the applicant’s first bail application has accordingly being refused. Therefore, it is necessary for this matter to be given an early trial date.

10. Counsel for the applicant had stated that this application is designed to give the defence an opportunity to fully prepare its defence. I have perused the written submissions filed on behalf of the applicant and I do not find a valid justification for the present trial dates to be vacated in the said submissions.
11. The need for further statements to be recorded as pointed out by the counsel for the applicant in line with the request made by the said counsel cannot be considered as a valid reason to vacate the trial. From the fact that the respondent is opposing this application, it could be deduced that the respondent is confident that whatever necessary documents could be obtained and disclosed in time.
12. In view of the foregoing, I would refuse this application. The trial should proceed as scheduled.




Vinsent S. Perera
JUDGE

Solicitors:

Anil J. Singh Lawyers for the Applicant
Office of the Director of Public Prosecution for the State.