

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL MISC. NO. 110 of 2022

BETWEEN : **BENJAMIN SEDUADUA**

APPLICANT

A N D : **THE STATE**

RESPONDENT

Counsel : Mr. R. Keteca for the Applicant.
: Mr. J. Nasa for the Respondent.

Date of Submissions : 08 August, 2022

Date of Hearing : 26 September, 2022

Date of Ruling : 06 October, 2022

RULING

Application for name suppression

BACKGROUND INFORMATION

1. The applicant faces four counts of rape contrary to section 207 (1), (2) (a), (2) (b) and (2) (c) of Crimes Act 2009.

2. It is alleged that between 11th February, 2017 to 13th February, 2017 the applicant penetrated the vagina and mouth of Mari Nishio with his penis and finger respectively without her consent.
3. The applicant has pleaded not guilty to the charges. The applicant by notice of motion dated 20th June, 2022 supported by his own affidavit sworn on 17th June, 2022 and supplementary affidavit sworn on 20th September, 2022 seeks the following orders:
 - a). *The applicant's name be suppressed from all media publication and distribution.*
4. The application filed by the applicant is opposed by the state. The state did not file any affidavit in reply but relies on the submission of state counsel.
5. The applicant's counsel did not file any submissions, however, the state counsel filed helpful written submissions and also both counsel made oral submissions during the hearing for which this court is grateful.

SUBMISSIONS BY THE APPLICANT

6. The applicant's counsel submitted that the applicant is a hotelier and a successful businessman of 20 years with substantial investment in the tourism and hospitality industry. A name suppression is needed firstly to protect the reputation of the applicant and secondly, in view of the three pending civil matters in the civil jurisdiction regarding his hotel business. The applicant will be prejudiced if his name is published in the media. Upon questioning by this court the counsel mentioned that so far the name of the applicant has not be published in the media in respect of this case.

DETERMINATION

7. The fact that the applicant is a well-known businessman with substantial investment and he has three civil cases pending in court in respect of his hotel is not a ground “*per se*” to be granted name suppression. At paragraph 23 of his supplementary affidavit the applicant states:

“I would be prejudiced if my name was published in the media as I still have 3 cases ongoing relating to the sale of my hotel where this incident is alleged to have happened ...”

LAW

8. It is trite law (applied by the courts of this country many times) that the applicant has to satisfy the court that the order for name suppression is necessary:
- a) For the administration of justice; or
 - b) To serve the ends of justice.
9. The leading authority for the above is the English case of *Attorney-General v Leveller Magazine Ltd [1979] AC 440*, which was applied by Madigan J. in *State vs. Doreen Singh, criminal review case no. HAR 005 of 2009 (27th August, 2009)*. At paragraph 7 his Lordship made the following observations:

“...the House of Lords was dealing with the question of whether a court could hold in contempt the publishers of a magazine that ignored a court order not to publish the name of a party to proceedings. The court made reference obiter to the power of a Magistrate to order name suppression. They said that as a Magistrate had the power to sit in camera then he must have the power to take a lesser step of allowing a name to be

withheld from the public in proceedings before it. Their Lordships were however mindful of the very limited scope of the powers both to sit in camera and to suppress names.

Lord Diplock said, at p 451H

"the reason for a ruling which involves departing in some measure from the general principle of open justice within the Court room is that the departure is necessary in the administration of justice." And

per Lord Scarman at p.473G

"if a Court is satisfied that for the protection of the administration of justice from interference, it is necessary to order the evidence either be heard in private or be written down and not given in open Court, it may so order."

10. Furthermore, at paragraph 10 of *Singh's case* (supra) Madigan. J. made a pertinent observation (which I agree wholeheartedly) that public embarrassment is not a reason for name suppression:

"...Public embarrassment at one's judicial predicament is not reason enough to seek suppression of name. Despite the fundamental presumption of innocence, if a person's actions bring suspicion upon him(her)self, then that person must bear the consequences of that behaviour including having their affairs brought into the public arena. To allow this application would open the floodgates of name suppression by applicants who may wish to apply for high office, or to maybe one day read the news on Fiji One or any other similarly frivolous application."

11. Everyone is equal before the law the fact that the applicant is a successful businessman who has three civil cases pending in the courts regarding his

hotel is not a ground for name suppression. The allegations in this case have not been proven hence the constitutional protection of presumption of innocence is available to the applicant until the allegations are determined.

12. The operative phrase in such an application is whether the name suppression order is a necessity for the due administration of justice or does it serve the interest of justice. From the materials presented before this court I am unable to understand how the pending civil cases will be affected if a suppression order is not granted in this case. There is no shred of evidence that justice will be compromised if name suppression order is not granted. In my considered judgment the name suppression order is needed to only protect the personal interest of the applicant and nothing else.
13. The application filed by the applicant is dismissed as frivolous. The applicant is to pay costs summarily assessed in the sum of \$350.00 within 14 days from today.




Sunil Sharma
Judge

At Lautoka
06 October, 2022

Solicitors

Messrs. MIQ Lawyers, Nasinu for the Applicant.
Office of the Director of Public Prosecutions for the Respondent.