

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL CASE NO. HAM 108 OF 2023

BETWEEN : **THE STATE** **APPLICANT**

A N D : **ISOA SAQASERE BAINIVALU** **RESPONDENT**

Counsel : Ms. S. Swastika for the Applicant.
: Ms. N. Mishra and Ms. L. Taukei for the Respondent.

Date of Hearing : 04 July, 2023

Date of Ruling : 25 July, 2023

RULING

[Application for an inquiry as to unsoundness of mind of the Respondent]

1. This is an application by the state counsel for an inquiry to be conducted by this court as to the unsoundness of the mind of the respondent. The notice of motion filed is supported by the affidavit of Cpl. 3980 Peni Vunisa sworn on 2nd May, 2023. This application is made pursuant to section 104 of the Criminal Procedure Act and sections 23 and 27 of the Mental Health Act.

2. The application filed by the state is not opposed by the respondent's counsel. Both counsel have filed written submissions for which this court is grateful.

BACKGROUND INFORMATION

3. The applicant has been charged for one count of attempted murder contrary to section 44 (1) and 237 of the Crimes Act, one count of act with intent to cause grievous harm contrary to section 255 (a) of the Crimes Act and one count of serious assault contrary to section 277 (b) of the Crimes Act.
4. On 17th January, 2023 this court made an order that the respondent be escorted to the St. Giles Hospital for a psychiatric evaluation. By report dated 16th March, 2023 the Medical Superintendent of the St. Giles Hospital forwarded a psychiatric evaluation to this court. The report was subsequently forwarded to both counsel for their information.

HEARING

5. At the hearing of this application Dr. Kiran Gaikwad the Principal Medical Officer from the St. Giles Hospital informed the court that he is the joint author of the report dated 16th March, 2023 sent to this court. The Psychiatric Evaluation Report was marked and tendered as exhibit number 1. Dr. Gaikwad has an MBBS degree and a Post Graduate Diploma from the Fiji National University other than this he has an International Diploma in Mental Health Human Rights. Dr. Gaikwad has been working at the St. Giles Hospital for the past 11 years.

6. According to the witness the respondent suffers from a mental illness known as schizophrenia which is currently unspecified. The respondent has been a patient of the hospital and he displays clear signs of psychosis. The respondent is also having disturbances like auditory and tactile hallucinations due to the harmful use of cannabinoids.
7. The witness in his assessment stated that the respondent is unfit to plead, is not able to meaningfully participate in the court proceedings and he was under the influence of mental illness at the time of the alleged crime.
8. Upon questioning by this court the witness agreed that the St. Giles Hospital has facilities to treat the respondent, however, he appeared reluctant to treat the respondent at the hospital as an inpatient citing unavailability of beds at the hospital. Upon further questioning by this court the witness suggested the respondent be remanded at the Suva Remand Centre so as to enable the doctors from the hospital to undertake their examination of the respondent. This court finds the above reasons shallow and unconvincing there is a specialized hospital in this country which can provide for the best care and medical supervision the respondent needs.

LAW

9. Section 104 of the Criminal Procedure Act 2009 states:

(1) When, in the course of a trial at any time after a formal charge has been presented or drawn up, the court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 223 for the purposes of —

(a) obtaining a medical report; and

(b) such other enquiries as it deems to be necessary.

(2) If the court is of opinion that the accused person is of unsound mind so that he or she is incapable of making a proper defence, it shall postpone further proceedings in the case and shall —

(a) act in accordance with any law dealing with mental health; or

(b) in the absence of any appropriate provision of such a law, make any order or orders that the court considers appropriate to protect the interests of the accused person and of the public.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he or she will be properly taken care of and prevented from doing self injury or injury to any other person, and for his or her appearance before the court or such officer as the court appoints in that behalf.

(4) Upon consideration of the court record the President may order that the accused person may be confined in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order.

(5) Any order of the President under sub-section (4) shall be sufficient authority for the detention of such accused person until —

(a) the President shall make a further order in the matter; or

(b) the court finding him incapable of making a proper defence shall order the accused person to be brought before it again in the manner provided by sections 106 and 107.

10. Sections 23 and 27 of the Mental Health Act 2010 states:

When detention is permissible

23 A person may be detained for assessment in a mental health facility only-

(a) on a recommendation certificate given by a medical practitioner, as provided by section 24;

(b) on the order of a Magistrate or Judge, as referred to in section 27;

(c) on transfer from another health facility, as provided by section 28;

(d) on action taken by a medical director in relation to a voluntary patient under section 20; or

(e) action by the police officer under section 25.

Detention on order of a court

27 A person may be taken to and detained in a mental health facility in accordance with an order made by a court on the recommendation of a medical practitioner under the Criminal Procedure Act 2009 and the Crimes Act 2009.

DETERMINATION

11. Upon hearing Dr. Gaikwad and upon reading the psychiatric evaluation report tendered in my judgment it is in the best interest of the respondent and the community at large that the respondent be confined at the St. Giles Hospital under medical supervision. The mental illness of the respondent is serious and he requires the best treatment available.

12. The remand facility in my view is not equipped to have a close supervision of remand inmates having such a prolonged mental illness. There are other inmates at the remand centre who may not appreciate the illness of the respondent and may harm him.

CONCLUSION

13. On the basis of the evidence in this special inquiry as to the unsoundness of the respondent's mind this court is satisfied that there is a need for the respondent to be given inpatient treatment at the St. Giles Hospital. I allow the application and make the following orders.

ORDERS

- a) The respondent is currently suffering from a mental illness which requires treatment at the St. Giles Hospital as an inpatient;
- b) In the current situation the respondent is not capable of taking a plea, follow the court proceedings and put forward a proper defence required by law;
- c) The respondent is to be confined at the St. Giles Hospital for treatment and medical supervision for a period of three months from today;
- d) The Medical Superintendent of the St. Giles Hospital is to send his report to this court at the end of the three months;

- e) Parties to apply generally if there is any need to vary the above orders.




Sunil Sharma
Judge

At Lautoka

25 July, 2023

Solicitors

Office of the Director of Public Prosecutions for the Applicant.

Office of the Legal Aid Commission for the Respondent.