

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

**CRIMINAL MISC. HAM 149 of 2023**

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

**A N D** : **INIA VETAUKULA**  
**RESPONDENT**

**Counsel** : Ms. S. Naibe for the Applicant.

**Date of Hearing** : 30 August, 2023

**Date of Ruling** : 31 August, 2023

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**RULING**

[Trial in Absentia]

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**BACKGROUND INFORMATION**

1. The applicant by Notice of Motion dated 28<sup>th</sup> June, 2023 supported by the affidavit of A/Sgt. 4943 Netava Yalayala sworn on 28<sup>th</sup> June, 2023 and supplementary affidavit of the same officer sworn on 29<sup>th</sup> August, 2023 seeks the following orders:

*“That a trial in absentia be granted to the State in relation to HAC 58 of 2022 against the respondent.”*

2. The Respondent is charged with another for one count of aggravated burglary and one count of theft contrary to sections 313 (1) (a) and 291 of the Crimes Act 2009. The co-accused has been dealt with by this court.
3. On 8<sup>th</sup> June, 2018 the matter was first called in the Magistrates Court at Lautoka in the presence of the respondent and on 12<sup>th</sup> April, 2022 the matter was transferred to the High Court. The respondent was granted conditional bail on 8<sup>th</sup> June, 2018 by the Magistrate’s Court. One of the conditions was to appear in court whenever required.
4. The respondent did not appear in the High Court on 29<sup>th</sup> April, 2022 and a bench warrant was issued. By his absence the respondent breached his bail conditions.
5. State submits the police had made several attempts to locate the respondent but have not been successful. The attempts included visiting the last known address of the respondent, all the correction/ remand facilities, publication of the respondent’s photo in the Fiji Sun on 29<sup>th</sup> May, 2023 and also contacting the Fijian Immigration Department. The Fijian Immigration Department confirmed that the respondent has not left the country.
6. It is also submitted that the Corrections Department has confirmed that Inia Vetaukula is not in any of the correction or remand facilities in the country. Counsel stated that the absence of the respondent is causing delay in finalizing the trial. Furthermore, the respondent is aware of the proceedings and he was aware of the date he was to have been present in the High Court hence he has violated his bail conditions voluntarily. By

his conduct the respondent has waived his right to be present in court at trial.

7. Any further delay will mean a substantial delay will occur resulting in prejudice to the State's case as it is a 2018 allegation.

### **LAW**

8. Section 14 (2) (h) of the Constitution of the Republic of Fiji specifically deals with trial in absentia situations as follows:

*(2) Every person charged with an offence has the right –*

*(h) to be present when being tried, unless –*

*(i) the court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend; or*

*(ii) the conduct of the person is such that the continuation of the proceedings in his or her presence is impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.”*


### **DETERMINATION**

9. There is no doubt that the respondent is aware of the substantive matter pending against him, he was granted conditional bail which he chose to breach by not appearing in this court as required.

10. The prosecution and the court have also waited patiently for the respondent to appear in court. The delay is inexcusable, inordinate and may prejudice the prosecution case. According to the state counsel all the prosecution witnesses are available.
11. For the proper administration of justice and to retain the confidence of the general public it is important that there be finality to the substantive matter without any further delay. A trial in absentia can be allowed with safeguards so that the interest of the absent respondent can be protected avoiding any unfairness to him (*see Fiji Independent Commission Against Corruption v Fiona Tukana Nemani; HAC 37(A) of 2010, FICAC v Mahendra Motibhai Patel; HAM 68 of 2013*).

### **ORDERS**

1. The application for trial in absentia is allowed with the following safeguards:
  - (a) The prosecution should disclose and present evidence of all relevant material facts that would be to the advantage of the accused at trial;
  - (b) The state counsel to alert the court of any weaknesses in the prosecution case favourable to the respondent.

  
**Sunil Sharma**  
Judge



**At Lautoka**  
31 August, 2022

**Solicitors**  
**Office of the Director of Public Prosecutions for the Applicant.**