

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 155 of 2022

STATE

V

JONE TURUVA

Counsel : Ms. Sheenal Swastika for the State
Ms. Keli Vulimainadave with Mr. Paula Gade for the Accused

Hearing : 14 August 2023

Ruling : 8 September 2023

RULING

Introduction

- [1] On 23 September 2022, the Accused was charged in the Magistrate’s Court of Nadi with one count of Arson contrary to Section 362 (a) of the Crimes Act No. 44 of 2009 (“Crimes Act”).
- [2] Since Arson is an indictable offence, on the same day, the Learned Resident Magistrate Nadi transferred the case to the High Court. The Director of Public Prosecutions (DPP) is still to finalize the Information against the Accused.

- [3] On 30 November 2022 and on 2 March 2023, this Court made order for the Accused to be taken to St. Giles Hospital for a complete psychiatric evaluation to be conducted on him. Pursuant to the said order, the Accused was taken to St. Giles for examination and a Psychiatric Evaluation Report, dated 14 March 2023, has been submitted to Court.
- [4] On 19 June 2023, an application was made for a further psychiatric evaluation to be conducted on him. Pursuant to the said order, the Accused was taken again to St. Giles for examination and a Psychiatric Evaluation Report, dated 24 July 2023, has been submitted to Court.
- [5] On 6 June 2023, an application was made by the Learned State Counsel, for conducting an Inquiry by this Court as to the unsoundness of mind of the Accused. This application was made under the provisions of Section 104 of the Criminal Procedure Act No. 43 of 2009 (“Criminal Procedure Act”) and the provisions of the Mental Health Act No. 54 of 2010 (Mental Health Act).

The Law

- [6] PART X of the Criminal Procedure Act sets out the **PROCEDURE WHERE ACCUSED PERSON HAS A DISABILITY** [Sections 104-109 of the Criminal Procedure Act].
- [7] Section 104 of the Criminal Procedure Act (as amended) is titled “**Inquiry by Court as to the unsoundness of mind of Accused**”. For ease of reference, the entire Section is re-produced below:

104. - (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) The court 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 court under sub-section (4) shall be sufficient authority for the detention of such accused person until —

(a) the court 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.

[8] Sections 23 and 27 of the Mental Health Act complements the provisions of the Criminal Procedure Act. Section 23 stipulates when detention is permissible and is re-produced below:

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.

[9] Section 27 provides: *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 Decree 2009 and the Crimes Decree 2009.*

The Hearing

[10] During the Inquiry, Court heard the testimony of Dr. Kiran Gaikwad, the Principal Medical Officer of the St. Giles Hospital. Dr. Gaikwad had completed his MBBS Degree at Pune University, India, in 1999. He is also the recipient of a Post Graduate Diploma in Mental Health from Fiji National University (FNU) and an International Diploma in Mental Health, Human Rights and Law from Indian Law Society (ILS), Pune, India.

[11] Since the year 2002, the Doctor has been working with the Ministry of Health. He has been serving at St. Giles Hospital for the past 12 years (since 2011). He had been Acting as Medical Superintendent of the St. Giles Hospital for about 5 years.

[12] As per the order made by this Court on 19 June 2023, Dr. Gaikwad conducted a psychiatric evaluation on the Accused. Pursuant to the said psychiatric evaluation, the Doctor had tendered a comprehensive Psychiatric Evaluation Report, dated 24 July 2023. The said Report was marked as 'X' during the inquiry.

[13] Dr. Gaikwad also commented upon the previous Psychiatric Evaluation Report, dated 14 March 2023, which was prepared by himself.

[14] The Doctor stated that for the purpose of his latest examination, the Accused was admitted to the St. Giles Hospital for observation from 26 June 2023.

[15] Dr. Gaikwad testified that the Accused has been diagnosed with mental illness, namely schizophrenia and has been commenced on medications. Schizophrenia is the most chronic and disabling of the severe mental disorders, associated with abnormalities of brain structure and function, disorganised speech and behaviour, delusions, and hallucinations. It is sometimes called psychotic disorder or a psychosis. Medications are the mainstay of

treatment for schizophrenia. Drug therapy for the disorder, however, is complicated by several factors: the unpredictability of a given patient's response to specific medications, the number of potentially troublesome side effects, the high rate of substance abuse among patients with schizophrenia, and the possibility of drug interactions between antipsychotic medications and antidepressants or other medications that may be prescribed for the patient. Most symptoms do get alleviated by medications and in some cases there is residual symptoms.

[16] Dr. Gaikwad's conclusions, which are exclusively based on the history/information available, current observations made during the Accused's stay in hospital, current examination, personal interviews and assessment of the Accused's mental state, are as follows:

- “(1) That the accused is a mentally disordered person and needs further treatment as in-patient under an in-patient treatment order.*
- (2) He will released from hospital once he makes satisfactory progress and is assessed to be mentally well enough to be in the community.*
- (3) He will need to be on Community treatment order once released from hospital and has to take his medications and attend clinics regularly.”*

Conclusion

[17] Having heard the testimony of Dr. Gaikwad and carefully examining all the Medical Reports received in this case, Court is satisfied that the Accused may be of unsound mind and as such, incapable of making a proper defence in this case as at present. Therefore, there is a need for the Accused to be confined at a mental hospital or other suitable place of custody and to be given inpatient treatment over a period of time.

FINAL ORDERS

[18] In the light of the above, the final orders of this Court are as follows:

1. The Accused is to be confined at the St. Giles Hospital for medical treatment and supervision for a period of 2 months from the date of this order.
2. The Officer-in-Charge of the Natabua Remand Centre is to facilitate the transfer of the Accused to the custody of the St. Giles Hospital for medical treatment and supervision forthwith.
3. The Medical Superintendent of the St. Giles Hospital is to forward a report to this Court at the conclusion of the aforesaid period of 2 months.
4. Further proceedings in this case are postponed until 14 November 2023.




Riyaz Hamza
JUDGE

HIGH COURT OF FIJI

AT LAUTOKA

Dated this 8th Day of September 2023

Solicitors for the State : **Office of the Director of Public Prosecutions, Lautoka.**
Solicitors for the Accused : **Office of the Legal Aid Commission, Lautoka.**