

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL MISC. NO. HAM 187 of 2024

BETWEEN : **THE STATE**
APPLICANT

A N D : **MOHAMMED SHAHEED KHAN**
ETHAN KAI
RESPONDENTS

Counsel : Ms. S. Swastika and Ms. L. Tabuakuro for the
Applicant.
: No appearance by the Respondent.
Mr. M. Anthony and Mr. J. Bancod for the Second
Respondent.

Date of Submissions : 22 July, 2024
Date of Ruling : 22 July, 2024

R U L I N G

[Application for an Adjournment]

1. This is the third miscellaneous application filed by the state counsel in respect of the substantive proceedings pending in this court. To be precise this application was made within two hours of the second miscellaneous application being heard by this court and before a ruling could be delivered in that application.

2. The notice of motion dated 22nd July, 2024 is supported by the affidavit of A/IP Shamim sworn today seeking the following orders:
 - a) *That extension of time be given for service of summons on the respondent Mohammed Shaheed Khan and in doing so the trial date set for 22nd July to the 2nd August, 2024 be vacated.*
3. Ms Tabuakuro submitted that they now wish to serve the first accused Mr Mohammed Shaheed Khan with the amended information filed in this court. The police will be liaising with the Australia Federal Police to serve the information and produce him in court. Counsel seeks one month to attend to the needful hence she is asking this court to vacate the trial.
4. The counsel for the second respondent Mr Anthony vehemently objects to any adjournment. He submits that the trial must be completed within a reasonable time and there should be a finality as far as the second respondent is concerned. The second respondent has been in court and it is no fault of his that the state has failed to get the first respondent to court. Any further delay is prejudicial to the second respondent since he is ready for trial. Moreover, the second respondent has been in remand after the retrial was ordered by the Court of Appeal for a year now.
5. Finally counsel submitted that no good cause has been shown to have the trial adjourned for another month while the state now wishes to get the first respondent to court which they ought to have attended to a long time ago.
6. In reply the state counsel stated that an accused person can be kept in remand for 2 years. Although the delay post retrial is 1 year it is not unreasonable.

DETERMINATION

7. There is no dispute that the second respondent is in remand post retrial which is nearing one year. The Bail Act is clear that a person can be kept in remand for two years unless the interest of justice requires him or her to be kept beyond two years.
8. It is obvious to me that the office of the Director of Public Prosecutions has not done anything to serve the information filed in this court or bring the first respondent to court when they had all avenues to do so.
9. This court understands the serious nature of the allegation raised and as the court record will show the trial date was assigned with the concurrence of the state counsel in February, this year.
10. The second respondent's right to a trial within a reasonable time is important as well. He was the appellant in the Court of Appeal and the fruits of his litigation has allowed him a retrial cannot be ignored.
11. The second respondent is ready for trial and it is nearly one year that he has not been tried. It is on the day of the trial the state counsel is asking for an adjournment of the trial. This leads me to the court record, on 16th July 2024, Ms. Tabuakuro appeared and informed this court that the state will be proceeding against both the respondents and on the same day an amended information was filed.
12. Again on 18th July, this court was informed that 10 witnesses will be called and the witnesses will be available in court on Monday 22nd July. The notice of motion filed is now giving me a different picture. If I accept the notice of motion then the state counsel may have misled the court into believing that they were ready for trial.

13. The trial date was assigned long ago and more than enough time for the Office of the Director of Public Prosecutions to get their act together. In my considered judgment this last minute application is a means to cover up for the laxity shown in progressing the matter as it ought to have. It is the second respondent who is affected if this matter is adjourned any further. There is no acceptable reason given by the state counsel why the trial scheduled for today ought not to proceed. I have also noticed that the prosecution witnesses have been summoned and they are also present in court. The application for an adjournment of trial is refused.
14. Before I leave, I wish to mention that the order sought in the notice of motion is incorrectly drafted. There is no summons filed in this court which requires extension of time for service on Mohammed Shaheed Khan. It is only an information that has been filed and it is the responsibility of the state counsel to ensure service of that information and the presence of the accused in court for due process.



**Sunil Sharma
Judge**



At Lautoka
22 July, 2024

Solicitors

Office of the Director of Public Prosecutions for the Applicant.

First Respondent not in attendance.

Messrs Millbrook Hills Law Partners, Lautoka for the Second Respondent.