

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO: HAM 138 of 2024

FREDRICK EPELI

V

STATE

Counsel : Mr. Aca Rayawa for the Applicant

Ms. Rukalesi Uce with Ms. Emi Cabeimaiwai for the Respondent

Date of Hearing : 11 September 2025

Date of Ruling : 24 October 2025

RULING

Introduction

- [1] This is an application made by the Applicant by way of a Notice of Motion seeking several orders from this Court.
- [2] The Applicant is the 1st Accused in High Court Lautoka Criminal Case No. HAC 23 of 2024.
- [3] As per the Amended Information filed by the Director of Public Prosecutions (DPP) in the substantive matter, the Applicant, together with one Justin Steven Mashu Ho, have been charged in the High Court of Lautoka with one count of Attempted Unlawful Exportation of Illicit Drugs, contrary to Section 4 (1) and 9 of the Illicit Drugs Control Act No. 9 of 2004 [Illicit Drugs Control Act].

The full details of the Amended Information reads as follows:

Statement of Offence

ATTEMPTED UNLAWFUL EXPORTATION OF ILLICIT DRUGS: Contrary to Section 4 (1) and 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

FREDRICK EPELI and JUSTIN STEVEN MASHI HO, on the 23rd day of December 2018, at Nadi, in the Western Division, without lawful authority, attempted to export 2015.7 grams of cocaine, an illicit drug, to Sydney, Australia.

- [4] Both the Applicant and the 2nd Accused, Justin Steven Mashi Ho, have pleaded not guilty to the above charge.
- [5] It must be stated at the very outset, that the Applicant and the 2nd Accused, Justin Steven Mashi Ho, were originally charged by the DPP in the year 2019, in High Court Lautoka Criminal Case No. HAC 71 of 2019. Subsequently, on 8 December 2020, the State filed a Nolle Prosequi, in terms of Section 49 of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act) in respect of both the Applicant and the 2nd Accused. Accordingly, the Applicant and the 2nd Accused were discharged in respect of the charge for which the Nolle Prosequi was entered and they were both discharged from those proceedings.
- [6] On 21 May 2024, the Applicant, Fredrick Epeli, filed a Notice of Motion, seeking several orders from this Court. The Notice of Motion is supported by an Affidavit deposed to by the Applicant on the same day.

The Notice of Motion filed by the Applicant

- [7] As per the Notice of Motion filed by the Applicant he seeks the following orders from Court.
 - 1) That the Alibi Notice filed in the High Court on the 24 June 2020 and served on the Office of the Director of Public Prosecutions on the 24 June 2020 in Lautoka HAC 71 of 2019 be adopted in HAC 23 of 2024.

- 2) That the Alibi Disclosures filed in the High Court on 31 July 2020 by the Director of Public Prosecutions in Lautoka HAC 71 of 2019 be adopted in HAC 23 of 2024.
- 3) That the Accused/Applicant namely Frederick Epeli and his Counsel be granted permission to view the exhibits in Lautoka HAC 71 of 2019 alleged to be cocaine and the place it was kept in before it went missing and to inspect the location where it was eventually found.
- 4) That the Prosecution is ordered to release to the Accused/Applicant Frederick Epeli copies of the Namaka Police Station Police Investigation File and Report on the Result of Investigation surrounding the loss of the exhibits in HAC 71 of 2019, including all the Station Diary, Report Book and Exhibit Register from the months of December 2018, January 2019 and February 2019.
- 5) That the Prosecution is ordered to facilitate the release and securing the chain of custody of samples of the exhibits alleged to be cocaine to an Independent Laboratory for an Independent Testing of the exhibits alleged to be cocaine and the said independent testing is to be paid for by the Accused/Applicant Frederick Epeli in Lautoka HAC 71 of 2019 and now allegedly rediscovered in Lautoka HAC 23 of 2024.
- 6) Alternatively the Prosecution is ordered to produce the Court Order authorizing them to destroy the evidence in Lautoka HAC 71 of 2019 before the Trial of the Accused/Applicant Frederick Epeli in that case and in the current case of Lautoka HAC 23 of 2024.
- 7) Any other Orders that this Honorable Court deems fair and just.
- 8) Costs of this Application.

The Affidavit of Fredrick Epeli in Support of his Notice of Motion

[8] In the Affidavit in Support of his Notice of Motion the Applicant, inter-alia, deposes as follows:

1. That he has been charged for Attempted Unlawful Exportation of Illicit Drugs, contrary to Section 4 (1) and 9 of the Illicit Drugs Control Act.
2. That he has pleaded not guilty and deny all of the allegations made against him by the DPP.

3. That he has instructed his Lawyers Rayawa Law to write a Letter to the DPP for the release to him of several documents and reports that could assist him in the preparation of his defence against the criminal charge. A copy of the said Letter has been annexed to the Affidavit filed.
4. That he has also asked for the release to him of several other disclosures as listed in that Letter, which he has further particularized in his prayers as set out in the Notice of Motion.
5. That he has also asked to be given specimen samples of the seized exhibits alleged to be cocaine to be released to an independent science laboratory, which he is willing to pay for, to test the contents thereof as he is disputing the findings of the Government Analyst and the Report she prepared.
6. That he is challenging the entire chain of custody of the said exhibits alleged to be cocaine and he disputes all the findings in relation to them.
7. That the DPP has not responded to his Letter of Request and he is left with no alternative but to come to this Honourable Court seeking orders as prayed for in his Notice of Motion.
8. The Applicant prays that this Honourable Court grants him the orders sought.

The Affidavit of Detective Inspector Iosefo Tawake in Response to the Affidavit in Support filed by the Applicant

[9] On 19 February 2025, Detective Inspector Iosefo Tawake filed an Affidavit in Response to the Affidavit in Support filed by the Applicant. Therein, he inter-alia, deposes as follows:

1. That he has been employed as a Police Officer in the Fiji Police Force for the past 33 years. He is currently based at the Cyber Crime Unit of the Criminal Investigations Department Headquarters in Suva.
2. That he deposes his Affidavit from the best of his knowledge and information obtained in the course of his work as a Police Officer, including information given to him by the Office of the DPP.

3. That he is fully versed with the facts of High Court Lautoka Criminal Case No. HAC 23 of 2024.
4. That in High Court Lautoka Criminal Case No. HAC 23 of 2024, the Applicant is charged with another for one count of Attempted Unlawful Exportation of Illicit Drugs, contrary to Section 4 (1) and 9 of the Illicit Drugs Control Act. A copy of the Amended Information filed in this case has been annexed to the Affidavit as IT1.
5. That the allegations set out in High Court Lautoka Criminal Case No. HAC 23 of 2024, was initially before the High Court of Lautoka via Criminal Case No. HAC 71 of 2019. On 8 December 2020, proceedings in the said case were discontinued by the State when they filed a Nolle Prosequi in the matter.
6. That on the 29 January 2024, the Respondent re-filed charges against the Applicant and his Co-Accused, before the Magistrate's Court of Nadi. The matter was then transferred to the High Court.
7. In response to Prayer 1 of the Notice of Motion, the Respondent has no objection to have the Notice of Alibi filed by the Applicant in High Court Lautoka Criminal Case No. HAC 71 of 2019 to be adopted in the current proceedings. However, the Officer deposes that the said Notice of Alibi be re-filed in the current proceedings so as to bear the action number of the current proceedings.
8. In response to Prayer 2 of the Notice of Motion, the Respondent has no objection to have the Alibi Disclosures filed by the State in High Court Lautoka Criminal Case No. HAC 71 of 2019 to be adopted in the current proceedings. However, the Officer deposes that the said Alibi Disclosures be re-filed in the current proceedings so as to bear the action number of the current proceedings.
9. In response to Prayer 3 of the Notice of Motion, Detective Inspector Tawake deposes that during the course of the investigations in High Court of Lautoka Criminal Case No. HAC 71 of 2019 (via Police Docket WA CR 47/3/2019) one brown bag containing the 2 bars of cocaine with the weight of 2015.7 grams was registered in the Register of Court Exhibits (RCE) at the Namaka Police Station. The

relevant RCE reference number is 563/18. A copy of the said Register of Court Exhibits from Namaka Police Station is annexed to the Affidavit as IT2.

10. That the brown bag containing the 2 bars of cocaine was kept in the Exhibit Room at the Namaka Police Station in Nadi after it was registered. Photographs of the Exhibit Room at the Namaka Police Station where the said cocaine was kept is annexed to the Affidavit as IT3.
11. That the brown bag containing the 2 bars of cocaine was then registered in the Register of Court Exhibits reference number 1/20 being carried forward with the relevant RCE reference number 29/20. A copy of the said Register of Court Exhibits from Namaka Police Station is also annexed to the Affidavit as IT4.
12. That the brown bag containing the 2 bars of cocaine was kept at the Namaka Police Station until it was discovered to have been missing on 7 December 2020.
13. That the brown bag containing the 2 bars of cocaine with the weight of 2015.7 grams of cocaine has not been found by the Police.
14. In the circumstances, the Officer deposes that the Respondent cannot facilitate for the Applicant and his Counsel to view the said Exhibits as it cannot be found by the Police.
15. In response to Prayer 4 of the Notice of Motion, the Officer deposes that on 7 December 2020, a Report was lodged by the then Divisional Crime Officer, West, Superintendent of Police Iakobo Vaisewa at the Namaka Police Station in respect of the missing exhibits in High Court of Lautoka Criminal Case No. HAC 71 of 2019.
16. That the relevant Report No. 56/12/20 was registered in the Register of Report/Complaint at the Namaka Police Station. A copy of the relevant entry of the Register of Report/Complaint at the Namaka Police Station is annexed to the Affidavit as IT5.
17. That an entry bearing the Report No. 56/12/20 was also made in the Station Diary at the Namaka Police Station. A copy of the relevant entry of the Station Diary of the Namaka Police Station is also annexed to the Affidavit as IT6.

18. The Officer further deposes that an investigation was initiated in respect of the missing exhibits namely the 2015.7 grams of cocaine in High Court of Lautoka Criminal Case No. HAC 71 of 2019. The Respondent cannot disclose the investigation file into the missing exhibits as it is a privileged document and has no bearing on the current proceedings before this Court. It is not in dispute that the drugs has not been found. However, it is deposed that this does not affect the current proceedings and it is for the Respondent to establish the chain of custody from the point when the drugs were discovered and seized until it was sent for testing and tested by the Government Analyst.
19. In response to Prayer 5 of the Notice of Motion, it is stated that during the course of investigations in High Court of Lautoka Criminal Case No. HAC 71 of 2019, two samples of white compact powder was sent to the Fiji Police Forensic Chemistry Laboratory for analysis by the Government Analyst, Dr. Miliana Werebauinoa. A copy of the Statement given by the Government Analyst, dated 3 January 2019, is annexed to the Affidavit as IT7.
20. That according to the Certificate of Analysis, the two samples of white powder like substance sent to the Fiji Police Forensic Chemistry Laboratory for analysis tested positive for cocaine with the total weight of 2015.7 grams. A copy of the Certificate of Analysis is annexed to the Affidavit as IT8.
21. Detective Inspector Tawake further deposes that the Statement of the Government Analyst and the Certificate of Analysis were filed and served to the Applicant and to his Counsel during the initial proceedings in High Court of Lautoka Criminal Case No. HAC 71 of 2019.
22. The State is relying on the same Certificate of Analysis that was filed and served in High Court of Lautoka Criminal Case No. HAC 71 of 2019 in the current proceedings.
23. During the initial proceedings in High Court of Lautoka Criminal Case No. HAC 71 of 2019, the Applicant and his Counsel did not at any stage of the said proceedings make any issue or file any application to have the drug samples which were tested by the Government Analyst to be independently tested.

24. The Applicant and his Counsel have not disclosed the reasons as to why they intend to have the drug samples now independently tested, apart from the fact that they are disputing the Government Analyst's Report. It has always been the position of the Applicant that he had no knowledge of the 2015.7 grams of cocaine that was attempted to be unlawfully exported to Australia.
25. The Applicant and his Counsel have always contested the chain of custody of the 2015.7 grams of cocaine. The Officer deposes that the chain of custody and the contents of the Certificate of Analysis are all trial issues and should be dealt with during the course of the trial in these proceedings.
26. In response to Prayer 6 of the Notice of Motion, it is deposed that there was no Court Order issued in High Court of Lautoka Criminal Case No. HAC 71 of 2019 for the destruction of the 2015.7 grams of cocaine. As such, no action was taken for the destruction of the said exhibits. In the circumstances, it is stated that the Respondent cannot make available any Court Order in this regard.
27. As to costs of this application, the Officer deposes that the Applicant should bear his own costs.
28. Detective Inspector Tawake further deposes that the State is only conceding to the orders sought in Prayers 1 and 2 of the Notice of Motion filed by the Applicant. He submits that the remaining orders sought as per the Notice of Motion should not be granted for the reasons stated in his Affidavit.

The Affidavit of Fredrick Epeli in Reply

[10] On 25 July 2025, the Applicant filed an Affidavit in Reply, wherein he reiterates what he had submitted to Court in the original Affidavit in Support filed by him on 21 May 2024. Furthermore, the Applicant submits that he is challenging the entire chain of custody of the exhibits alleged to be cocaine and that he disputes all the findings in relation to them. He deposes that in fact there was no cocaine found at all because he has never being shown any such evidence from the day he was arrested until today.

[11] Furthermore, the Applicant strongly objects to the re-filing of the Notice of Alibi and the Alibi Disclosures all over again in the current proceedings. He submits that it is the duty and responsibility of the DPP to re-file the said documents.

[12] The Applicant further deposes that he strongly believes that he is entitled to the full disclosures of the Police investigation file into the missing exhibits. He submits that this is his Constitutional Right to full disclosures which the Police and the DPP are claiming privilege over.

The Hearing

[13] This application was taken up for hearing before me on 11 September 2025. Counsel for the Applicant and the State were heard.

Analysis

[14] This Court has considered the Notice of Motion filed by the Applicant and the Supporting Affidavit filed by him. Court has also taken into consideration the Affidavit of Detective Inspector Iosefo Tawake in Response to the Affidavit in Support filed by the Applicant and the Affidavit in Reply filed by the Applicant.

[15] Court has also considered the submissions made by the Learned Counsel for the Applicant and the Learned State Counsel during the hearing of this application.

[16] This Court has called for and perused the Court Record in the High Court of Lautoka Criminal Case No. HAC 71 of 2019. Court finds that the Alibi Notice filed by the Applicant, on the 24 June 2020 and the Alibi Disclosures filed by the DPP, on 31 July 2020, are available in the said Court Record.

[17] Therefore, this Court is of the view that orders sought in Prayers 1 and 2 of the Notice of Motion filed by the Applicant can be granted.

[18] Accordingly, Court makes order for the Alibi Notice filed by the Applicant on the 24 June 2020 and served on the Office of the DPP on the 24 June 2020, in High Court of Lautoka Criminal Case No. HAC 71 of 2019 to be adopted in the current proceedings.

- [19]** This Court makes further order that the Alibi Disclosures filed by the DPP on 31 July 2020, in High Court of Lautoka Criminal Case No. HAC 71 of 2019 to be adopted in the current proceedings.
- [20]** The manner in which the aforesaid Alibi Notice and Alibi Disclosures will be adopted in the current proceedings will be determined during the course of the proceedings.
- [21]** It has been clearly submitted by the State that the brown bag containing the 2 bars of cocaine which had been kept at the Namaka Police Station was found to be missing on 7 December 2020.
- [22]** Since the State has submitted that the 2015.7 grams of cocaine is not available, Court is not in a position to make any orders permitting the Applicant or his Counsel from viewing or inspecting the said exhibits. For the same reasons, Court is not in a position to make any orders for the said exhibits to be sent for independent testing.
- [23]** Furthermore, since it has been revealed that the 2015.7 grams of cocaine has been found missing from Namaka Police Station instead of being destroyed pursuant to an Order issued by the High Court of Lautoka in Criminal Case No. HAC 71 of 2019, no such Court Order can be made available to the Applicant.
- [24]** It has been submitted by the State that an internal Police investigation was initiated in respect of the missing exhibits namely the 2015.7 grams of cocaine in High Court of Lautoka Criminal Case No. HAC 71 of 2019. It was stated that the Respondent cannot disclose the investigation file into the missing exhibits as it is a privileged document.
- [25]** However, further to the Affidavit filed by Detective Inspector Iosefo Tawake, this Court was of the opinion that a copy of the Police Investigation Report should be filed in Court to ascertain the outcome of the said Police Investigation.
- [26]** Accordingly, on 12 June 2025, Senior Superintendent of Police, Loraini Seru, the Director of the CID, submitted a Report to the Office of the DPP regarding the “Status of Investigation – Missing Exhibit (Drugs) at Namaka Police Station”. A copy of the said Report was filed in Court on 25 June 2025 and served on the Learned Counsel for the Applicant.

The contents of the Report reads as follows:

“... this correspondence serves to confirm an active criminal investigation into the above matter vide CID HQ PEP 03/12/2020.

We confirm that the missing drugs, a 2 kg cocaine was registered as an exhibit vide Namaka Police Station RCE No. 02/2020 for registered Criminal Registered Case (CR) No. 47/03/2019 – State v Frederick Epeli & Justin Ho.

As per our records, the relevant investigation file – CID HQ PEP 03/12/2020 was despatched to the Office of the DPP on 08/06/2022 for an independent legal advice.

Two suspects both Police Officers were interviewed under caution in this case”.

- [27] On 25 June 2025, the Learned State Counsel who appeared on behalf of the State submitted to Court that the Office of the DPP has examined the relevant investigation file and have found no evidence to proceed against the two suspected Police Officers.
- [28] In the circumstances, this Court will not make order directing the State to disclose the contents of the Police Internal Inquiry (The Police Investigation File) conducted in relation to the missing exhibits as Court agrees that it is a privileged document.
- [29] During the hearing of this application, the Learned Counsel for the Applicant submitted to Court that the Applicant has a right of access to the aforesaid information in terms of the Information Act No. 9 of 2018. However, this Court does not agree with this contention.
- [30] It must be emphasized that it is incumbent on the State to establish beyond reasonable doubt in the substantive criminal matter, that the Applicant and the 2nd Accused, Justin Steven Mashi Ho, on the 23 December 2018, at Nadi, in the Western Division, without lawful authority, attempted to export 2015.7 grams of cocaine, an illicit drug, to Sydney, Australia. This includes to establish beyond reasonable doubt the chain of custody in relation to the 2015.7 grams of cocaine, from the point of time when it was discovered and seized until it was sent for testing and tested by the Government Analyst.

FINAL ORDERS

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

1. The orders sought as per Prayer 1 of the Notice of Motion is allowed.

2. The orders sought as per Prayer 2 of the Notice of Motion is allowed.
3. The orders sought as per Prayers 3 to 6 of the Notice of Motion are disallowed.
4. I make no order for costs.


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT LAUTOKA

Dated this 24th Day of October 2025

Solicitors for the Applicant : Messrs Rayawa Law, Barristers & Solicitors, Suva.
Solicitors for the Respondent : Office of the Director of Public Prosecutions, Lautoka.