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

**MISCELLANEOUS CASE NO: HAM 33 of 2026**
**[CONSOLIDATED WITH MISCELLANEOUS CASE NO: HAM 32 of 2026]**

**1. SUNDAR LAL**
**2. BALEIWAI WAQABACA**

**V**

**STATE**

**Counsel** : Mr. Stephen J. Stanton for the 1st and 2nd Applicants

Ms. Sheenal Swastika with Mr. Joeli Nasa for the Respondent

**Dates of Hearing** : 13 March and 16 March 2026

**Date of Ruling** : 24 March 2026

# RULING

## Introduction

**[1]** This is an application made by the two Applicants for a permanent stay of the criminal proceedings instituted against them in the High Court of Lautoka. The 1st Applicant is the 4th Accused; while the 2nd Applicant is the 5th Accused in Lautoka High Court Criminal Case No: HAC 101 of 2021.

**[2]** As per the Information filed by the Director of Public Prosecutions (DPP) in the substantive matter, the two Applicants together with Rusiate Kelvin James Lal, Ronald

Simon Lal and Ron Tuivuna William Lal, are charged with one count of Murder, contrary to Section 237 of the Crimes Act No. 44 of 2009 (Crimes Act).

The full details of the Information reads as follows:

***Statement of Offence***

**MURDER:** Contrary to Section 237 of the Crimes Act of 2009.

***Particulars of Offence***

**RUSIATE KELVIN JAMES LAL, RONALD SIMON LAL, RON TUIVUNA WILLIAM LAL, SUNDAR LAL AND BALEIWAI WAQABACA,** on the 19th day of September 2021, at Nadi, in the Western Division, murdered **ENERI ABBAS ALI.**

**[3]** Both Applicants and the co-accused pleaded not guilty to the above charge and the matter was fixed for trial from 2 March to 27 March 2026.

**[4]** On 6 March 2026, the 1st Applicant, Sundar Lal, filed a Notice of Motion [In Criminal Miscellaneous Case No. HAM 33 of 2026], seeking the following Orders from this Court:

(a) An order that there be a permanent stay of criminal proceedings against the Applicants in reliance upon the inherent jurisdiction of this Honourable Court;

(b) A Declaration that in the circumstances as deposed to in the Affidavit of Priya Lal sworn on 3 March 2026 (actually the 4 March 2026) there has been a breach of the Constitution clause 15 in respect of the Applicants' rights to a fair trial before a Court of Law contrary to clause 15(1);

(c) An order that the proceedings be stayed as a consequence of the Declaration made in paragraph 2 above;

(d) Directions be made for an adjournment of the trial until the application is heard and determined; and

(e) Such further or other relief as may seem fit.

**[5]** The Notice of Motion was supported by an Affidavit deposed to by the said 1st Applicant, Sundar Lal. The Notice of Motion was further supported by an Affidavit deposed to by

one Priya Lal, a daughter of the 1st Applicant, on the 4 March 2026. A Further Affidavit in Support deposed to by Priya Lal, on 6 March 2026, and a Further Affidavit in Support deposed to by Uri Kurop, on 7 March 2026, were also filed in support of the application for permanent stay.

**[6]** On 6 March 2026, the 2nd Applicant, Baleiwai Waqabaca, filed a similar Notice of Motion [In Criminal Miscellaneous Case No. HAM 32 of 2026], seeking the following Orders from this Court:

(a) An order that there be a permanent stay of criminal proceedings against the Applicants in reliance upon the inherent jurisdiction of this Honourable Court;

(b) A Declaration that in the circumstances as deposed to in the Affidavit of Priya Lal sworn on 3 March 2026 (actually the 4 March 2026) there has been a breach of the Constitution clause 15 in respect of the Applicants' rights to a fair trial before a Court of Law contrary to clause 15(1);

(c) An order that the proceedings be stayed as a consequence of the Declaration made in paragraph 2 above;

(d) Directions be made for an adjournment of the trial until the application is heard and determined; and

(e) Such further or other relief as may seem fit.

**[7]** The Notice of Motion was supported by an Affidavit deposed to by the said 2nd Applicant, Baleiwai Waqabaca, on 4 March 2026. The Notice of Motion was further supported by the said same Affidavit deposed to by Priya Lal, who is a daughter of the 2nd Applicant as well, on the 4 March 2026.

**[8]** The said two applications were first called before this Court on 9 March 2026, and directions given for the State to file and serve their Affidavits in Opposition and for the Applicants to file their Affidavits in Reply.

**[9]** Since the subject matter in both applications was the same-namely seeking a permanent stay of criminal proceedings against the two Applicants-all parties agreed that the two applications can be consolidated and heard together. Accordingly, Criminal

Miscellaneous Case No. HAM 33 of 2026 and Criminal Miscellaneous Case No. HAM 32 of 2026 were consolidated. This Court made order that the consolidated case number would remain as Criminal Miscellaneous Case No. HAM 33 of 2026.

**The Affidavit of Sundar Lal in Support of his Notice of Motion**

**[10]** In the Affidavit in Support of his Notice of Motion the 1st Applicant, Sundar Lal, inter-alia, deposes as follows:

1. That he is the 4th Accused in the substantive matter.
2. That he has read the Affidavit of Priya Lal sworn on 4 March 2026 and has listened to the recording and read the transcript in that affidavit.
3. That as a citizen of the Republic of Fiji and as an Accused person he has a Constitutional right to a fair trial.
4. That his wife also has a right to a fair trial as an Accused person.
5. That he is deeply concerned and very much in fear of his right to a fair trial being unable to be given to him where witnesses have been coached by the prosecution.
6. That unless this Court intervenes to stay these proceedings and in doing so afford to his wife and himself (justice) they will be denied and deprived a fair trial and may possibly suffer conviction from evidence that has been contaminated by the coaching that has been undertaken.

**The Affidavit of Baleiwai Waqabaca in Support of her Notice of Motion**

**[11]** In the Affidavit in Support of her Notice of Motion the 2nd Applicant, Baleiwai Waqabaca, inter-alia, deposes as follows:

1. That she is the 5th Accused in the substantive matter.
2. That she has read the Affidavit of Priya Lal sworn on 4 March 2026 and has listened to the recording and read the transcript in that affidavit.

3. That as a citizen of the Republic of Fiji and as an Accused person she has a Constitutional right to a fair trial.

4. That she is deeply concerned and very much in fear of her right to a fair trial being unable to be given to her where witnesses have been coached by the prosecution.

5. That unless this Court intervenes to stay these proceedings and in doing so afford to herself (justice) she will be denied and deprived a fair trial and may possibly suffer conviction from evidence that has been contaminated by the coaching that has been undertaken.

**The Affidavit of Priya Lal in Support of Application for Permanent Stay**

**[12]** In the Affidavit in Support of this Application for Permanent Stay, Priya Lal, inter-alia, deposes as follows:

1. That she is making this Affidavit in Support of the application for a permanent stay of proceedings filed by the 4th and 5th Accused, who are the Applicants herein.

2. That she was the former de-facto partner of the deceased Eneri Abbas Ali (the deceased) who died on 19 September 2021.

3. That at the time the deceased passed away they were estranged and she had indicated to him that she would not return to live with him in a de-facto relationship. At the time of his death, they had a child who was an infant aged approximately 4 months old.

4. That she is the daughter of the two Applicants, who along with co-Accused Rusiate Kelvin James Lal, Ronald Simon Lal and Ron Tuivuna William Lal (who are all her biological brothers), have been charged with Murder and have pleaded not guilty to the charge. She had been subpoenaed to attend as a witness for the State up to and including as best as she recalls the 4 August 2025.

5. That on 13 August 2025, she was informed that the trial in the matter was adjourned to be heard in March 2026.

6. That on 5 August 2025, she was advised by the Prosecutor Ms. Shreta Prakash that she would not be called as a witness for the prosecution. At that time, she attended in the company of her sister-in-law Ingrid Lal, the wife of the 1st Accused Rusiate Kelvin James Lal.

7. That the DPP had put her and witnesses for the prosecution on a Viber Group chat which was titled Henry's Case. Participants in the Viber Group were Ms. Prakash, Irfan Ali, Lavenia Vinaka (Nia), Sanjay Kumar, Priya Singh, Paulina Lewa, Tavaga Semo and Tinai Lita. Photographs (Profile Photos) of some of the participants in the Viber Chat group have been annexed to her Affidavit as Annexure A.

8. That on 4 August 2025, she attended the DPP's Office at the request of Ms. Prakash. In addition to the persons referred to above, but who were not part of the Viber Group chat and present at the DPP's Office on 4 August 2025, were Samuel Morgan, Rusila Bakabaka and Azeem Ali Khan, the father of the deceased. To her knowledge these were all witnesses for the prosecution at the upcoming trial to be held in August 2025.

9. That in response to the notification in the Viber Group chat, she attended a meeting with each of the other witnesses at the third floor of the DPP's Office. The meeting was conducted by Ms. Prakash herself. There were no other lawyers from the DPP's Office present at that time.

10. That at the outset she observed that this was going to be similar exercise that she had attended in May 2024 when she received a summons to be a witness for this case and requested to attend the DPP's Office for a similar meeting. She recalls that most of the witnesses who were present at the meeting in May 2024 were also in attendance at the meeting on 4 August 2025.

11. That she became concerned on the previous occasion in May 2024, that what she was participating in was the coaching of evidence being undertaken by the

Prosecutor of all the witnesses in attendance, who were being encouraged to give their evidence and to do so, so that they would be consistent. They were also coached as to how they should react to cross-examination and that they should be specific even if they could not accurately recall what happened.

12. The Prosecutor during the May 2024 meeting was a tall I-taukei woman whose name she had forgotten. She cannot recall specifically the words that this lady spoke, but she remembers it was to coach the witnesses and they were all spoken to at the same time. The lady had invited each witness to speak and gave guidance as to how they should give their evidence. She recalls there was also a male Prosecutor present at that meeting, whose name she cannot recall. The said male Prosecutor similarly participated in coaching of the witnesses.

13. That she recalls being upset at what she had witnessed and heard because she felt it was being unfair to the Accused that the witnesses were being coached as to what to say and where they were unable to recall they were being prompted in the presence of each other to make sure that their evidence was consistent to convict.

14. Back to the 4 August 2025, Priya Lal deposes that on that day, she attended the DPP's Office in response to a subpoena and at the request of Ms. Prakash. Present in the room at the time were 11 other people who were in attendance together (12 persons together with herself). The persons present were Tavaga Semo, Abdul Shaizal Shah, Solomoni Nakeli, Samuel Morgan, Seini Delai, Priya Singh, Rusila Bakabaka, Irfan Ali, Lavenia Vinaka, Ana Bulou, Asaeli Driu and herself.

15. THAT Ms. Prakash opened the meeting and she clearly remembers her saying, "We are here for justice". After hearing Ms. Prakash make the opening statement, she decided that she would record the meeting and if possible video it on her phone and accordingly she had activated her phone.

16. That she videoed and recorded the meeting in what were six videos (Video 1 to Video 6) until she was excluded from the meeting because she questioned that Samuel Morgan was not there from the beginning (of the incident). At this

stage, Ms. Prakash had requested her to leave the room and that she will be called back shortly.

17. Based on the audio and video recording, a written transcript was made by herself with the assistance of Mr. Uri Kurop who typed the transcript in her presence. They had both listened to the audio and video recording together and prepared the said transcript. The said portion of the transcripts have been numbered from pages 1 to 16 and is annexed to the Affidavit as Annexure C.

18. That she stayed outside the room for 2 hours until she was dismissed by a Police Officer who had served summons on her. The Police Officer had told her to come back on the next day (5 August 2025). Before she left, a photo was taken on her phone of the Police Officer and herself. A copy of the said photo is annexed to the said Affidavit as Annexure B.

19. That on 5 August 2025, she had attended the DPP Office again at the request of Ms. Prakash. Her sister-in-law Ingrid Lal was also present. Apart from the two of them, the other people who were in attendance were all Police Officers in the case who were dressed in civilian clothing.

20. Soon after she and Ingrid Lal arrived in the room, she heard one of the Police Officers say that they (the Police witnesses) should all leave and return later. Accordingly, the Police Officers had left the room.

21. Thereafter, it was just herself and Ingrid Lal who were left in the room with Ms. Prakash. The deponent had again decided that she would audio and video record the meeting on her phone and she did so from Video 7 to Video 13 inclusive.

22. Based on the audio and video recording, a further written transcript was made by herself with the assistance of Mr. Uri Kurop who typed the transcript in her presence. They had both listen to the audio and video recording together and prepared the said transcript. The said portion of the transcript have been numbered from pages 17 to 26 and is annexed to the Affidavit as Annexure D.

23. The audio and video recording was downloaded onto a USB which was used to make the transcripts in Annexures C and D. The USB is annexed to the Affidavit as Annexure E.

24. That she refers Court to the transcripts and in particular to pages 3, 4, 5 and 6 as well as pages 11, 12, 13 and 15 of the transcripts as instances of coaching by the Prosecutor to the witnesses.

25. That she was told by Ms. Prakash that she would be given clearance as she would not be called as a prosecution witness. However, she was not to contact the lawyers for the Accused until she was given clearance.

26. That as soon as she was given the clearance, that she would not be a witness, she was so upset that the Accused in this case would not be given a fair trial because of interference by the prosecution. Thereafter, she contacted the lawyers for her mother and father.

**Further Affidavit of Priya Lal in Support of Application for Permanent Stay**

**[13]** In the Further Affidavit in Support of this Application for Permanent Stay, Priya Lal, inter-alia, deposes as follows:

1. That despite being told that she would not be required as a witness for the prosecution, she was not made officially aware that she was not going to be a witness until late February 2026, when she received information that she would be made available as a witness for cross-examination. The first time it became official that she would not be required as a witness for the prosecution was when the List of Prosecution Witnesses was provided by the State on 5 March 2026. In the said list her name appears under the heading – Witnesses Available for Cross-examination.

2. That she had contacted the lawyers for the Applicant only after becoming officially aware that she was no longer required as a witness for the prosecution.

**Further Affidavit of Uri Kurop in Support of Application for Permanent Stay**

**[14]** In the Affidavit in Support of this Application for Permanent Stay, Uri Kurop, inter-alia, deposes as follows:

1. That he is the employer of the 2nd Accused in this case (Ronald Simon Lal) and the 2nd Applicant Baleiwai Waqabaca, who worked for him as Outboard Marine Motor Mechanics. He also knows the family for a period of over 5 years.

2. That he had first been approached by Priya Lal, daughter of the 2nd Applicant, regarding this matter on or about August 2025.

3. That Priya Lal had provided to him her phone where certain conversations had been audio and video recorded. He had downloaded the said audio and video recorded conversations on to his computer and from which a USB was made. He had then typed a transcript in the presence of Priya Lal, listening to what was said in the said recording and identifying the people according to her recollection as to names. A copy of the USB and the transcript was given to Priya Lal for her safe keeping.

4. He deposes that he made the transcripts from the recording as made and downloaded on to his computer and from which a USB was made. He confirms that the contents of the transcript are true and correct to the best of his knowledge.

**The Affidavit in Opposition filed by Shreta Prakash**

**[15]** Shreta Prakash has filed an Affidavit in Opposition to this application for permanent stay. Therein, inter-alia, she deposes as follows:

1. That she is a Legal Officer working at the Office of the DPP based in Lautoka.
2. She confirms that Priya Lal was subpoenaed as a witness for the State for the trial proper which was scheduled to begin on 4 August 2025. She confirms that the said trial date was vacated and the matter was re-fixed for trial in March 2026.
3. A Viber Group including all witnesses was created by Sergeant Saiasi who was the Investigating Officer in the case. This was for the purpose of assisting the State in

informing the witnesses as to which witness was to come to Court on a particular day, since this was a month long trial.

4. She confirms that a witness conference for this case was held on 4 August 2025, at the Conference Room of the DPP's Office. The witness conference was conducted by her on instructions of the Lead Trial Counsel, Ms. Uce who was unwell on that day. Priya Lal with some other witnesses attended the said witness conference on 4 August 2025.
5. She submits that Court allowances are paid to all witnesses who come to give evidence for the State. The Court allowance is not paid to lure the witnesses to give evidence in favor of the State. It is only paid as a compensation for their time spent in Court as required by law.
6. With regard to those presence at the witness conference held on 4 August 2025, she cannot recall if Abdul Shaizal Shah and Lavenia Vinaka were present that day. However, she do confirms that all other persons listed were present for the witness conference.
7. Ms. Prakash reiterates that these witnesses were eye witnesses to the incident, thus classifying them as the same class of witnesses. From her experience at the Office of the DPP, there is nothing that prohibits having a witness conference with the same class of witnesses at once or in one sitting. All witnesses were continuously reminded to be honest with what they say and heard at the scene of the incident and to be honest with any explanation they provide to issues raised during cross-examination. At no point were the witnesses coached or asked to alter their evidence in favor of the State's case.
8. Ms. Prakash further deposes that she was totally unaware that witness Priya Lal was recording the proceedings of the witness conference held that day. No permission was sought by Priya Lal to record a confidential witness conference that was conducted by her on behalf of the State, within the private and confidential vicinity of the Office of the DPP in Lautoka.
9. She denies the reasons provided by Priya Lal for excluding her during the course of the meeting. Priya Lal was only excluded from the meeting after she had noticed that she was deliberately trying to interrupt and confuse the other witnesses. Given her relationship with the Accused persons, she could understand her agenda to

deliberately do so. As such, Priya Lal was asked to leave the Conference Room to avoid any unnecessary confusion.

10. She is unaware as to the time Priya Lal had spent outside the room after being asked to leave the room. She had been informed to come the next day (5 August 2025) by Sergeant Saiasi.
11. Ms. Prakash confirms that Priya Lal and Ingrid Lal came for a witness conference on 5 August 2025. The said witness conference was conducted in the same room as on 4 August 2025. She denies that there were any Police Officers present during the witness conference with Priya Lal and Ingrid Lal. The witness conference was conducted by her with only Priya Lal and Ingrid Lal present. There was no other person present at the time, except a child they brought with them who they said did not have anyone to look after.
12. Again it is reiterated that she was totally unaware that witness Priya Lal was recording the proceedings of the witness conference held that day. No permission was sought by Priya Lal to record a confidential witness conference that was conducted by her on behalf of the State at the Office of the DPP in Lautoka.
13. She categorically denies the allegation of coaching and that the prosecution evidence has been contaminated by such coaching. She respectfully submits that the transcripts submitted Priya Lal clearly shows that there was no coaching on her part. She was merely explaining to the lay witnesses (who are lay persons and do not understand how the Court functions), as to what to expect in Court and the importance of giving detailed, specific and clear evidence as possible according to their true recollection of the events which took place.
14. It is also evident from the transcripts submitted by Priya Lal that she had kept reminding the witnesses to be honest with whatever they saw and happened at the time of the incident.
15. It is further stated that at pages 3 and 4 of the transcripts submitted by Priya Lal the distance discussed by her and the witnesses was in regard to the distance between the scene of the incident and their house and the house of the deceased. This was asked only for her understanding of the distances and to understand the area at which the incident had occurred.

16. Ms. Prakash confirms that on 5 August 2025, Priya Lal was informed by her that she would not be called as a State witness. However, she was asked to refrain from contacting the Defence Counsels as they had requested for her to be made available for cross-examination during the trial.
17. It is submitted that Priya Lal has stated in her Affidavit that as soon as she became aware that she would not be called as a State witness, she contacted the Counsel for her parents. This shows that the Applicants and their Counsel would have been fully aware of the audio and video recordings that Priya Lal made since August 2025. However, the Applicants had waited until the trial date to file this application for stay of proceedings. This clearly indicates that this is a delaying tactic adopted by the Applicants, who are well aware of the strength of the State's case and that the State's case is largely based on the evidence of direct eye witnesses.
18. It is further deposed that when she and Ms. Uce had a meeting with Mr. Stanton (Counsel for the two Applicants) and Mr. Roneil Kumar (Counsel for the 3rd Accused) in 2025, they had suggested that the Defence call Priya Lal as their witness as it was clear to the State that Priya Lal's evidence during witness conferencing totally contradicted the rest of the eye witnesses. However, the Defence had stated that they do not intend to call Priya Lal as their witness, but that she be made available for cross-examination, which the State agree to do.
19. It is further deposed that Priya Lal has a hidden agenda for obvious reasons. All the Accused persons are directly related to her and are facing a serious charge of Murder. She is aware that the State's case is a strong one against all he Accused persons and it is in her interest to see that they do not go to trial or eventually get convicted.
20. For the aforesaid reasons, Ms. Prakash strongly objects to this application made by the Applicants for a permanent stay of proceedings. She submits that the said applications should be dismissed with costs.

**[16]** Further Affidavits in Opposition were filed by Azeem Ali Khan (the father of the deceased) and Gyaneel Kumar (IT Officer at the Office of the DPP based in Lautoka).

**[17]** Azeem Ali Khan inter-alia deposes that the deceased was his youngest son and the only child who resided with him in Fiji. He was his right hand and was supporting him with

his day to day activities, given that his wife had passed away in 2006. The life of his youngest son was brutally taken away on 19 September 2021. His death has caused immense grief and suffering to him and his family. They have endured significant emotional trauma since losing the deceased. Since the death of the deceased, he and his family have been waiting for the legal process to take its course so that the circumstances surrounding his death may be fully determined by the Court. Therefore, he strongly objects to this application for a permanent stay of proceedings.

**[18]** Priya Lal filed an Affidavit in Reply to the aforesaid Affidavits in Opposition filed by the State. A Further Affidavit in Reply was also filed by Uri Kurop.

**The Hearing**

**[19]** This application was taken up for hearing before me on 13 March 2026 and 16 March 2026. Counsel for both the Applicants and the State were heard. All parties also filed comprehensive written submissions, and referred to case authorities, which I have had the benefit of perusing.

**Legal Provisions**

**[20]** Stay of proceedings in a criminal trial is a legal remedy which has its origins in the common law jurisdiction as an extension of the inherent power of the Court to control its proceedings and thereby ensuring a fair trial to both the prosecution and the defence. Its common law origins can be traced back to the case of ***Connelly v Director of Public Prosecutions*** [1964] AC 1254 at 1301, where Lord Morris stated:

> *"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuse of process and to defeat any attempted thwarting of its process...."*

**[21]** The term *"abuse of process"* used in this judgment has been further elaborated on by the subsequent authorities to identify and demarcate two specific areas of concern. In ***R v. Derby Crown Court, exp Brooks*** [1984] 80 Cr. App. R. 164, Sir Roger Ormrod said:

*"The power to stop a prosecution arises only when it is an abuse of the process of the court. It may be an abuse of processes if either:*

*(a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or,*

*(b) on the balance of probability the defendant has been, or will be, prejudiced in the prosecution of or conduct of his defence by delay on the part of the prosecution which is unjustifiable: for example, not due to the complexity of the inquiry and preparation of the prosecution case, or to the action of the defendant or his co-accused or to genuine difficulty in effecting service."*

**[22]** It is accepted law in Fiji that the High Court has the inherent jurisdiction to stay proceedings following common law tradition. In ***State v Waisale Rokotuiwai*** [1998] FJHC 196; HAC 09d of 1995S (21 August 1998); Justice D.B. Pain held as follows;

*"It is submitted that this Court has inherent power to make any order to prevent an abuse of its process and this includes an order for permanent stay. That power will be exercised to protect the accused from oppression and prejudice but its scope is not limited to those considerations. The Court has a duty to secure a fair trial for an accused. Allied to this is a need to protect the integrity and reputation of the judicial system and administration of justice. Infringement of these requirements are proper considerations for the Court in deciding whether a trial should be terminated."*

.....

*"I accept that this Court has inherent jurisdiction to prevent abuse of its process in criminal proceedings. Concurrent with that is a duty (confirmed in the Constitution) to ensure that an accused receives a fair trial. This is made abundantly clear in the cases cited by counsel. The ultimate sanction is the discretion invested in the Court to grant a permanent stay. However, such a stay "should only be employed in exceptional circumstances". (Attorney-General's Reference (No.1) of 1990 [1992] Q.B. 630, endorsed by the Privy Council in* ***George Tan Soon Gin v Judge Cameron & Anor*** *[1992] 2 AC 205."*

**[23]** This position was further reiterated in ***Ratu Inoke Takiveikata and 9 others v State*** [2008] FJHC 315; HAM 39 of 2008 (12 November 2008); where Justice Andrew Bruce held that;

> *"It is common ground that the High Court of Fiji, being a superior court of record, has an inherent jurisdiction to stay proceedings which are determined by the Court to be an abuse of the process of the court. Generally speaking, the circumstances in which this court might consider the imposition of a stay of proceedings are:*
>
> *"(1) Circumstances are such that a fair trial of the proceedings cannot be had; or*
>
> *(2) There has been conduct established on the part of the executive which is so wrong that it would be an affront to the conscience of the court to allow proceedings brought against that background to proceed."*

**[24]** It was further held in this case that the burden of proof in such instances is on the Applicant and the standard of proof which must be attained is proof to the civil standard (on a balance of probabilities).

> *"Before a stay of proceedings could be considered, there must be a factual basis for that consideration. It is common ground that the accused bear the burden of proof of establishing the facts which might justify the intervention of this court by way of stay proceedings. It is also common ground that the standard of proof which must be attained is proof to the civil standard. The facts must be established by evidence which is admissible under the law."*

**[25]** This position was followed by Justice Priyantha Fernando in the cases of ***Bavoro v State*** [2011] FJHC 235; HAM 236 of 2010 (27 April 2011); and ***Salauca v State*** [2012] FJHC 959; HAM 6 of 2012 (20 March 2012).

**[26]** In the case of ***Ganesh Chand v FICAC;*** HAM 65 of 2016 (16 December 2016) (Unreported); His Lordship Justice Achala Wengappuli made reference to the following cases from New Zealand and Australia, which dealt with stay of proceedings and the doctrine of abuse of process as follows:

"In ***Moevao v Department of Labour*** [1980] 1 NZLR 464, the New Zealand Court of Appeal offered a further clarification to the applicability of the doctrine of abuse of process at p. 470 ;

> *"....it cannot be too much emphasised that the inherent power to stay a prosecution stems from the need of the Court to prevent its own process from being abused. Therefore any exercise of the power must be approached with caution. It must be quite clear that the case is truly one of abuse of process and not merely one involving elements of oppression, illegality or abuse of authority in some way which falls short of establishing that the process of the Court is itself being wrongly made use of".*

"In the neighbouring Australian jurisdiction, another dimension was added to the considerations that are to be taken into account, when granting a stay of proceedings with the pronouncement of the judgment in ***Jago v. The District Court of New South Wales*** [1989] 168 CLR 23. The High Court of Australia held:

> *"To justify a permanent stay of criminal proceedings, there must be a fundamental defect which goes to the root of the trial "of such a nature that nothing that a trial judge can do in the conduct of the trial can relieve against its unfair consequences..."*

"In the same judgment the term "*abuse of process*" received additional treatment by the High Court as it was held:

> *"An abuse of process occurs when the process of the court is put in motion for a purpose which, in the eye of the law, it is not intended to serve or when the process is incapable of serving the purpose it is intended to serve. The purpose of criminal proceedings, generally speaking, is to hear and determine finally whether the accused has engaged in conduct which amount to an offence and, on that account, is deserving of punishment. When criminal process is used only for that purpose and is capable of serving that purpose, there is no abuse of process".*

**[27]** It was held by Justice Fernando in the case of ***Tuisolia v Director of Public Prosecutions*** [2010] FJHC 254; HAM 125 of 2010; HAC 19 of 2010 (19 July 2010); that an example of a circumstance where the process of a criminal trial will be incapable of serving the purpose it is intended to serve would be where the proceedings are such that *"they can*

*clearly be seen to be foredoomed to fail*" following ***Walton v Gardiner*** **[1933] 177 CLR 378.**

**[28]** However, Justice Wengappuli stated in ***Ganesh Chand v FICAC*** *(supra)* "Although the Courts would grant a stay in proceedings where it can clearly be seen that the prosecution is foredoomed to fail, a weak case for prosecution need not be stayed." He quoted Lord Justice Brooke who said in *Ebrahim,* ***R (on the application of) v Feltham Magistrate's Court*** [2001] EWHC Admin 130, at 133 that:

> *"It must be remembered that it is a commonplace in criminal trials for a defendant to rely on "holes" in the prosecution case, for example, a failure to take fingerprints or a failure to submit evidential material to forensic examination. If, in such a case, there is sufficient credible evidence, apart from the missing evidence, which, if believed, would justify a safe conviction, then a trial should proceed, leaving the defendant to seek to persuade the jury or magistrates not to convict because evidence which might otherwise have been available was not before the court through no fault of his. "*

**[29]** His Lordship Justice Wengappuli further stated in ***Ganesh Chand v FICAC*** *(supra)*: "In a rare but deserving situation, even if a strong case is available to the prosecution, Courts have intervened and stayed prosecutions." His Lordship cited ***State v Sat Narayan Pal*** [2008] FJCA 117; [2009] 1 LRC 164 (8 February 2008); as one such instance. In that case, the Court of Appeal followed the judgement of ***R v Horseferry Road Magistrates' Court, ex p Bennett*** [1993] 3 LRC 94, where the House of Lords clearly laid down the criterion for such intervention when it held that;

> *"... it was unconscionable for the courts to allow a prosecution, however well substantiated, to go ahead in circumstances where gross breaches or a gross breach of fundamental rights and the system of justice had occurred."*

**[30]** However, it must be reiterated that, it is common factor in all jurisdictions to have considerations limiting the granting of stays. In ***R v Jewitt*** 1985 CanLII 47 (SCC), the Supreme Court of Canada held that the power to stay criminal proceedings should be exercised only in clearest cases where compelling an accused to stand trial would undermine the community's sense of fair trial and decency and to prevent the abuse of

a Court's process through oppressive or vexatious proceedings (As per Justice Wengappuli in ***Ganesh Chand v FICAC*** *(supra)*).

**[31]** His Lordship Justice Madigan in ***Karunaratne v State*** [2015] FJHC 849; HAM 150.2015 (4 November 2015) held:

> *"[10] Stay of Proceedings in criminal matters is granted in the rarest of circumstances where there has been undue delay in bringing proceedings against a party, or alternatively where there is undue delay in the conduct of proceedings already brought. Additionally and more importantly it is an inherent power of the High Court in cases of clear and obvious miscarriages of justice and/or abuse of process cases.*
>
> *[11] To bring such an application before this Court is in itself an abuse of process. While this Court does have supervisory powers over proceedings in a lower Court, it will not intervene in proceedings already in train below, merely on the submission that the charge cannot be made out. The accused (the applicant herein) has the right to challenge the charge in a submission of no case at the end of the prosecution case and should he not succeed in such an application then he has the right to appeal in accordance with our appellate rules and legislation.*
>
> *[12] It would be wrong for this Court to stay proceedings in the absence of delay and abuse of process, given that the accused/applicant has perfectly legitimate alternative avenues of redress and this court refuses to do so.*
>
> *[13] The application for stay on the grounds of abuse of process is dismissed."*

**[32]** In the case of ***(Ronald Rakesh) Nand & 2 Others v State*** [2016] FJHC 272; HAM 171.2015 (15 April 2016); His Lordship Justice Aluthge held that even a 10 years delay in the conclusion of the case, given the circumstances of that particular case, was not an abuse of process, and refused an application for permanent stay of the proceedings in the Magistrate's Court of Lautoka.

**[33]** This Court has previously outlined the principles relating to permanent stay applications in ***(Mohammed) Samshood v State*** [2021] FJHC 226; HAM 04.2021 (27 May 2021); ***(Bradley Robert) Dawson v State*** [2024] FJHC 573; HAM 205.2024 (25 September 2024);

and ***(Sanjeev) Chetty & Another v State*** [2025] FJHC 271; HAM 10.2025 (9 May 2025). In the aforesaid cases the granting of a permanent stay of the proceedings was refused.

**Analysis**

**[34]** It is trite law that the High Court of Fiji, being a Superior Court of Record, has an inherent jurisdiction to stay proceedings which are determined by the Court to be an abuse of the process of the Court. Generally, the grounds on which a stay of proceedings maybe granted is where a fair trial cannot be guaranteed or where there has been conduct established on the part of the prosecution which is so wrong that it would be an affront to the conscience of the Court to allow proceedings brought against that background to proceed.

**[35]** Section 15 (1) of the Constitution of Fiji provides that: *"Every person charged with an offence has the right to a fair trial before a court of law."*

**[36]** The primary basis on which the two Applicants have filed this application for permanent stay of the proceedings in the High Court of Lautoka, is that witnesses for the prosecution have been coached and as a result they will be denied and deprived a fair trial and may possibly suffer conviction from evidence that has been contaminated by the coaching that has been undertaken.

**[37]** Witness coaching or witness training refers to unethical or illegal behaviour by a Lawyer or Party to influence a witness to change their testimony, fabricate evidence or align their story with a specific narrative, which is untrue. It crosses the line from proper preparation into manufacturing or creating evidence.

**[38]** There is a clear distinction between witness coaching and witness preparation. Witness preparation would be to familiarize a witness with Court procedures, reviewing of documents and discussing truthfully their re-collection of events. Witness coaching would be to instruct a witness to lie, shaping testimony to fit a legal theory, providing a script for testimony, or telling a witness what words to use.

**[39]** While witness preparation is legal and necessary, witness coaching crosses the line and is considered a violation of legal ethics. Therefore, witness coaching is generally prohibited because it risks contaminating a witness's testimony.

**[40]** Both parties made extensive reference to ***R v (Henry) Momodou*** [2005] EWCA Criminal 177 (2 February 2005); where this principle has been clearly elaborated upon. It was stated in this case that *"There is a dramatic distinction between witness training or coaching, and witness familiarization. Training or coaching for witnesses in criminal proceedings (whether for prosecution or defence) is not permitted."*

**[41]** In this case an allegation has been made by the Applicants that the Learned State Counsel in carriage of the matter had coached the prosecution witnesses during witness conferencing on 4 and 5 August 2025. The allegation is made based upon the Affidavits filed in these proceedings by Priya Lal, who was originally considered a witness for the prosecution.

**[42]** Priya Lal has deposed that she became concerned even on a previous occasion in May 2024, that what she was participating in was the coaching of evidence being undertaken by the Prosecutor of all the witnesses in attendance, who were being encouraged to give their evidence and to do so, so that they would be consistent. They were also coached as to how they should react to cross-examination and that they should be specific even if they could not accurately recall what happened.

**[43]** It must be reiterated that the said Priya Lal is the daughter of the 4th and 5th Accused in the substantive Lautoka High Court Criminal Case No: HAC 101 of 2021. They are also the two Applicants in these proceedings. The 1st, 2nd and 3rd Accused are her biological brothers. Priya Lal has deposed that she was the former de-facto partner of the deceased Eneri Abbas Ali. She further states that at the time the deceased passed away they were estranged and she had indicated to him that she would not return to live with him in a de-facto relationship. In this case, all five accused are charged with the Murder of the deceased.

**[44]** Due to these concerns Priya Lal submits that she had gone on to audio and video record the proceedings which took place on 4 and 5 August 2025 on her phone. The audio and video recording was downloaded onto a USB which has been tendered to Court. Based

on the audio and video recording, a written transcript was made by herself with the assistance of Mr. Uri Kurop who typed the transcript in her presence. The said transcripts have also been tendered to Court.

**[45]** The transcripts for 4 August 2025 have been numbered from pages 1 to 16 and is annexed as Annexure C to Priya Lal's Affidavit. The transcripts for 5 August 2025 have been numbered from pages 17 to 26 and is annexed as Annexure D to her Affidavit.

**[46]** State Counsel Ms. Prakash has submitted that she was totally unaware that witness Priya Lal was recording the proceedings of the witness conference held on 4 and 5 August 2025. No permission was sought by Priya Lal to record a confidential witness conference that was conducted by her on behalf of the State, within the private and confidential vicinity of the Office of the DPP in Lautoka. Therefore, the recording made by Priya Lal was obtained by her in an unauthorized manner.

**[47]** That said, since the recording and transcripts are now available in Court it has assisted Court to determine as to whether witness coaching had in fact taken place.

**[48]** Ms. Prakash has reiterated that the witnesses present at the witness conference on 4 and 5 August 2025 were eye witnesses to the incident, thus classifying them as the same class of witnesses. As per her experience there is nothing that prohibits having a witness conference with the same class of witnesses at once or in one sitting. All witnesses were continuously reminded to be honest with what they say and heard at the scene of the incident and to be honest with any explanation they provide to issues raised during cross-examination. At no point were the witnesses coached or asked to alter their evidence in favor of the State's case.

**[49]** Furthermore, she categorically denies the allegation of coaching and that the prosecution evidence has been contaminated by such coaching. She submits that the transcripts submitted Priya Lal clearly indicates that there was no coaching on her part. She was merely explaining to the lay witnesses as to what to expect in Court and the importance of giving detailed, specific and clear evidence as possible according to their true recollection of the events which took place.

**[50]** The Learned Counsel for the Applicant's submitted to Court that while one to one witness conferencing maybe permitted, having a witness conferencing with 12 witnesses all together and on the eve of a criminal trial, is not permissible. The State counters this position by submitting that there is nothing that prohibits having a witness conference with the same class of witnesses at once or in one sitting. The witnesses are said to be direct eye-witnesses who had seen the alleged actions of the Accused persons unfolding before them.

**[51]** During the Hearing of this matter, reference was made to the DPP's Prosecution Code 2003; the DPP's Code of Conduct 2014 (Issued on 26 August 2014) and the Prosecutor's Handbook 2014.

**[52]** The Code of Conduct 2014 contains the governing principles within which every employee of the DPP's Office, whether temporary, permanent, contracted, on attachment, a volunteer or seconded must operate or perform his or her duties. The Prosecutor's Handbook 2014, broadly sets out, inter-alia, the duties and responsibilities of a Prosecutor.

**[53]** However, as could be observed, none of these documents make specific reference to witness conferencing and as to how such witness conferencing should be conducted. The State submits that what is paramount is for a Prosecutor to act honestly, impartially and ethically at all times.

**[54]** Further reference was made during the Hearing to the ODPP Guidelines on Prosecuting Child Sexual Abuse Cases & Other Crimes Against Children (Guidelines issued on 6 August 2019); the DPP Brochure on Giving Evidence; and the document titled Crown Prosecution Service: Speaking to Witnesses at Court (Revised on 27 March 2018; and updated on 15 October 2024).

**[55]** Having carefully analysed all the transcripts in relation to the witness conferencing which took place on 4 and 5 August 2025, in its totality (containing the 26 pages of transcripts as referred to previously) and also having listened to the audio recording, I am of the opinion that no witness coaching or witness training has taken place in this case by the prosecution. What has taken place during the witness conferencing was the usual preparation of the witnesses for the trial which was scheduled to commence at

the time. I do not find any material to establish that the Learned State Counsel conducting the witness conference had acted dishonestly or unethically at any time during the said witness conferencing.

**[56]** Priya Lal has deposed that the Learned State Counsel opened the meeting on 4 August 2025, with the statement *"We are here for justice"*. This Court is of the opinion that there is absolutely nothing objectionable to that statement. Justice means justice for all – the deceased in this case and the Accused persons. It would have been different if the Learned State Counsel had said something to the effect that the witnesses were present at the meeting to ensure that the Accused must pay for the crime they have committed or words to that effect.

**[57]** In any event, it must be reiterated that evidence that Court will make its determination in this matter is the testimony of witnesses that would be elicited in Court under oath and not what has been discussed during witness conferencing. During the trial in this matter the Defence Counsel have the right to cross-examine all prosecution witnesses with regard to their testimony. Thus no prejudice will be caused to the Applicants in this case or the other Accused persons. Their right to a fair trial will continue to be safe guarded.

**[58]** For the aforesaid reasons, I am of the opinion that this application seeking a permanent stay of the proceedings is without merit and should be rejected.

**[59]** That said, I wish to provide some advice to the Office of the DPP. The DPP should seriously rethink its strategy of having witness conferencing with a large number of witnesses together. Going through the audio recording plus the transcripts of the witness conference which took place on 4 and 5 August 2025 and which have been provided to Court, Court finds that there was absolutely no order during the meeting. There was so much of cross talk going on at the meeting. So many persons can be heard talking together. No one seemed to be in control of the proceedings. In my view this type of witness conferencing would be more detrimental to the prosecution rather than being beneficial.

**Conclusion**

**[60]** Accordingly, this application for a permanent stay of criminal proceedings in Lautoka High Court Criminal Case No: HAC 101 of 2021 is dismissed.

**[61]** I make no order for costs.


**Riyaz Hamza**
**JUDGE**
**HIGH COURT OF FIJI**

AT LAUTOKA
Dated this 24th Day of March 2026

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|---|---|
| **Solicitors for the 1st and 2nd Applicants:** | **Messrs Vijay Naidu & Associates, Barristers & Solicitors, Lautoka.** |
| **Solicitors for the Respondent:** | **Office of the Director of Public Prosecutions, Lautoka.** |