

BOOK REVIEW

Leslie Mamu, *The Law and Principles of Bail in Papua New Guinea*, (Port Moresby: Kairos Press, 2009)

Dr. Mange Matui*

The book, *The Law and Principles of Bail in PNG*, is written by Leslie Benjamin Mamu and covers laws and principles on bail which are declared by the courts, and also covers bail application process from the time of arrest, where a person's liberty is restricted, through to conviction and appeal at the National and the Supreme Courts. In the book, the author covers specific laws on bail and the bail processes in a clear and succinct ways that anyone, including a non-lawyer who picks up the book and reads it, can easily and clearly understand what is written in the book.

The author, Leslie Mamu is currently the Public Solicitor of PNG - the position he has now held for nearly two years. Mr Mamu graduated from the University of PNG with a bachelor of law degree and obtained his practical training at the Legal Training Institute in 2008. He began his career with the Office of the Public Solicitor and the PNG Defence Force, until his appointment as the Public Solicitor. He has been practising law in the National and the Supreme Courts, and dealt with many different cases, both criminal and civil, and he is well placed to write a book on bail in PNG, given his experience and knowledge in the area of criminal law.

The book begins with Chapter 1 that discusses different definitions of bail, under the common law and the *Bail Act 1977*. It is clear from the definition under the *Bail Act* that the definitional ambit is general and broad enough to extend bail to those who are in prison. The author highlights the basis of bail under sections 36, 37 and 42 of the *Constitution* and the different National and the Supreme Courts cases that discussed these provisions. The chapter concludes with highlighting the brief history of bail and the divisions of offences under the Criminal Code Act and the availability of bail under each of the divisions. Chapter 1 sets the foundation for the other chapters.

In Chapter 2, the author identifies and discusses bail authorities, and the bail application processes from the police station, district court registry, and the bail application at the National Court and the Supreme Court. Further, the chapter discusses bail application given in different situations such as bail application when the matter is still pending election by the Public Prosecutor, during committal proceedings, after the accused is committed to trial, and during trial, when the judge is incapacitated, during reverse of arrest judgement, bail application after conviction and before sentence, after lodging an appeal, and bail application during the hearing of the appeal. The chapter points out specific laws with supporting cases and highlights the likelihood of success by an applicant at each stage of the bail application. From reading the chapter, it is clear that a lay person can clearly see where he or she can apply for bail or advise a lawyer to file bail application on his or her behalf.

Chapter 3 specifically looks at bail application prior to conviction or acquittal. It highlights two aspects of bail – which can be based under section 42 of the *Constitution* as a constitutional right or considered under section 9 of the *Bail Act*, given the various considerations under section 9. The chapter goes on to look at different considerations for grant of bail. Each bail consideration is discussed with cases that expound on each of those considerations. The chapter makes it clear on whether a person has a likely chance of success with his or her bail application.

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Under Chapter 4, the author looks at bail after conviction. The point is very clear here that bail is not easily given, especially when a person is convicted. But when bail applications are made, they are looked at with care. In determining whether or not to grant bail, the authority applies discretion.

Chapter 5 discusses judicial discretion. Judicial discretion is an important aspect of the law as it gives the judges an opportunity to manoeuvre within the confinements of law to decide on a particular case. At the end, the judges are given wide discretion to ensure that justice is delivered regarding a particular matter, given the facts and evidence presented before the courts. Chapter 5 of the book examines judicial discretion within the context of the *Constitution*, particularly section 42 of the *Constitution*, and the *Bail Act*, and it is clear from the cases that judges apply discretion to grant bail to an accused. The author discusses some of the important cases that considered bail with regard to wilful murder, and how judges were assessing whether or not to allow bail under section 42 of the *Constitution* and section 9 of the *Bail Act*.

Chapter 6 looks at the onus of proof and standard of proof. The paramount consideration in looking at the issue of bail is the dispensation of justice. In granting or refusing bail must ensure justice is achieved at the end of the case. This is an important consideration when looking at the issue of bail. Hence, the onus of proof shifts from one person to another. Any person who is accused of criminal wrong is entitled to bail. The author makes it very clear that bail is available to any person and that means that those who oppose bail have the obligation to prove that one or two considerations are present under section 9 of the *Bail Act* to oppose bail to be given to a person who applies for it. At the committal court, the Police Prosecutor has the onus to oppose bail if there are one or two factors under section 9 of the *Bail Act* are present and proven to the court. At the National or the Supreme Court, the Public Prosecutor has the onus to establish considerations under 9 to deny bail. Once the State, through the Public Prosecutor establishes that one or two considerations under section 9 are present, the onus then shifted to the accused to argue why his or her continuous detention will result in injustice. The author makes it clear that the rules of evidence based on proof beyond reasonable doubt does not apply in a bail application. In other words, the technical rules of evidence do not apply through the application process. The bail authority merely relies on information that is available to it.

In Chapter 7, the author describes the process of bail application provided under the *Bail Act*. He describes the bail process from the police station, District Courts, and the National Court and the Supreme Court. The processes are explained clearly and succinctly that one can easily understand and follow.

Chapter 8 discusses the obligations and conditions that attach to bail when a person is on bail. Bail is not a license to freedom, but it is given to acknowledge the fact that the person is innocent until proven guilty before the court of law. The person is given certain conditions to perform once the bail is given, such as not to leave town or interfere with state witnesses, and observe other bail conditions imposed by a bail authority outlined by the author in chapter 8.

Finally, Chapter 9 discusses distinct processes involved after bail has been given, especially to cater for special needs that arise after bail is granted. Bail conditions, when given, can however be amended given the changing circumstances. An application has to be made to request for change.

The book brings together the laws and principles on bail and clearly explains them at different stages of the bail application processes. The author documents the different requirements under various pieces of legislation and brings them together in the book. Anyone that picks up the book will be able to know, for example, whether bail is available to a person who is arrested by police, and the basis of granting bail or refusing bail. The book holistically presents the law on bail and highlights different stages of the criminal process where bail can be sought.

The author uses many primary sources in his book to discuss bail. These sources range from the Constitutional law, Acts of Parliament and subordinate legislation, such as the *Criminal Practice Rules*, *National Court Rules* and the *Supreme Court Rules*. Further, the writer discusses the National and the Supreme Court cases that cover bail from before Independence in 1975 to present (before the publication of the book). Given his position as a Law Officer, the author manages to include

major cases on bail - these include the *Bernard Juale v The State, Re Fred Keating* and others. The author was able to dissect each of these cases and extract the major principles outlined in each of them.

From the number of cases cited and discussed, it is clear that the author has spent some years to read and understand each case and aligned and synergized each case with various provisions of the law. The author tactfully highlights the observations of the judges regarding various laws that they have interpreted, and establishes clearly the position of law on each of the provisions of law on bail.

In terms of structure, chapters are too short. Chapters are meant to be self-contained – they must have an introduction, body and conclusion especially in a non – fiction book. What appears obvious is that the chapters do not have proper introductions and conclusions. And one or two chapters should have been merged with others. For example, chapter 9 on post bail process should have merged with Chapter 7 on procedure on bail application. I can see the intention of the author in separating each chapter to highlight each stage of a bail application, and exhaustively discusses them with statutes and cases. He has done that very well and given prominence to bail process at each stage of the criminal process where bail is sought. Apart from these minor structural issues, this is the first book on bail in Papua New Guinea and must be read by all lawyers and non- lawyers. The author has done a very good job of bringing together laws on bail and outline processes at different stages of bail application.