

REGINA -v- JOHN OME

HIGH COURT OF SOLOMON ISLANDS.
(KABUI, J.).

Criminal Case No. 421 of 2004.

Date of Hearing: 22nd September 2004.

Date of Ruling: 23rd September 2004.

S. Cooper for the Crown.

K. Anderson for the Accused.

RULING

Kabui, J. The Police arrested John Ome, the accused, at his home in Honiara on 14th July 2004 and detained him. They charged him originally with the murder of the late Selwyn Saki but later dropped that charge against him. He is now being charged with kidnapping and abduction, contrary to section 252 of the Penal Code Act (Cap.26) "the Code" and robbery, contrary to section 293(1)(a) of the Code. In his affidavit filed on 13th September 2004, the accused admits that the offences for which he is being charged are very serious offences for which he could be sent to prison. He says that the licence that bears his other name, "Hen" had been obtained since 1993 and not for the purpose of misleading the Police as to his identity or for the purpose of evading Police. He says he lives permanently at Fulisango, Kola Ridge, in Honiara. His wife confirms this fact in her affidavit filed on 13th September 2004. The evidence against his case is provided by Senior Sergeant Bridget Louise Doell of RAMSI in her affidavit and the annexure attached thereto filed on 21st September 2004. The Prosecution opposes the bail application on the grounds that the offences are serious in nature; there is a prima facie case against him, a risk of flight and possible interference with witnesses if he is let out on bail. There is no doubt the offences he is charged with are serious offences for which custodial sentences may be imposed by the court that tries and convicts him. The argument of course is that the wish to abscond is more likely to arise in the mind of the accused if he realizes that his chances of escaping conviction do not exist or are only marginal. Or that the thought of being detained by the Police is repulsive to him regardless of the seriousness of the offences he is facing in court in which case the fear of being convicted and sentenced does not arise for that is not the reason for taking flight. The fear of being convicted and sentenced by the court being the reason for considering absconding really depends upon the strength of the evidence against the accused. If the evidence is strong, there is the likelihood of absconding being consistent with human nature. The decision to escape or not is a personal one for no one reads the mind of an accused person. One can only assume on the

strength of the case against the accused that there are good reasons for the accused to consider absconding. In this case, the previous evading of the Police by the accused is a reason to conclude that the accused has the tendency to avoid the Police arising from perhaps guilty conscience on his part. He may repeat that disposition if he is let out on bail in this case. Interfering with witnesses is the same result of fear of being convicted and sentenced by the court. Every Solomon Islander is fearful of the court because the courts do punish persons for offences committed. So, where does one draw the line between a timid soul and robust one? This is why the courts are vested with the discretion to decide on the evidence produced before it. I now turn to the evidence against the accused. The Prosecution needs only to make out a case of probability in order to convince the court to refuse bail.

Tony Baura saw the accused helping others to pull Saki up from the ground. He says he does not know where the accused had come from. So he does not know whether the accused was one of Saki's abductors from the start. Tony Baura says he saw the accused there for the first time. John Tua also saw the accused at the Japanese Memorial. He does not say what the accused was doing if anything. In an additional statement made to the Police on 16th March 2004, John Tua recalled the accused kicking Saki in the face and then removing the boots belonging to Saki. In an earlier statement to the Police on 19th January 2004, John Tua said he saw the accused removing Saki's clothes. Jezeeril Mani confirms the accused being in possession of a pair of Australian boots. That is the evidence against the accused on the two counts against him. The evidence on kidnapping and abduction is not strong against the accused. The Japanese Memorial is a public place and a lot more people were there to watch what was being done to Saki. John Tua's first statement to the Police confirms this fact at page 2 of that statement. The Japanese Memorial is situated on top of a ridge overlooking Honiara. I take judicial notice of this fact. Saki had been brought out of a vehicle and placed on the ground when he was being assaulted. Saki was placed on the open ground that time. There is evidence of the accused removing Saki's boots and wearing them later. Whether that is an act of robbery is a matter for the trial judge to decide. One thing is clear. The fact that Saki was at the Japanese Memorial was not for the purpose of committing a robbery on him. The purpose was, it would appear, to decide what to do with him next, following his abduction from his village. Conviction of the accused of the offences he is charged with cannot therefore be a foregone conclusion at this stage. It is again a matter for the trial judge. Absconding is a possibility but it can be reduced by imposing conditions if bail is granted. Evading Police on previous occasions cannot be a yardstick for measuring the attitude of the accused after his arrest and detention because if he had wanted to evade Police permanently, he could have gone back to Malaita and gone into the jungle there like others who have done just that and are still at large in the bush of Malaita. I think the reason for him continuing to stay in Honiara so far is the fact that his family is here in a home situated at

Fulisango, Kola Ridge. The accused had been living in Honiara since 1998. Influencing witnesses by threat is again a possibility but again this can be reduced by imposing conditions. There is no evidence to show that he may influence witnesses who made statements against him on the charges he is being charged with. As regards further offences being investigated against the accused and the fear of the accused threatening potential witnesses, the position is rather different in that if that position is taken too far, the accused's rights under section 5 (3) of the Constitution may be breached to the extent that the accused is detained without being tried within a reasonable time. Section 23 of the Criminal Procedure Code Act (Cap. 7) the "CPC" requires an accused person to appear before a Magistrate within 24 hours, if the accused is not released immediately on conditions by the Police. I have noticed at page 5 of Senior Sergeant Doell's affidavit that the accused appeared in the Magistrate Court on 19th August 2004 after which he was remanded in custody. If this was his first appearance after his arrest on 14th July 2004, the Police had breached section 23 of the CPC. I hope this is not what happened. I would assume that this did not happen. In the end, I would ask myself the same basic question that serves as the bottom line in the consideration of bail cases. That is, is this a case where the interest of the community or in the public interest for that matter, should prevail over the liberty of the accused? I would answer that question in favour of the accused. The application is granted but on these conditions-

1. The accused must remain at his same address at Fulisango, Kola Ridge, Honiara, being his residence until his trial concludes;
2. The accused must not leave Honiara city until his trial concludes;
3. The accused must surrender his passport, if he has one, to the Police within 2 days from today;
4. The accused must report to the Central Police Station every Mondays of every week before 6 pm;
5. The accused must not interfere with or threaten any witnesses assisting the Police in their investigation of him.

The accused is to be released immediately from detention on the above conditions. I order accordingly.

F.O. Kabui
Puisne Judge