

**ALICK SOFALA KABUI, PETER KWAITAKA AND JOSEPH FAKANI-v-REGINA**

HIGH COURT OF SOLOMON ISLANDS  
(Mwanosalua, J.)

*Criminal Case No. 33 of 2007*

**Hearing:** 23 February 2007

**Ruling:** 27 February 2007

*E Fitzpatrick for the Crown*  
*P Southey for the Applicants*

**RULING**

**Mwanosalua, J:** This is an application for bail. The Applicants are **Alick Sofala Kabui, Peter Kwaitaka and Joseph Fakani**. They are charged with murder and the committal proceedings has been set for 3 April 2007. For the meantime, they are being remanded in custody at the Rove Prison.

They apply to this court for bail on the grounds that:

- (a) there is likelihood of inordinate delay before trial;
- (b) the case against them is weak;
- (c) The Applicants have people to live with in Honiara and who willing to stand surety for them.

Alick Sofala Kabui attended a party at Rove on the night of 21 October 2006. He returned to Ngossi after some boys attacked him and Philip Koro when they went to buy cigarette rolls near the Rove clinic. He went to Peter Kwaitaka and Philip Koro's lodge, and found that they had returned to Rove. He then came down to Rove. He saw Philip Koro and Peter Kwaitaka standing in front of the Good View Store. He saw some boys throwing stones at them. He did not recognise the boys who were throwing stones at Philip Koro and Peter Kwaitaka. He went to Lengkiki and then returned to Ngossi after that.

Peter Kwaitaki lives at Ngossi. On 21 October 2006, he attended a party with Alick Sofala Kabui and Philip Koro at Rove. He returned to Ngossi with Philip Koro and Alick Sofala Kabui after some boys fought with them. He and Philip

Koro returned to Rove. They met Paul Osi (the deceased) at the Chinese Store near the Clinic at Rove. Peter Kwaitaka punched the Deceased on the head. They then went to Michael Palmer Bennett's house who hosted the party. Peter Kwaitaka was armed with a bush knife whilst Philip Koro was armed with a small knife. They left Michael Palmer Bennett's house and walked along the main road towards Good View Store.

The Deceased went to the main road and threw stones at Peter Kwaitaka and Philip Koro while they were standing in front of Good View Store. One of the stones struck Peter Kwaitaka on his ribs. The Deceased stood at the side of the main road close to the Police Residential quarters when he threw stones at Peter Kwaitaka and Philip Koro.

Peter Kwaitaka then walked towards the Deceased. George Noli walked into the scene at that instant to stop the brawl but Philip Koro cut him with a knife which he missed. Peter Kwaitaka then cut George Noli with his bush knife, but George Noli blocked the knife and escaped. Peter Kwaitaka and Philip Koro appeared to withdraw to the Good View Store. The actual position is to be clarified at the committal proceedings.

Then the Ngossi boys arrived at the scene close to the electric post at the road junction. These boys included Joshua Kama, Joseph Fakani and Alick Sofala Kabui. Joshua Kama and Joseph Fakani walked towards the Deceased and his brother, George Mendani. George Mendani heard a "bang" sound on the Deceased. He looked to the Deceased and saw Joshua Kama lifting up his closed fist. Joshua Kama had an object in his closed fist. George Mendani did not identify the object in Joshua Kama's fist, because Joseph Fakani pushed him away while he was trying to help the Deceased who was bending down with his hands on his chest.

Joseph Fakani used his right hand to push George Mendani away and said **"IU FALA NAO SHUT IA"**. After this, Joseph Fakani and Joshua Kama walked across the road to the Good View Store where Peter Kwaitaka and Philip Koro were standing.

Joseph Fakani gave statements to the Police. He says that he lives at Ngossi and that Peter Kwaitaka and Philip Koro are his brother in-laws. On 21 October 2006, he was at Rove at 10pm. He was there with the Ngossi boys. As he was walking to the main road, he heard sound of shooting and shouting at Rove/Ngossi road junction. He saw the people who were throwing stones at Peter Kwaitaka and Philip Koro ran away when he arrived at the junction. Joshua Kama was with him at the time. He crossed the main road to see Peter Kwaitaka and Philip Koro in front of the Good View Store.

The Applicants are charged with the murder of **Paul Osi** on 21 October 2006. He died from a single stab wound measuring 2.0cm x 1.0cm on his abdomen. The wound penetrated the linear alba and entered into the peritoneal cavity obliquely. Murder is a very serious offence. It carries a mandatory sentence of life imprisonment. There is prima facie evidence that Joseph Fakani was a party to the stabbing of Paul Osi. He immediately pushed George Mendani away when Joshua Kama allegedly stabbed the Deceased.

Peter Kwaitaka was armed with a bush knife. He swung the knife to cut George Noli with it. George Noli escaped serious injury or even death when he blocked the knife in time. It was Peter Kwaitaka and Philip Koro who led the way to Rove to fight the Deceased and the boys who fought Alick Sofala Kabui at Rove earlier on. The act which Peter Kwaitaka did to George Noli is serious. It may be an offence under Section 224(b) of the Penal Code, which carries a maximum penalty of life imprisonment. His position regarding the charge of murder will be clarified during the committal proceedings.

Alick Sofala Kabui is charged with murder. He was seen at the scene of murder. That is the only piece of evidence against him. There is no evidence of him doing anything to the deceased nor to any other person. The evidence against him is very weak. It is not clear why he was charged with this offence in the first place.

This case is set for committal proceedings to 3 April 2007. It will be in long form. This means that the Crown will call its witnesses to give oral evidence in court. It is not certain that there would be inordinate delay before trial. The assertion that there would be long delay prior to the trial is speculative at this point in time. Some of the accused in this case may be discharged during the committal proceedings.

The court has considered the affidavit evidence of the Applicants, the evidence of other deponents supporting their application for bail and the submissions made by both Advocates before making its ruling in this application.

Alick Sofala Kabui is granted bail. He is to report at the Magistrates' Court on 3 April 2007 for the Committal Proceedings. Bail is refused for both Peter Kwaitaka and Joseph Fakani. I order accordingly.

**Francis Mwanalua**  
**Puisne Judge**