

**REGINA -v- BEN JERI**

HIGH COURT OF SOLOMON ISLANDS  
(Mwanosalua, J.)  
Criminal Jurisdiction

Criminal Case No. 222 of 2010

**Date of Hearing:** 1 November 2010  
**Date of Ruling:** 26<sup>th</sup> November 2010

Mr. Coates for the Crown  
Mr. Barlow for the Accused

**RULING ON BAIL APPLICATION**

**Mwanosalua J:** The accused is charged with murder, contrary to section 200 of the Penal Code. He was committed for trial to the High Court on 8 July 2010 and was sent to Rove Prison for safe custody until his trial. The information against him was filed on 22 July 2010, but no date has yet been set for his trial. He has been in custody for more than 16 months.

He now lodges an application to this court to admit him to bail pending his trial. He agrees to be subjected to reporting, residential and non-contract with witnesses conditions if were to be granted bail. His application is supported by his sister, Maria Andrew, who proposes to be a surety for him and accommodate him at her family home at Kobiloko in Honiara.

The police obtained a statement from the accused in Honiara after he was formally arrested. In that statement, the accused made admissions to stabbing the victim with a knife. However, he claims that he did so in self-defence. His counsel confirms that the accused would raise self-defence as a defence during the trial in the High Court.

The prosecution opposes the application. They contend that the accused may abscond to his home village in Malaita if he is released on bail. If that eventuates, it would be difficult for the police to relocate him to face trial at the relevant date. But the prosecution further contends that they would not persist with their opposition to bail if the accused is ordered to report at a police station three times a week.

This court has discretion to grant bail even though there is objection by the prosecution and to refuse bail even though the prosecution raises no objection. However, the court must act

judiciary while exercising that discretion. The existence of a reasonable suspicion that an arrested person has committed an offence is an essential condition for the validity of continued detention pending trial. However, after a certain lapse of time that condition may become insufficient, as a ground to continue refusal to bail.

I bear in mind that under the Solomon Islands constitution, a person charged with an offence has a right to be tried within a reasonable time or to be released on bail. I consider that the continued custody of an accused may be justified where:

- (I) The accused would fail to attend trial;
- (II) The accused would interfere with evidence or witnesses, or obstruct the course of justice;
- (III) The accused would commit an offence on bail;
- (IV) Release would result in a disturbance by public and; or
- (V) It is necessary for the accused's own protection.

There is no evidence before this court that the prosecution is concerned about the matters referred to in (II), (III), (IV) and (V) above. What they are concerned about is ground (I). That is to say, that the accused may abscond and fail to attend the trial.

Andrew Maria is willing to be a surety for the accused. But she has not stated the actual amount of money she would put up for the surety. It is therefore not possible at this time to determine whether she has sufficient financial resources to answer for any sum in which she is to be bound. I say this because there is an obligation on a surety to be fully satisfied that she can meet the liability which will arise if the accused does not surrender to bail.

This is a case where the court would require a surety to be able to grant bail. Maria Andrew would be a good candidate except that she did not specify the amount she would be able to put up for surety. The court has no doubt that the accused could stay in her family home awaiting trial. However, for the meantime, the court is unable grant bail to the accused. Bail is therefore refused.

Order accordingly.

**THE COURT**