

**IN THE CENTRAL MAGISTRATES COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**



Criminal Case No: 132/2022

REGINA

-V-

EDDIE FUNUBANA

COURTS RULING

Verbal ruling: Fri 29th July 2022
Written Ruling: Fri 28th Aug 2022
Defence Counsel: Mr. Fugui, Hubert
Prosecutor: Ms Clevan from ODPP
Accused: Appeared in court on remand

CHARGE:

The Defendant in this matter is Mr Eddie FUNUBANA. As seen on the file, he has been charged for office breaking contrary to section 300 (a) and section 21 of the Penal Code.

The particulars of his charge reads "That Eddie FUNUBANA together with another at Ford USP Constructions site at King George Sixth Area, Honiara, in the Guadalcanal Province, on the 22nd of April 2022 did break and enter an office, the property of Joy WONG and did commit a felony therein to with Larceny."

BACKGROUND:

The history of the case is as follows:

1. On or about 4th June 2022, the police and Office of the Director of Public Prosecutions (ODPP) filed this matter to have the Defendant remanded. I refer to the Remand application on file that formed the basis of their remand application. This came with the sworn statement of police officer Thomas PUHANIKENI. Looking through these 2 filed documents they display that the Defendant has been charged for a serious offence and that investigations into his matter is still ongoing. There is a co Defendant involved which they have not located and thus he had to be remanded so police could do their work accordingly.

2. After the remand application was done this court accepted the application and remanded the Defendant and adjourned it to the 17th June 2022 for the first mention.
3. On the 17th June 2022, I presided over the mention matter and Prosecutor Mr. Tonowane appeared to inform me that it is a new matter for their office, the file was still with Police at Naha and they have derived a procedure internally that police must complete investigations before sending files to ODPP. Therefore they have not received the file as they are aware that 2 statements are still pending for investigation purposes. I also checked on the Defendant who stated that he had requested a defence counsel from Public Solicitors Office (PSO) and yet to hear from them.
4. I therefore adjourned the matter further for completion of investigations and the Defendant to secure a counsel from PSO. I adjourned to 1st July 2022.
5. On this 2nd mention date of 1st July 2022, Ms. Mono appeared for the ODPP and informed me again that investigations is still ongoing and witnesses in relation to the matter did not want to give evidence. She is aware that there are still 4 statements to be collected and forensic unit is also yet to provide photos but at a later date. On this date I made it clear that if witnesses are not willing and investigations are not progressing then it may be best for the Prosecutions to release the Defendant who has been remanded than prolonging with no progress.
6. I then made orders to adjourn for the 3rd Mention and for the Defendant to also update on his lawyer from PSO. Prosecutions was also ordered to update on the investigations or release the Defendant given the delay observed to be occurring.
7. By the next mentioned date which is the 4th Mention on 15th July 2022, Ms Waletafea appeared for ODPP and stated the same update as the previous court hearing. That 4 statements were still outstanding and will be obtained by the next day. I expressed my grave disappointment at this stage and reminded prosecutions that in every remand they do, the police officers would swear on oath that the Defendants need to be remanded for them to do their work. Clearly in this case they have done this and have failed to work on the outstanding investigations since the Defendant was remanded and they make it very difficult for the court to just keep adjourning with no progress of any sort with investigations.
8. Mr. Harunari appeared for the PSO and stated that Mr Pulekera will attend to the Defendant but has not seen him in the office. I also asked if any prosecutor has been allocated the matter. At this stage the Defendant also informed court that Mr. Hubert Egui will do his matter as well.
9. I then adjourned again to the 29th July 2022 for plea. This was for prosecutions to finalise investigations and serve disclosures to defence. And for the defence counsel to be confirmed.

10. On the 29th July 2022, Ms. Clevan appeared for ODP. She informed me that the investigator has not been responding to them. They (ODP) emailed and checked him but he has not replied in any manner at all.
11. Defence counsel Mr. Fugui then rose up and informed the court that he represents the Defendant and was very much concerned with the handling of the matter by prosecution. He stated that he has nothing to discuss with his client as the file is completely empty with no single evidence on it. The same is for Public Solicitors Office (PSO) as he already checked their office to see if they have any evidence on file for him to be aware of being the Defendants defence counsel. He further added that the Defendant since remanded has been dealt with inhumanely breaching his constitutional rights. He stated that with the status of the matter there is clearly no reasonable suspicion by police to have dealt with him in the manner they have done so. This is the test that police operate under when they receive complaints. With a file having no evidence at all, this test has failed as well. He urged me to dismiss the case for want of prosecution and abuse of process due to how it has been handled since the beginning. He also highlighted that before the Defendant was taken to court, when police raided his home, they did so without any search warrant to validate the search and he was ill treated badly by police since then. He argued that the Defendants' rights has been severely abused and though a record of interview was done with him, no charge was ever laid against him for him to receive it after being interviewed and be aware of his matter. He also informed me that the Defendant had actually been held in police custody for about 4 days (beyond 24 hours as stipulated by the law) before they came to court to ask for remand. With all these complaints and points, Prosecution did not and could not respond with valid reasons or produce any search warrant to validate the police handling of the Defendant. As is the rule, when Defendant complains and raises issues with prosecution not providing any proper response, the court would then accept the Defendant's version.
12. I went through the file again and noted all the comments that have been made in the previous proceedings. I informed parties of the time that the Prosecution stated that they have no evidence as witnesses did not want to provide any statements (proceeding on 1st July 2022). I also alerted to them the fact that when they applied to remand the Defendant the sworn statement by police assured the court that they will do investigations and also look for the co accused. It has been about 2 months since the Defendant was remanded yet there has been no progress of any investigations at all.
13. After defence complained so much of the handling of the Defendants matter, I gave the opportunity for prosecutions to respond.
14. Ms. Clevan in her reply continued to only ask for a stand down to get the investigator who will explain why the

investigations has been delayed to this date. I reminded her of the adjourned period of about 2 months that the court had given as ample time that should have alerted them to ensure they get proper updates from their investigators to keep progressing the matter. I had even warned them to ensure they progress investigations than just keep adjourning without any progress at all. To not do any work nor check investigators for progress all these while, especially when time is given over and over again over the 2 months period, and to now ask again for a stand down is a total abuse of court process and the time spent to just keep adjourning the case.

15. I then asked 2 crucial questions for her to answer which are:

- a. I asked if she could provide to the court any evidence at all for the matter that has been on file to sustain and substantiate the charge they have filed. I informed her that if she was to provide 1 evidence that would pass the test of reasonable suspicion and more so sufficient evidence now that the matter is dealt with by Prosecutions, then their application to stand down would suffice. She did not provide any and kept asking for a stand down for the investigator to come in and provide the information. I gathered from her reply that clearly there was no evidence on file at all as alleged by defence. She was not able to respond to defence strong allegation that there was totally no evidence on file.
- b. My second question was for her to provide to the court any principle of justice that she can rely on to validate her application to stand down and delay the matter further when it has been delayed with no evidence on file since the beginning of the case. With this question she also did not respond and provide any principle of Justice.

Courts analysis:

I therefore deliberated over all that was before me and the application by defence to just release the Defendant.

Since Prosecution could not assist me in advancing and substantiating their application for a stand down and delaying the matter further with no hope in sight, I exercised my discretion to discharge the Defendant for the abuse of court process by police and prosecution. The way they have handled this Defendants matter falls way below standard and procedures under all relevant legislations. The police as the law sets out must have had reasonable suspicion to deal with the Defendant based on some evidence to substantiate their suspicion. In the absence of this and no provision of any evidence at all for the charge laid against the Defendant along with not providing any justice principle applicable for their stand down application I am

forced to exercise my powers to discharge the Defendant who should be released at the rising of the court.

I have also revisited case authorities that I find as relevant for this matter. They are as follows:

1. *R v Fafoi*¹
2. *R v Gaá & Others*²
3. *Regina v Maenuú* [1998] SBHC 80; HCSI-CRC 11 of 1998 (1 May 1998)

The summary of the above cases are as follows:

1. Fafoi

In the *Fafoi* matter his lordship CJ Palmer's decision resulted in allowing the appeal and agreed that the Magistrate exceeded his powers to dismiss the case, his deliberations particularly paragraph 15 which I quote "But even if he had jurisdiction to consider an application for dismissal at that point of time..." is what I am interested in which in my view still allow for magistrates to dismiss cases in the most abusive usage of court processes. Reading his reasoning's in that case, he elaborated on the background of the case to arrive at his decision. Clearly that case was not delayed by prosecutions alone but the court was also to be blamed. There was also another way available to deal with the case than just dismiss thus he reiterated that the Magistrate exceeded his powers in exercising it at that time. When he made this quoted comment I apply in this case, it was for reasons that are proper and just for the court to deal with such matters. This would be the only reason why he would put this comment in his ruling. If the law stands that there is absolutely no power or discretion on the Magistrate to dismiss cases, then he would just say it in that manner than adding this quoted text in which still leaves it open to be interpreted as I have done so.

In reading that whole case, it is clearly a different set of facts as compared to the one before me. In that case his lordship stated that the Magistrate should have progressed the case and list it for trial than keep adjourning. It was also made clear that the court was partly to be blamed for having delayed the matter at some point than just blaming prosecutions as the presiding Magistrate did and fell into error when dismissing the case.

For this case, clearly the Defendant was remanded with no evidence at all. In effect Police could not have had any reasonable suspicion at the time they started handling the Defendant and even when they searched his place without a search warrant as complained of by the defence counsel. PSO had no evidence on their file and the defence

¹ [2010] SBHC 91; HCSI-CRC 120 of 2010 (30 December 2010).
² *R v Gaá* [2016] SBMC 771

counsel Mr. Fugui at the time he complained and made this application, also had nothing in his file to get instructions from his client. This is on the 29th July 2022 which is already about 2 months since he was remanded. I gave the opportunity for the Prosecution to respond to defence and when I did so, she could not provide the same as well. She did not inform me of any single witness statement she had on file nor any exhibit pertaining to the matter. She therefore had nothing to present me with and justify for another stand down. These facts as compared to **Fafoi** are definitely distinguishable. I also take into account the fact that the Defendant was at the start not represented and expressed his wish to have a lawyer. Thus part of the first adjournments were to allow him to request for a lawyer with PSO as well as to ensure that prosecutions together with police finalise their investigations. The 2 months in my respectful view should have enabled them to finalise investigations and prepare disclosure by the time defence counsel is identified to represent the Defendant.

2. Gaá matter:

This is a case whereby the Defendants were dealt with but the prosecutions failed to progress their matter when it got to certain stages of the proceedings. The PTC was delayed and then the matter got dragged unnecessarily later on. This came to a point where I had to stop the proceedings and dismiss the matter entirely because of the none attendance of prosecution to the key substantive matter of the case. The gross delay could not be prolonged further given the background of the case and dismissal was made on abuse of process by prosecutions for not properly prosecuting the matter. This was never appealed which impliedly means that prosecution accepted the ruling that in such instances where failure of prosecutions is so grossly exhibited then the court must step in to discontinue further abuses of the court processes.

3. Maenu'u matter

In this case, the ODPP appealed against the Magistrates decision for dismissing their case.

The facts of the case is the matter was listed for trial at the Magistrates Court. The Defendants who were the Respondents for the appeal matter had arrived in court before time (10am for the trial to commence) while the prosecuting counsel was not there. When the Magistrate heard the case earlier that day the DPP Mr. Mwanosalua at the time, informed him that the counsel in carriage will appear for the matter as he is prosecuting it. The court stood it down and instructed the clerk to check on the prosecutor. The clerk did as instructed by the court and then informed the court that the prosecutor was not around the court premises. The prosecutor later called the registry to ask for the court to wait on him as he has made his way

to court and will arrive soon. He had said that he called around 940am. However he arrived in court at around 1030am. The matter was dismissed when he was not found around the court premises.

In assessing the appeal the appellate Judge made it clear that the court has inherent jurisdiction to control proceedings before them, so as to maintain confidence in courts. This was made clear in paragraph 10 or page 4, 1st paragraph and I quote "Before I consider s. 186 of the Criminal Procedure Code, I shall mention that all courts have inherent jurisdiction to control proceedings before them, so as to maintain confidence in courts." With this quote the courts including the Magistrate has this jurisdiction to properly deal with cases.

In this present case though absence of prosecution is not an issue, the Defendant being remanded for about 2 months with no progress of any investigation and no evidence on file is the real issue. Not only was this the substantive critical issue for his matter but the investigator (s) has not been responding to ODPP Prosecutors to update them on the file and provide them with the sufficient evidence required for Prosecutions to continue prosecuting cases. Defence counsel represented the Defendant and could not progress his part to get instructions as there was no single disclosure of any evidence as well. ODPP Prosecutors had at one stage conveyed to me that the witnesses have not been willing to provide any evidence as well. With all these factored in and the prosecutions to provide no evidence when requested and no single justice principle to validate further stand down or adjournment in the face of gross delay for about 2 months already, I just had to stop the proceedings and free the Defendant from custody for being held against his constitutional right with no evidence on file since remanded and even dealt with by police as transpired in all that has occurred with his matter.

All the above 3 cases provide guide to a certain extent on how prosecutions should take matters to court. Investigators failure should always alert prosecutions and defence as well as the court to consider discharging remanded Defendants especially when there is totally no evidence at all to support the ongoing adjournments and prolonging remandees time in custody. The Honourable Chief Justice Sir Albert Palmer has reiterated this call to minimise remanding suspects or Defendant in the Legal Year Openings speeches and in various cases dealt with on this point.

Finally the Prosecutions Policy section or part 2. 2 and 4.1 (a) are reminders of prosecutions duty apart from many others. In Part 2.2 it states and I quote "A prosecution should not proceed unless there is sufficient evidence before a Magistrate or evidence capable of

securing a conviction before a Judge; sections 197 and 269 of the Criminal Procedure Code. This is essentially the prima facie test. It requires an assessment of all of the evidence. All elements of a charge must be satisfied."

Section 18 of the Criminal Procedure Code provides for the test that police must apply when dealing with suspects. The test as clearly written in that section with all subsections is reasonable grounds or reasonable suspicion that a person is responsible for committing an offence or offences. In this case clearly police had no evidence before them to have searched the Defendant and have reasonable suspicion as no evidence was ever available.

In my respectful view when police have no evidence before them or written complainant through a police statement from victims or complainants and just search and arrest a person, these actions are outside their powers and should not and never be done to the people. The law does not support such actions and the police must stop these kinds of arrest approaches they are doing.

When ODPF receive files proper assessment of all the evidence before it should also be made before approving a remand application the way it was done in this case. To find out after about 2 months that there has never been any evidence on file while the Defendant has already been remanded is a total shock and failure that all court officers have committed individually. This reminds me as the court to be vigilant in dealing with cases and for the court in its role to ensure that there are evidences present when hearing remand applications.

Clearly the quoted aspect of the Policy above states that prosecution of cases in the Magistrates court can only be proceeded with when there is sufficient evidence before me or other Magistrates. This requires assessment of all of the evidence and even goes to say that all elements of a charge must be satisfied. In effect what the policy is stating is that any case brought before the Magistrates court must have been assessed based on all evidence before the Prosecutions and in their opinion they have sufficient evidence on file. In this present case, clearly there is not even any single evidence before me and to make it worst this is after the Defendant has been remanded for about 2 months. Most especially when prosecutions has at one stage informed me that the witnesses have not been willingly able to give any evidence.

With the explanation by Justice Sam Lungole-Awich in the **Maenuú** case which I have quoted, I am forced to stop the proceedings in this present case given the background of the matter and all the relevant

factors such as; no evidence on file all throughout the proceedings since the remand of the Defendant, the search made on the Defendant since police handled his matter, the problem with witnesses not willing to give any evidence or witness statement and the gross delay of about 2 months. I have discharged the Defendant as the charge is a serious and felony one and I warn police and prosecutions strongly that if they will take up this matter again, they must comply with the laws governing their work and procedures. The people of this land expects that we deal with their cases cautiously, wisely and according to law. Anything beyond or outside these guiding principles must never be tolerated in any way so this nation's justice system can be shaped into a strong and legally sound system that will best serve our people.

Defence also complained of the personal properties that police took from the Defendant that have no link to the charge. I have perused the charge that does not state anything about properties being stolen as described by defence as being held by police. I also allowed prosecution to address me on defence application on these but prosecution stated that they have no issues.

I therefore also ordered that the police release the properties taken from the Defendant when they dealt with him which are described as:

- 1: Music system
2. Amplifier

Court orders:

1. The Defendant is ordered to be released from custody at the rising of the court;
2. The Defendant is discharged and can be re charged when Prosecution decides to do so with sufficient evidence on file. Police must produce reasonable suspicious evidences to do this again than run a case with no evidence present as has been the case.
3. The Defendant's properties with police to be returned to him immediately as the properties have no connection with the charge he has been discharged from. (music system, amplifier)
4. Right of appeal applies.



Miss Tearo Beneteti
Principal Magistrate

