

IN THE CENTRAL MAGISTRATES COURT  
IN THE SOLOMON ISLANDS

Criminal Case No: 518 of 2023



In the Criminal Jurisdiction

**BETWEEN:** REX  
V  
**AND:** MOSTYN MAENU'U JUNIOR

Appearances

Applicant/Defendant: Mr Lazarus Kwaiga (L&L Lawyers)

Crown: Ms Myrella Cleven

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**RULING ON BAIL**

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1. Mr Mostyn Maenu'u Junior, on the 29<sup>th</sup> of July 2023, Principal Magistrate Fatima Taeburi refused bail on your part, and ordered that you be remanded in custody on the assessment that there is a high possibility for you to reoffend. This conclusion may have been drawn from your criminal record and the proximity between the date of your recent conviction and the dates of the current allegations against you.
2. I note that the charge against you comprises of six counts-wilful and unlawful damage, possession of weapon, threatening behaviour, using abusive words, assault causing actual bodily harm and that of intimidation.
3. These counts arose from incidents that were alleged to have occurred in December 2022, May 2023 and June 2023.
4. Counsels are well aware, that once bail has been refused by the Magistrates Court after an application in that regard, the ruling can only be appealed to the High Court, or Counsel appearing for the Applicant must convince the presiding Magistrate, that there has been a material change to the case or the Applicant himself. The principles of subsequent bail are well covered in the High Court cases of *Bartlett v Regina* and *Regina v Chivili*. With this being your second attempt in applying for bail, I am reminded of

such circumstances where someone who was initially refused bail comes back for a second bail application.

5. In the Case of Regina v Gwao<sup>1</sup>, the court referred to the case of Bartlett v Regina, where Justice Kabui, as he was then, stated the following:

*"The rule of practice is that I cannot re-open the findings in the three previous bail applications unless by way of an appeal which in this jurisdiction is not one that is available to an accused whose bail application has been refused by the High Court (see R v Bartlett, Appeal No. 20 of 2004). There are however two exceptions to this rule of practice. First is that a subsequent bail application may raise matters of fact that had been omitted in a previous bail application. Second is where new facts have caused changed circumstances to occur so that a fresh bail application is justified. (See R v Nottingham Justices ex parte Davies [1981] QB 38)"*<sup>2</sup>

6. In Regina v Chivili, the court stated and I quote:

*Proof of a material change in circumstances, or proof of new facts, only enables the court to hear the fresh application. The applicant must still satisfy the court that the changed circumstances or the new facts justify the granting of bail. The question (in this application), therefore, is whether there has been a material change in the circumstances of the accused or of the case since the hearing of the 1st application, and/or whether new material, which was not before the court at the hearing of the 1st application, has emerged so as to justify this second attempt*<sup>3</sup>.

7. In interpreting what these two important cases are saying, this court must not be seen as reviewing its own decision and taking on the role of an appellate court, and that this court must ensure that circumstances have shifted since the time the first bail application was refused.
8. On the 25<sup>th</sup> of August 2023, this court heard submissions from Counsels and further invited clarifications on the 29<sup>th</sup> of August 2023. In an Affidavit filed on your behalf, a medical report from one Dr Jason Itaku was annexed and a letter from the Rugby Association of Solomon Islands which tells of you being a member of the national rugby team.
9. The Crown relied on evidence sworn and tendered by one DC Lorna Poma, a member of the RSIPP.
10. In his oral submissions on the 29<sup>th</sup> of August 2023, your lawyer stated that at the time of the first bail application, full disclosures were not provided to the defence, hence back then, you were not aware of who the complainants are. In my view, there is no doubt that the charge sheet was part of the disclosures first.

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<sup>1</sup> [2011] SBHC 54; HCSI-CRC 481 of 2010 (13 July 2011)

<sup>2</sup> [2006] SBHC 4; HCSI-CRC 022 of 2006 (17 February 2006)

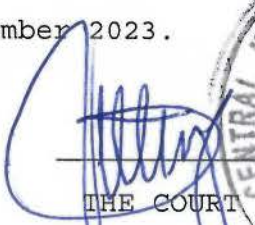
<sup>3</sup> [2011] SBHC 53; HCSI-CRC 137 of 2011 (12 July 2011)


served, hence to say that you were not aware of who the complainants are would be quite unbelievable since their names would always be included in the charge sheet.

11. The fact submitted by your lawyer that you now know, that should you reoffend, you will be thrown back to jail cannot be said to be a material change of circumstances as one cannot claim to have just find out that the consequence of reoffending whilst on bail is being thrown back to jail.
12. Oral submissions touched on the fact that the cell environment is not conducive given your medical condition. I note from the medical report referred to that you were admitted at the medical ward, for multiple diagnosis relating to dengue fever, hyperthyroidism and atrial fibrillation.
13. There was limited information, presented in the arguments for you, on the treatment you are currently getting at the correctional centre and the diet you are currently under, which could have justified the need for you to be released on bail. In other words, I am not told as to the ability of the correctional centre to ensure your current condition is addressed. I take judicial notice that there is a wing at the National Referral Hospital for inmates and remandees and the special treatment rendered to those held at the correctional centre by nurses and doctors.
14. The evidence by Lorna Poma was dubbed by your lawyer as full of hearsay and speculation. However, being a police officer and a Detective Constable who is part of the investigations against you, she was entitled to give evidence based on what she was told as the information was part of the investigations that she was undertaking.
15. In terms of the medical report and the letter confirming your membership as a rugby player in the national team, I asked how exactly your medical condition will affect the risk of reoffending assessed on your part. Overall, it can be said that you are too sick to remain in the correctional centre but not too sick to be involved in a sport like rugby. I was told by your lawyer that people like you should be encouraged to take part in sports.
16. I must say the sworn evidence tendered on your behalf speaks only of the advice given to you on the basis that the offences you are charged with are all bailable offences. This was also highlighted during your first unsuccessful bail application. I further note at paragraph 3 as to how the facilities at the correctional centre is not suitable, and your failure to state whether there is no steps and attempts taken to ensure your health and wellbeing is taken care of. ~~The very fact pleaded at paragraph 4, whereby you were rushed to the NRH, is evidence of how the correctional centre is addressing your health condition and how they wish to ensure that you are provided with the necessary health attention needed on your part.~~

17. I note, the court had already dealt with submissions regarding your dependencies, the proposed cash bail, surety and curfew hours, but went ahead and refused bail on your part.
18. At this stage I wish to address the annexures tendered through your evidence. I share the same views shared by Justice Apaniai, as he was then, in his final remarks in the case of *Regina v Chivili*, where he states:  
*Strictly speaking, all these materials are hearsay as to their content and are inadmissible. A prison officer or medical officer expressing an opinion in relation to the medical condition of a person applying for bail, or expressing an opinion on the ability of the prison service to properly look after such person, must do so in the form of a direct sworn statement signed by himself or herself and not by writing letters, memoranda or notes addressed to the public at large or to the court with the aim of those letters, memos and notes being produced to the court as exhibits to someone else's sworn statement. Such materials would be admissible only to the extent that they are proof of the fact that they have been written by the officers concerned but they are inadmissible as proof of the truth of their contents<sup>4</sup>.*
19. At the face of it, you have decided to rely on two very irreconcilably inconsistent evidence that in my view have not really amounted to any change of circumstance but only contradictory to each other.
20. I therefore am not inclined to accept that there has been a change of circumstance either to you or the case itself.
21. I therefore refuse this second application for bail, as there is no evidence reflecting any material change of circumstances.

Dated this 1<sup>st</sup> day of September 2023.

  
THE COURT  
Emily Z Vagibule Pakoa\* (MRS)  
Magistrate of the First Class



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<sup>4</sup> Above n 3.