

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 183 OF 2012S

ISOA KUBUNALAGI

VS

THE STATE

**Counsels : Ms. S. Vaniqi for Accused
Ms. T. Leweni for State**

Hearing : 2nd November, 2012

Ruling : 2nd November, 2012

Written Reasons: 3rd May, 2013

WRITTEN REASONS FOR REFUSAL OF BAIL APPLICATION

1. On 24th September, 2012, the accused appeared in the Suva Magistrate Court on the following charges:

COUNT ONE

Statement of Offence

AIDING PRISONERS TO ESCAPE FROM LAWFUL

CUSTODY: Contrary to Section 197(a) of the Crimes

Decree No. 44 of 2009.

Particulars of Offence

ISOA KUBUNALAGI, on the 17th day of September, 2012, in Veisari, in the Central Division, aided **TEVITA SUGU**, **ISOA WAQA**, **SOLOMONI QURAI**, **EPELI QARANIQIO** and **JOSAIA USUMAKI**, who are all prisoners incarcerated at the Naboro Medium Prison Complex to escape from lawful custody.

COUNT TWO

Statement of Offence

HARBOURING PRISONERS AT LARGE: Contrary to Section 52(3)(c) of the Prisons and Corrections Act No. 2 of 2006.

Particulars of Offence

ISOA KUBUNALAGI and **IFEREIMI SAUBESA** , on the 18th and 19th day of September, 2012, in Suva, in the Central Division, knowingly and without lawful excuse assisted prisoners illegally at large namely **TEVITA SUGU**, **ISOA WAQA**, **SOLOMONI QURAI**, **EPELI QARANIQIO** and **JOSAIA USUMAKI**.

COUNT THREE

Statement of Offence

RECEIVING STOLEN PROPERTY: Contrary to Section 306(1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

ISOA KUBUNALAGI and **IFEREIMI SAUBESA**, on the 19th day of September, 2012, in Suva, in the Central Division, dishonestly received the total sum of

FJD\$1,986.85 which sum of money is stolen property,
knowing or believing the said property to be stolen.

2. The matter was transferred to the High Court on 5th October, 2012 [High Court Criminal Action No. 336/12]. The prosecution, is at present, considering consolidating other charges, that arose out of the events that gave rise to the present charges. The accused had been remanded in custody since 24th September, 2012. On 9th October, 2012, he applied for bail pending trial via a notice of motion and three affidavits in support from himself, his father and his sister. The State replied with an affidavit from Detective 3036 Amani Satuwere, dated 2nd November, 2012.
3. I have read the papers filed by both parties. I heard them on 2nd November, 2012. I declined the accused's bail application, and I said I would give my written reasons later. Below are my reasons.
4. It is well settled that, an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise (section 3(1) of the Bail Act 2002). It is also well settled that, the primary consideration in deciding whether to grant bail is the likelihood of the accused person turning up in court to take his trial on the date arranged (section 17(2) of the Bail Act 2002). It is also well settled that, in order for the court to decide the above issue, it is mandatory for it to consider each of the factors mentioned in section 19 of the Bail Act 2002, that is, the likelihood of the accused surrendering to custody, the interest of the accused and the public interest and protection of the community.

Factor No. 1: The Likelihood of Accused Surrendering to Custody:

5. The accused is 26 years old and resides at Bilo Settlement, Veisari. He reached Form 5 level at Ratu Sukuna Memorial School. He is married and supports his wife and four children. He earns his livelihood by diving for fish. He said, his brother is Tevita Sugu, one of the alleged escaped prisoners last year. In the High Court, the prosecution is still examining the files to consider consolidating the charges. I have read Detective 3036's affidavit, and it does not help the accused's case. According to the State, the accused allegedly assisted the 5 escaped prisoners last year, by transporting them around in his fibre glass boat. These are serious allegations. Under this head, it appeared the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accused:

6. The trial for this case will be determined after the prosecution had consolidated the charges. It will be heard next year. The accused had been remanded in custody for the last 7 months. However, time spent in custody while been remanded in custody, will be deducted from the final sentence, if found guilty. He was represented by Legal Aid Lawyers, and they can visit him in custody to take instructions. A new remand facility is about to be open in Suva, and he can enjoy new facilities. He is not incapacitated, and there does not appear to be any reason for him to be at liberty for other lawful reasons. Under this head, the accused's chances of bail are slim.

Factor No. 3: The Public Interest and the Protection of the Community:

7. The circumstances surrounding the escape of 5 prisoners from Naboro Prison in September 2012, caused the public great alarm. People and Banks were robbed and threatened. The charges against the accused were that he allegedly aided and abetted the 5 escaped prisoners. One of the prisoners was his brother, and the two communicated a lot to aid in the commission of crimes. Although the accused is presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it is in the public interest and the protection of the community that he be remanded in custody. Under this head, the accused's chances of bail are slim.

Conclusion:

8. Because of the above reasons, I denied the accused's bail application on 2nd November, 2012.

The Applicant's Fishing Vessel:

9. The accused also asked for the release of his fishing vessel. It appears the prosecution does not object. The accused may take his fishing vessel, once the police have photograph it and done other essential matters, and approved its return.

Salesi Temo
JUDGE

Solicitor for Accused : **Legal Aid Commission, Suva.**
Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**