

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 188 OF 2012S

IFEREIMI SAUBESA

VS

THE STATE

**Counsels : Mr. K. Singh for Accused
Mr. Y. Prasad for State**

Hearing : 2nd November, 2012

Ruling : 2nd November, 2012

Written Reasons: 3rd May, 2013

WRITTEN REASONS FOR DENIAL 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. The prosecution, is at present, considering consolidating other charges, that arose out of the events that gave rise to the present charges. The accused has been remanded in custody ever since 24th September, 2012. On 12th October, 2012, the accused applied for bail pending trial via a notice of motion and an affidavit in support. He filed his written submission on 19th October, 2012. Two further affidavits from the defence were filed on 31st October, 2012. The State replied with an affidavit from Detective 3036 Amani Satuwere, dated 2nd November, 2012.
3. I have read all the papers submitted by the 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 38 years old. He resides at Bilo Settlement, Veisari. He had lived there for the last 20 years. He earns his livelihood as a diver, earning about \$150 per week. He is the friend of Isoa Kubunalagi, a co-accused in High Court Criminal Case No. HAC 336/12. The allegation against him are serious and are reflected in the charges presently laid against him. In the High Court, the prosecution is still examining the files connected with related events, with a view to consolidating the charges. I have read Detective 3036's affidavit from the State, and it appeared

counter – productive to the accused’s interest. This is so, despite the presumption that he is innocent until proven guilty beyond reasonable doubt. In my view, under this head, the accused’s chances of bail are slim.

Factor No. 2: The Interest of the Accused:

6. The trial for this case will only be determined after the prosecution had consolidated the charges. It will be done next year. The accused has been in custody for the last 7 months. However, time spent in custody while in remand will be deducted if the accused is found guilty as charged. He has an able counsel, who could visit him in custody to take instructions. A new remand facility is about to be re-opened, thereby giving him the opportunity to enjoy new facilities. He is not incapacitated, and it appeared there is no reason for him to be at liberty for other lawful reason. 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 Institutions were allegedly robbed and threatened. The charges against the accused alleged that he aided and abetted the 5 escaped prisoners. These are serious allegations. 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, at this stage of the proceeding. Under this head, the accused’s chances of bail are slim.

Conclusion:

8. Because of the above, I refused the accused’s bail application on 2nd November, 2012.

Salesi Temo
JUDGE

Solicitor for Accused : **Jamnadas & Associates, Suva.**
Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**