

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 122 and 123 OF 2013S**

**1. JOELI SOAQALI**

**2. PETERO TUIVAKALE**

**VS**

**THE STATE**

**Counsels** : **Accused No. 1 in Person**  
**Ms. T. Leweni for Accused No. 2**  
**Ms. P. Madanavosa for State**

**Hearing** : **8<sup>th</sup> July, 2013**

**Ruling** : **26<sup>th</sup> July, 2013**

**Written Reasons:** **20<sup>th</sup> September, 2013**

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**WRITTEN REASONS FOR REFUSAL OF BAIL**

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1. The accused made separate bail applications in the Standard High Court bail application form, but I will deal with them together, because they are jointly charged in Suva High Court Criminal case No. HAC 147 of 2013. They are facing the following information:

**Statement of Offence**

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1)  
(a) of the Crimes Decree No. 44 of 2009.

### **Particulars of Offence**

**TEVITA GONEVOU, JOELI SOAQALI and PETERO**

**TUIVAKALEA** on the 2<sup>nd</sup> day of April, 2013 at Pacific Harbour in the Central Division, stole \$45,281.57 cash from **Chandreshwaran Goundar**.

2. Both accuseds appeared in the Navua Magistrate Court on 5<sup>th</sup> April 2013, and were remanded in custody. On 19<sup>th</sup> April 2013, both accuseds first appeared in the Suva High Court. On 24<sup>th</sup> May 2013, both accuseds used the Standard High Court bail application forms to apply for bail pending trial. For Petero Tuivakalea, his counsel Ms. T. Leweni filed a submission on 8<sup>th</sup> July 2013. On 8<sup>th</sup> July 2013, I heard the parties. At first, the prosecution did not object, but objected later. On 26<sup>th</sup> July 2013, I denied the accuseds' bail application, and I said, I would give my reasons later. Below are my reasons.
  
3. 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:**

4. I will deal with both accuseds together, under this head.

##### **(i) Joeli Soaqali:**

Joeli is 42 years old, married with 3 children. He and his family resided at Sarava Settlement, Wainibuku. He is unemployed. He had 18 previous convictions since 1988, 6 of which occurred in the last 10 years. The 6 previous convictions, in the last 10 years, including 3 Housebreaking, Entering and Larceny convictions, 2 larceny convictions and 1 assault conviction. As far as this

case was concerned, the prosecution said they have strong evidence against the accused. They said, he allegedly confessed to the robbery. They said, the accused used a stone and knife to attack and injure the complainant, at the material time. If found guilty, the accused faced a possible sentence of more than 10 years imprisonment. Under this head, the accused's chances of bail are slim.

**(ii) Petero Tuivakalea:**

Petero is 27 years old, with a defacto wife and two children to support. He and his family resided at Sarava Settlement, Wainibuku. He is a subsistence farmer, and sells his farm produce to earn the family income. According to the prosecution, they have strong evidence against him. They said, he allegedly confessed to the robbery, and they said, he was the one who pulled the money bag from the complainant. If found guilty, the accused face a possible prison sentence of more than 10 years imprisonment. Under this head, the accused's chances of bail are slim.

**Factor No. 2: The Interest of the Accuseds' Persons:**

5. I will deal with both accuseds together under this head. Both accuseds will be tried next year. They have been in custody for approximately 5 months. If found guilty, time spent in custody while on remand, will be deducted from the final sentence. There is a new Suva Remand Centre, and the two accuseds can enjoy new facilities. If represented by lawyers, they can visit them in custody to take instructions. In my view, there is no need for them to be at liberty for any other lawful reasons. They are not incapacitated. Under this head, their chances of bail are slim.

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

6. I will deal with both accuseds together under this head. The allegation against the two accuseds are serious. They allegedly attacked a businessman, who was taking his business taking (ie. \$45,000 plus) to the bank. They attacked him with a stone and knives. Although they are 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, they be remanded in custody, until further orders of the court. Under this head, the accuseds' chances of bail are slim.

**Conclusion:**

7. Because of the above, I denied the accuseds' bail application on 26<sup>th</sup> July 2013, and the above are my reasons.

**Salesi Temo**  
**JUDGE**

**Solicitor for Accused No. 1** : **In Person**  
**Solicitor for Accused No. 2** : **TL Lawyers, Suva.**  
**Solicitor for State** : **Office of the Director of Public Prosecution, Suva.**