

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 024 OF 2014S

TUPOU BOKADI

VS

THE STATE

Counsels : **Mr. M. Fesaitu for Accused**
Mr. T. Qalinauci for State

Hearing : **24 March, 2014**

Ruling : **28 April, 2014**

Written Reasons: **17 July, 2014**

WRITTEN REASONS FOR DENYING BAIL

1. In High Court Criminal Case No. HAC 321 of 2013S, the accused, with others, faces the following information:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

TUPOU BOKADI, SEMISI RABAKOKO and LEDUA GUDRU, with another, on the 29th of August 2013, at Tamavua, in the Central Division, robbed Alexey Pernachuk of an Apple Laptop with charger

valued at \$4,000, an Apple i-Phone 5 valued at \$2,000.00, a Nokia E65 mobile phone valued at \$200.00, a Samsung mobile phone valued at \$200.00, wallet with \$150.00 in cash, Fiji driving licence valued at \$14.50, and a BSP ATM card valued at \$5.00, all to the total value of \$8,500.00, and all the property of the said **Alexey Pernachuk**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

TUPOU BOKADI, SEMISI RABAKOKO and LEDUA GUDRU, with another, on the 29th of August 2013, at Tamavua, in the Central Division, robbed **Evergency Dubovuk** of 1 x steel safe valued at \$300.00, USD \$10,000.00, FJD \$12,000.00, KRW \$1,000,000.00, Russian rubles, a Samsung Galaxy mobile phone valued at \$600.00, an Apple brand tablet valued at \$3,500.00, an Apple brand i-Pod valued at \$2,000.00 and an Apple brand laptop valued at \$4,000.00, all the property of the said **Evergency Dubovuk**.

THIRD COUNT

Statement of Offence

THEFT: *Contrary to section 291(1) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

TUPOU BOKADI, SEMISI RABAKOKO and LEDUA GUDRU, with another, on the 29th of August 2013, at Tamavua, in the Central Division, dishonestly appropriated a white mini-van with registration number FV 922 valued at \$35,000.00, the property of **Waerua Fishing Company**, with the intention of permanently depriving the said **Waerua Fishing Company** of the same.

2. The accused had been remanded in custody since 9 September 2013, when he first appeared in the Suva Magistrate Court. He first appeared in the High Court on 20 September 2013, and had been remanded in custody, ever since. On 28 January and 5 February 2014, he applied for bail pending trial. The State replied with an affidavit on 24 March 2014. I heard the parties on the same date. I denied the accused's bail application on 28 April 2014. I said I would give my written reasons later. Below are my reasons.
3. An accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for bail is whether or not the accused will turn up on the date arranged to take his trial. In deciding the above, the court is duty bound to take into account the factors mentioned in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrendering to Custody:

4. The accused was 25 years old at the time of the alleged offence. He is single, and unemployed from Suvavou Village. According to the prosecution, their case against the accused appeared strong, in that he allegedly confessed to the crimes. Although the accused is presumed innocent until proven guilty beyond reasonable doubt in a court of law, if found guilty after trial, he faces a possible sentence of 14 years imprisonment. According to the prosecution, he is also facing similar charges in the Magistrate Courts – for example, Suva Magistrate Court Criminal Case No. 1633/11 and 448/12. In my view, under this head, the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accused:

5. The accused will be tried from 21 September to 2 October 2015, that is, 1 year 2 months 4 days away. He is presently remanded in the new Suva Remand Centre. He is legally represented by Legal Aid Commission lawyers, and they can visit him in custody, to prepare his defence. There appears to be no need for him to be at liberty for other lawful purpose. If found guilty after trial, time spent on remand will be deducted from his final sentence. He is not incapacitated. In my view, his chances of bail under this head are slim.

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

6. The allegations against the accused were serious. He, with others, allegedly invaded the complainant's home armed with weapons, ransacked the same, and with violence, stole his properties. In my view, it is in the public interest and the protection of the community that, he be remanded in custody until further orders of the court. Under this head, the accused's chances of bail are slim.

Conclusion:

7. It was for the above reasons, I refused the accused's bail application on 28 April 2014.



A handwritten signature in blue ink, consisting of a large, stylized 'S' shape with a loop at the top and a tail that curves downwards and to the right.

Salesi Temo
JUDGE

Solicitor for Accused
Solicitor for State

:
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Legal Aid Commission, Suva.
Office of the Director of Public Prosecution, Suva.