

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 100 OF 2015S

BETWEEN

UATE BALEIONO

APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Ms. P. Lal for Applicant
Mr. M. Vosawale for Respondent
Hearing : 5 October, 2015
Ruling : 1 December, 2015
Written Reasons : 8 April, 2016

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 202 of 2015S, the applicant with others were charged with 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

JEKE VAKARARAWA, MOSESE TARAU, SEREMAIA MUDURA and TEVITA QAQANIVALU on the 21st day of May 2015 at Suva in

the Central Division, stole a billabong wallet containing \$60.00 cash and a black and white Alcatel phone valued at \$179.00 the property of **Sher Dil** and a motor vehicle registration number LT 4626 the property of **Rajneel Chand** and immediately before committing the theft used force on the said **Sher Dil**.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

JEKE VAKARARAWA, MOSESE TARAU, SEREMAIA MUDURA, TEVITA QAQANIVALU and UATE BALEIONO on the 21st day of May, 2015 at Suva in the Central Division, stole a black Mulberry handbag, a set of house keys with coloured plastic identifiers, a black Samsung Galaxy Note phone valued at \$1500.00, a black Alcatel Android phone valued at \$120.00, a ladies metal framed eyeglass in case valued at \$1300.00, a ladies sunglass valued at \$20.00, a leather wallet with approximately \$250.00 cash and various cards, the property of **Donald Michael Clifford and Mary Wemyss** and immediately before committing the theft threatened **Donald Michael Clifford and Mary Wemyss** with a cane knife, steel rod and bottles.

THIRD COUNT

Statement of Offence

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

Particulars of Offence

JEKE VAKARARAWA, MOSESE TARAU, SEREMAIA MUDURA, TEVITA QAQANIVALU and UATE BALEIONO on the 21st day of May, 2015 at Suva in the Central Division, stole a black leather bag containing an Iphone valued at approximately \$1000.00, a gents wallet containing \$250.00, a leather coin purse containing approximately \$20.00, a pair of Electric brand sunglasses valued at \$200.00 the property of **Tim Noble and Olivia Owen** and immediately

before committing the theft threatened **Tim Noble and Olivia Owen** with a cane knife, steel rod and bottles.

FOURTH COUNT

Statement of Offence

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

Particulars of Offence

JEKE VAKARARAWA, MOSESE TARAU, SEREMAIA MUDURA, TEVITA QAQANIVALU and UATE BALEIONO on the 21st day of May, 2015 at Suva in the Central Division stole a cash register valued at \$1500.00, cash of \$850.00, a bottle of yellow Tail Shiraz valued at \$21.85 and a bottle of Grandial Sparkling Wine valued at \$18.95 the property of **Distill (Lawhill Companies Ltd)** and immediately before committing the theft threatened **Jodi Bacchiochi Chang** and **Elisha Lavulo** with a cane knife, steel rod and bottles.

FIFTH COUNT

Statement of Offence

ACTS INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255 (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JEKE VAKARARAWA, MOSESE TARAU, SEREMAIA MUDURA, TEVITA QAQANIVALU and UATE BALEIONO on the 21st day of May, 2015 at Suva in the Central Division, with intent to maim, disfigure or do some grievous harm unlawfully wounded **Bernadus Groenewald** on the forehead.

2. The applicant first appeared in the Suva Magistrate Court on 27 May 2015. He had been remanded in custody since then. He first appeared in the High Court on 5 June 2015. On 23 June 2015, he applied for bail pending trial, using the standard High Court bail application form for those not represented by counsel. The prosecution replied with an affidavit in reply from Detective Inspector Peni Tuivaga on 26 August 2015. The applicant replied with an affidavit in reply on 30 September 2015. I heard the parties on 5 October 2015. On 1 December 2015, I

denied the applicant's bail application. I said I would give my written reasons later. Below are my reasons.

3. It was well settled that an accused person had a right to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail was whether or not the accused will turn up in court on the date arranged for his bail. In deciding the above, the court is duty bound to consider the factors laid out in section 19 of the Bail Act 2002.

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

4. The applicant is 26 years old, married with 3 young children. He worked as a casual labourer at the wharf and resided with his in-laws at Tamavua-i-wai. He reached Form 4 level education at Lelean Memorial School. According to the prosecution, they had a strong case against the applicant. He allegedly confessed to the crimes. If found guilty after trial, he will be liable to a prison sentence of 14 years and up. Under this heading, the applicant's chances of bail are slim.

Factor No. 2: Interest of the Accused:

5. The trial for this case had been set from 26 September to 7 October 2016 (2 weeks). The trial is approximately 5 months away. By trial time, the applicant would be in custody for 1 year 4 months. The court had the power to remand people in custody for 2 years prior to trial. In any event, time spent in remand will be deducted from the applicant's final sentence, if he's found guilty after trial. He is presently remanded at the new Suva Remand Centre. He is represented by counsel, and he can visit the applicant in custody, as and when he pleases. There does not appear to be any reasons for the applicant to be at liberty for any other lawful purpose. He is not incapacitated. In my view, under this head, the applicant's chances of bail are slim.

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

6. The allegations against the applicant were very serious. He faced three "aggravated robbery" charges and one "act with intent to cause grievous harm". It was alleged that on 21 May 2015, they attacked and robbed members of the public who were attending a dinner and wine function at a public place. They also allegedly attacked the then Commissioner of Police. Although the applicant was presumed innocent until proven guilty beyond a 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, until further orders of the court. Under this head, the applicant's chances of bail, are slim.

Conclusion:

7. It was for the above reasons that I denied the applicant's bail application on 1 December 2015.



Salesi Temo
JUDGE

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