

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 16 OF 2016

BETWEEN : **JONE LUTUMAILAGI**
MIKAELE SERU

First and Second Applicants

AND : **STATE**

Respondent

Counsel : **Miss S. Nasedra for the First Applicant**
Second Applicant in person
Ms J. Fatiaki for Respondent

Date of Hearing : **12th of May 2016**

Date of Ruling : **8th of June 2016**

RULING

Introduction

1. The Applicant who is a Juvenile filed this petition of appeal against the ruling delivered by the Learned Magistrate of Lautoka, revoking his bail on the 11th of April 2016. This appeal is made pursuant to Section 31 (1) of the Bail Act.
2. It was revealed by the learned counsel for the Applicant during the course of the hearing of this appeal that the Learned Magistrate has also revoked the bail of Mr. Mikaele Seru, (hereinafter referred as the second Applicant) who is named as the first accused person in the substantive matter. He was granted bail by this

court on the 24th of March 2016. Accordingly, the court by its own motion decided to review the said order of revocation of bail by the Learned Magistrate pursuant to Section 30 (3) of the Bail Act.

3. Having considered the background of this application and the submissions of the learned counsel of the Applicants and the Respondent, I granted the first and second Applicants bail on the 9th of May 2016 and 12th of May 2016 respectively pending my ruling of this Appeal and bail review.

Background

4. The first and second Applicants are being charged with two other accused persons for one count of Aggravated Burglary contrary to Section 313 (1) of the Crimes Decree and one count of Theft contrary to Section 291 (1) of the Crimes Decree. All of them were produced in the Magistrate's court of Lautoka on the 29th of February 2016. The prosecution had informed the learned Magistrate that the Applicant is a juvenile. However, the Learned Magistrate has not granted him bail pursuant to Article 41 (1) (e) of the Constitution and Section 3 (5) of the Bail Act. The matter was then transferred to the High Court pursuant to Section 191 of the Criminal Procedure Decree as the first count as charged is an indictable offence.
5. The first and the second Applicants filed their applications for bail in the High Court on the 11th of March 2016 and 15th of March 2016 respectively. The bail application of the first Applicant was called in the High Court on the 17th of March 2016, where the High Court granted the first Applicant bail. The second Applicant was granted bail by the High Court on the 24th of March 2016. The

Substantive matter was remitted back to the Magistrate Court under the extended jurisdiction by the High Court pursuant to Section 4 (2) of the Criminal Procedure Code on the 24th of March 2016.

6. The matter was then called in the Magistrate's court on the 30th of March and 4th of April 2016 respectively. On the 11th of April 2016, the Prosecution made an application to consolidate the matter with Criminal Case No 233 of 2016. The learned Magistrate allowed the application for consolidation. Having allowed the consolidation, the learned magistrate remanded the first Applicant on the ground that there is no bail ruling in his file.
7. The second Applicant was not present in the court, when the matter was first called in the morning of the 11th of April 2016. The matter was mentioned again before the Learned Magistrate in the evening of 11th of April 2016, where the second Applicant appeared with a sick sheet. It is not clear whether the second applicant has produced a prescribed format of the sick sheet as required or not. However, the Learned Magistrate had revoked his bail and remanded him on the ground that all other accused persons in this matter are being charged with an indictable offence.

Law and Analyses

8. In view of the Section 25 of the Bail Act, if the accused person who has been released on bail breached any bail condition or failed to surrender to custody, the court could issue a warrant to arrest him. Section 25 (1) of the Bail Act states

i) If an accused person who has been released on bail -

- a) *fails to surrender to custody,*
- b) *otherwise breaches a condition of bail,*
- c) *absents himself or herself from the court without the court's leave at any time after he or she has surrendered to custody, or*
- d) *is found to have given a false residential address contrary to Section 16 (1),*

The court may issues a warrant for the arrest of the accused person"

9. Section 25 (3) of the Bail Act states that;

A person arrested pursuant to subsection (2) must be brought as soon as practicable, and in any event within 24 hours after the arrest, before a judge or a magistrate, who may remand the person in custody or grant him or her bail subject to conditions, which may be the same as or different from those originally imposed"

10. Accordingly, Section 25 (3) of the Bail Act has empowered the Magistrate either to remand the accused in custody or grant him bail on condition if an accused is brought before him on the ground of breach of bail condition pursuant to Section 25 (1) (2) of the Bail Act.

11. In this instant case, the Learned Magistrate has revoked the bail of the first Applicant on rather ludicrous ground of that he could not find a written bail ruling in the file. According to section 20 of the Bail Act, the written ruling is required only when the bail is refused. However, the Learned Magistrate should have inquired from the Registry of the High Court, if he was in doubt with the

oral submissions made by the learned counsel of the first Applicant to the effect that he was granted bail by the high court. The Learned Magistrate must have directed his mind to Article 41 (1) (e) of the Constitution as the first Applicant is a juvenile. Article 41 (1) (e) it states that;

"Every Child has the right

e) not to be detained, except as a measure of last resort"

12. In respect of the second Applicant, it appears that the Learned Magistrate has revoked his bail on the ground that the substantive matter was amalgamated with another case and all other accused persons are remanded in custody as the charge is an indictable offence. The High Court on the 24th of March 2016, having considered the nature of the charge and other circumstances, granted the second Applicant bail. Hence, the Learned Magistrate has no jurisdiction to revoke the bail that was granted by the high court on the ground that the offence is an indictable offence.

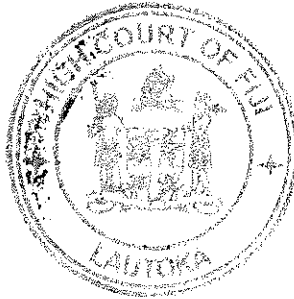
13. Moreover, neither the provisions of the Bail Act nor the provisions of Criminal Procedure Decree has restricted the jurisdiction of the Magistrate of granting bail in respect of indictable offences. If the substantive matter is in relation to an indictable offence and is transferred to the High Court pursuant to Section 191 of the Criminal Procedure Decree, the Learned Magistrate still has discretionary jurisdiction to grant the accused bail pursuant to Section 195 (b) of the Criminal Procedure Decree, where it states;

"The accused person shall be remanded either on bail or in custody, to appear in the High Court on a fixed date not exceeding 28 days from the date of the order for transfer"

14. In view of the reasons discussed above, I find the order of the Learned Magistrate revoking the bail of the first and second Applicants is wrong in principle and has no proper foundation. Hence I quash the said order of the Learned Magistrate dated 11th of April 2016.


R. D. R. Thushara Rajasinghe
Judge

At Lautoka
8th of June 2016



Solicitors : Office of the Legal Aid Commission
Office of the Director of Public Prosecutions