

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO: HAM 001 of 2017

BETWEEN : THE STATE

APPLICANT

AND : 1. ELIA LEWENI VULA
2. MATEO NAIWAU

RESPONDENTS

Counsel : Mr. T. Tuenuku for the State
: Mr. A. Rayawa for the Respondents
Date of Ruling : 28th July 2017

CONSOLIDATION
RULING

1. The Applicant files this Notice of Motion seeking an order to consolidate matters in State v. Mateo Naiwau HAC 395/16 and State v. Elia Leweni Vula HAC 396/16. The Notice of Motion is being supported by an affidavit of DC Jitendra, stating the grounds for this application.
2. The two Respondents objected to this application for consolidation on the ground that the consolidation of these two cases would prejudice the two Respondents.

3. Mr. Mateo Naiwau is charged in HAC 395/16 for one count of Rape, Contrary to Section 207 (1) and 2 (b) of the Crimes Act. The particulars of the offence are that:

“Mateo Naiwau between the 1st day and 31st day of August 2016, at Nabouciwa Village, Nakelo in the Central Division, had carnal knowledge of Alumeci Bolakula without her consent”.

4. Mr. Elia Leweni Vula is charged in HAC 396/16 for one count of Rape, contrary to Section 207 (1) and 2 (b) of the Crimes Act. The particulars of the offence are that:

“Elia Leweni Vula on the 16th day of July 2016, at Nabouciwa Village, Nakelo in the Central Division, had carnal knowledge of Alumeci Bolakula without her consent”.

5. Section 60 of the Criminal Procedure Decree stipulates the procedure for joinder of charges and information, where it states that:

“The following persons may be joined in one charge or information and may be tried together —


- a. Persons accused of the same offence committed in the course of the same transaction;*
- b. Persons accused of an offence and persons accused of—*
 - i. aiding or abetting the commission of the offence; or*
 - ii. attempting to commit the offence;*
- c. Persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character; and*
- d. Persons accused of different offences committed in the course of the same transaction.*

6. The court is required to consider two main factors in an application of this nature. The first is that whether there is sufficient evidential and factual nexus in relation to each accused.

The second factor is that no prejudice will cause to the accused person. (**The State v. Ashneel Prasad & Others HAM 127 of 2008, Robert William Lack (1977) 64 Cr. App. R. 172**).

7. The Applicant states that these two offences have taken place at two different occasions. However, the victim of these two incidents is same. She had made one police report concerning these two incidents. One medical examination was conducted. The Applicant submits that the prosecution relies on the same witnesses and documents in both of these cases.
8. Apart from stating that the consolidation would prejudice them, the Respondents have not provided any specific grounds or factors that could substantiate their contention of prejudice.
9. Having carefully considered the factual grounds of these two cases, I find there is evidential and factual nexus in both cases. I further find that the consolidation would not cause any prejudice to the Respondents.
10. In conclusion, I allow this application of consolidation of HAC 395/2016 and 396/2016.




R.D.R.T. Rajasinghe
Judge

At Suva
28th July 2017

Solicitors
Office of the Director of Public Prosecutions for the State
Rayawa Law for both Accuseds