

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

MISCELLANEOUS CASE NO: HAM 65 of 2022

STATE

V

AJAY KUMAR

Counsel : Mr. Taitusi Tuenuku for the State
Mr. Iqbal Khan for the Respondent

Hearing : 29 August 2022

Ruling : 17 October 2022

RULING

- [1] This is an application made by the State pursuant to Section 11 (3) of the Constitution of the Republic of Fiji 2013 (“Constitution”), seeking an order of Court to obtain the bodily sample of the Respondent, Ajay Kumar, in Lautoka High Court Criminal Case No. HAC 116/2021, for the purpose of DNA analysis.
- [2] The Respondent is the accused in Lautoka High Court Criminal Case No. HAC 116/2021. As per the Information filed by the Director of Public Prosecutions (“DPP”) in the substantive matter, the Applicant is charged with one count of Murder, contrary to Section 237 of the

Crimes Act No. 44 of 2009 ("Crimes Act"). The Applicant has pleaded not guilty to the charge. The deceased was the Applicant's de-facto wife.

The Notice of Motion and Affidavit in Support

[3] This application was filed in Court on 11 April 2022, by way of a Notice of Motion, which was supported by the Affidavit of Detective Sergeant 4943 Netava, Police Officer, based at the Criminal Investigations Department, Lautoka Police Station. D/Sgt Netava is the Investigating Officer in the substantive matter.

[4] In his Affidavit, D/Sgt Netava *inter alia* states as follows:

- (1) That on the morning of 16 September 2021, the deceased Saleszni Devi (the de-facto wife of the Respondent) was found dead beside her car at Teidamu. She had been bludgeoned and the pathologist established that she died of positional asphyxia resulting from multiple traumatic head injuries.
- (2) It is alleged that the Respondent had murdered his de-facto wife between 15 September 2021 and 16 September 2021 at Lautoka. The Respondent is now charged with one count of Murder, contrary to Section 237 of the Crimes Act, in the High Court of Lautoka.
- (3) In this case there is no direct evidence of what actually occurred that led to the death of the deceased. The State's case against the Respondent is entirely based on circumstantial evidence.
- (4) Rajesh Kumar, Insurance Agent for LIC, has made a statement to the Police during the investigations that there was an insurance policy of the deceased which nominated the Respondent to receive \$100,000.00 on the normal death of the deceased and \$200,000.00 in the event that the deceased had an accidental death. In September 2021, he had met the Respondent, who had come alone to meet him in order to revive the said Insurance Policy.
- (5) Suresh Chauhan, BSP Life Insurance Advisor, has stated to the Police that the Respondent was the beneficiary of the said Life Insurance Policy of the deceased.

- (6) Micky Kumar, Vehicle Examiner, Land Transport Authority, had compiled a Post Collision Vehicle Investigation Report, dated 17 September 2021. A copy of the said report has also been annexed to the Affidavit in Support.
- (7) Micky Kumar has confirmed that upon examining the deceased's vehicle, the damage sustained on the windscreen could not have been a result of an accident. Instead the damage was caused by someone hitting the windscreen from outside, possibly with an iron rod. Furthermore, Micky Kumar has stated that the airbags of the vehicle, had not been deployed, which indicated that the incident was low impact. Also the setting of the driver's seat indicated that the last driver of the vehicle was a man.
- (8) Jiten Prasad has stated that he was driving home along Teidamu Road on 15 September 2021, at about 7.18 p.m, when he saw a maroon car near the mango tree adjacent to his brother's house. Someone was trying to reverse the car. When he arrived home a few minutes later, his brother informed him that he had heard a sound like an accident on the Teidamu Road. He and others went to investigate and saw the maroon car on the slope facing down towards the sea.
- (9) During the course of investigations the Police had on a search warrant seized the Respondent's mobile phones and obtained his call records. The Respondent had two numbers registered under his name.
- (10) Avikash Nand, Search Warrant Liaison Officer, employed by Vodafone Fiji Limited has stated that by analyzing the call records using satellite technology, he was able to confirm that the Respondent's mobile phone had been used in the vicinity of Teidamu on 15 September 2021, at about 7.16 p.m.
- (11) The Investigating Officers have also recovered CCTV footage which showed that the Respondent's vehicle registration IW 138 was following closely behind the deceased's vehicle registration JH 387 near Matawalu Village (approximately 2.4 km from the scene of the accident) at 7.14 p.m. on 15 September 2021.
- (12) During the investigations in this case, swabs were taken at the crime scene from the deceased and other pieces of evidence that were uplifted from the crime scene.

Semen was found in the genitals of the deceased and swabs were taken for the purposes of DNA samples. Swabs were also obtained from the car keys of the deceased for the purposes of DNA samples and analysis. A copy of the DNA report detailing the swabs taken from the said pieces of evidence has been attached as PE 12 to the Affidavit.

- (13) According to page 2 of the said DNA report (under the column Exhibit 35) a DNA profile obtained from the car keys of the deceased's vehicle is said to be consistent with the major DNA profile obtained from the oral swab from the deceased. Further (under the column of Exhibit 58) a male fraction from the vaginal swab of the deceased was obtained. A mixed DNA profile was obtained from this male fraction. A minor DNA profile obtained from this male fraction is said to be consistent with the minor DNA profile obtained from the car keys of the deceased.
- (14) Furthermore, at page 3 of the said DNA report (under the column Exhibit 60) a male fraction was obtained from the anal swab of the deceased which contained mixed DNA profiles. The major DNA profile was consistent with the major DNA profile obtained from the car keys of the deceased, her oral swab and her high vaginal swab.
- (15) These DNA matching results were the same under columns Exhibit 1 and Exhibit 2, as depicted at page 3 of the DNA report.
- (16) Since there was strong circumstantial evidence against the Respondent, he was approached by the investigation team during the investigation and was requested to provide his bodily sample (his buccal swab) for the purposes of DNA testing. This was due to the fact that there were strong suspicion that the male fraction obtained from the vaginal swab of the deceased belongs to the Respondent.
- (17) The purpose of obtaining the buccal swab of the Respondent was to match his DNA with the DNA samples that was collected from the semen found in the genitals of the deceased, the steering wheel of the deceased's vehicle and the car key of the deceased. The Respondent was duly explained as to the reasons why his buccal

swab was needed and its purpose. The Respondent was also explained that his informed consent is needed for obtaining his buccal swab.

- (18) However, the Respondent refused to provide his informed consent for the Police to obtain his buccal sample for the purpose of DNA sampling and analysis.
- (19) The DNA sample of the Respondent is necessary to thoroughly investigate the case against him for the murder of his de-facto wife. The obtaining of the buccal sample and the DNA analysis is in the interests of justice.
- (20) The obtaining of the buccal sample for the purpose of DNA analysis does not mean that the Respondent is confessing to the alleged murder. The result of the DNA testing may also assist the Respondent in his defence of the charge against him.
- (21) Accordingly, considering the circumstantial nature of this case, it is in the interests of justice that this Court grants an order for the Respondent to provide his buccal sample for the purpose of DNA analysis.

The Affidavit in Reply filed by the Respondent

[5] An Affidavit in Reply was filed by the Respondent on 22 April 2022. Therein, the Respondent *inter-alia* deposes as follows:

- (1) That he is strongly objecting to the application made by the State for obtaining of his buccal swab for the purpose of DNA analysis.
- (2) That he denies all the allegations made against him in the Affidavit filed by Detective Sergeant 4943 Netava.
- (3) That he had exercise his rights to refuse to provide his bodily sample for the purpose of DNA testing under the Constitution of Fiji.
- (4) Furthermore, he has been already charged for the alleged offence and the Applicant (State) ought to have obtained evidence before charging him rather than charging him and now looking for further evidence.
- (5) That the DNA testing by the State would violate his constitutional right of freedom from scientific procedure. As such, the State further compelling him to undergo DNA testing after having being charged for the case and before the hearing of his trial, may

infringe his rights against self-incrimination.

Miscellaneous Case No. HAM 90 of 2022

- [6] It must be mentioned that while the instant application was pending the determination of this Court, on 20 May 2022, the Respondent filed another application pursuant to Section 15 (1) of the Constitution, which provides that *“Every person charged with an offence has the right to a fair trial before a court of law.”*
- [7] The primary relief sought in terms of this application was that the Respondent be allowed to exercise his legal rights to refuse submitting his buccal sample for the purposes of DNA analysis.
- [8] The said matter was taken up for hearing before me on 7 July 2022. At the outset, the Learned Counsel for the State submitted to Court that the application should be dismissed as it is an abuse of process. He relied on the contents of the Affidavit in Response filed by Detective Sergeant 4943 Netava and also on the pleadings filed in Miscellaneous Case No. HAM 65 of 2022 (the instant case).
- [9] Since the reliefs sought by the Respondent in the said application have already been addressed in the Affidavit in Opposition filed by him in HAM 65 of 2022 (the instant case) and in the Written Submissions filed by his Learned Counsel in that matter, this Court was of the opinion that all those matters could be further advanced during the hearing of the instant application.
- [10] This Court was in agreement with the State that the said application filed by the Respondent was an abuse of process and that the reliefs sought in the said application were superfluous and could be addressed when HAM 65 of 2022 (the instant case) is taken up for hearing.
- [11] Accordingly, on 28 July 2022, the said application filed by the Respondent was dismissed.

The Hearing

[12] The instant application was taken up for hearing before me on 29 August 2022. During the hearing both Counsel for the Applicant and the Respondent were heard. The Applicant and the Respondent also filed written submissions, and referred to case authorities, which I have had the benefit of perusing.

Legal Provisions and Analysis

[13] At the very outset it must be stated that there is no enabling provision in terms of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act) or in any other specific legislation dealing with criminal procedure, providing for an application to be made by the State for the obtaining of any bodily sample of a person for the purpose of DNA analysis.

[14] In comparison, the Family Law Act No 18 of 2003 ("Family Law Act") has detailed provisions regarding Parentage Testing (From Sections 137 to 145). Section 138 provides that the Family Court may make orders for carrying out of parentage testing procedures on its own initiative or on the application of a party to the proceedings or a person representing a child.

[15] In terms of Section 139 of the Family Law Act, the orders Court can make include, but are not limited to:

(a) an order requiring a person to submit to a medical procedure;

(b) an order requiring a person to provide a bodily sample;

(c) an order requiring a person to provide information relevant to the person's medical or family history.

[16] However, the above provisions are only confined to family law matters.

[17] In many other jurisdictions enabling provisions would be found in the legislation dealing with criminal procedure for similar applications to be made to Court.

[18] For example, in Sri Lanka, specific provisions are found in the law enabling the taking of finger, palm or foot impression or impression of any part of the body of any person suspected of an offence under investigation or any specimen of blood, saliva, urine, hair or finger nail or any scraping from a finger nail of such person to be taken. This is provided for in terms of Section 123 of the Code of Criminal Procedure Act No 15 of 1979. The Section is re-produced below:

“(1) Where any officer in charge of a police station is of opinion that it is necessary to do so for the purpose of an investigation, he may cause any finger, palm or foot impression or impression of any part of the body of any person suspected of the offence under investigation or any specimen of blood, saliva, urine, hair or finger nail or any scraping from a finger nail of such person to be taken with his consent.

(2) Where the person referred to in subsection (1) does not consent to such impression, specimen or scraping being taken, such police officer may apply to the Magistrate's Court within whose jurisdiction the investigation is being made for an order authorizing a police officer to take such impression, specimen or scraping and such person shall comply with such order.

(3) Any officer in charge of a police station may, where it is necessary for the purpose of the investigation to compare any handwriting, cause a specimen of the handwriting of any person to be taken with his consent.

(4) Where such person refuses to give a specimen of his handwriting the officer in charge of the police station may apply to the Magistrate's Court within whose jurisdiction the investigation is being made for an order requiring such person to give a specimen of his handwriting, and such person shall comply with such order.”

[19] Furthermore, in terms of Section 122 of the Code of Criminal Procedure Act, a person can be subjected to an examination by a medical practitioner with his own consent or in the event the said person does not consent, by an order of Court. The Section provides:

“(1) Where any officer in charge of a police station considers that the examination of any person by a medical practitioner is necessary for the conduct of an investigation he may, with the consent of such person, cause such person to be examined by a Government medical officer. The Government medical officer shall report to the police officer setting out the result of the examination.

(2) Where the person referred to in subsection (1) does not consent to being so examined, the police officer may apply to a Magistrate within whose jurisdiction the investigation is being made for an order authorizing a Government medical officer named therein to examine such person and report thereon. Where such an order is made such person shall submit to an examination by such Government medical officer who shall report to the Magistrate setting out the result of the examination.”

[20] Similarly, Section 13 of the Criminal Investigations (Bodily Samples) Act 1995 of New Zealand makes provisions for applications to be made to the District Court or to the High Court, seeking an order for a suspect (who is over 18 years or more) to provide his bodily sample during investigations. This application may be made where there is good cause to believe that the suspect has committed an offence and the suspect has refused to consent to the taking of a bodily sample. In terms of Section 16 of the Criminal Investigations (Bodily Samples) Act, a District Court Judge or a High Court Judge may make an order requiring the suspect to give his bodily sample where certain specific conditions are satisfied.

[21] Similar provisions for obtaining of bodily samples from a suspect are found in Sections 62 and 63 of the Police and Criminal Evidence Act of the United Kingdom 1984.

[22] However, in Fiji there is no such enabling legislation in place in its laws governing criminal procedure. Therefore, it is an urgent need for the Legislature of Fiji to enact similar provisions to facilitate the obtaining of bodily samples of suspects, during the course of investigations.

[23] Due to the absence of any such enabling provisions, this application has been made by the State pursuant to Section 11 (3) of the Constitution. Section 11 of the Constitution is titled,

Freedom from Cruel and Degrading Treatment. The Section is reproduced below:

(1) Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

(2) Every person has the right to security of the person, which includes the right to be free from any form of violence from any source, at home, school, work or in any other place.

(3) Every person has the right to freedom from scientific or medical treatment or procedures without an order of the court or without his or her informed consent, or if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian. [Emphasis is mine].

[24] By way of this application the State is seeking an order of Court to obtain the bodily sample of the Respondent for the purpose of DNA analysis. More specifically, to obtain his buccal sample for the purpose of DNA analysis.

[25] Section 100 (3) of the Constitution provides: *The High Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction as is conferred on it under this Constitution or any written law.*

[26] Further in terms of Section 100 (4) of the Constitution: *The High Court also has original jurisdiction in any matter arising under this Constitution or involving its interpretation.*

[27] Chapter 2 of the Constitution (Sections 6-45) is the Chapter establishing the Bill of Rights or Fundamental Rights in Fiji. As per Section 6 (1) this Chapter binds the legislative, executive and judicial branches of government at all levels, and every person performing the functions of any public office.

[28] However, Section 6 (5) of the Constitution provides as follows:

The rights and freedoms set out in this Chapter apply according to their tenor and may be limited by—

(a) limitations expressly prescribed, authorised or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;

(b) limitations prescribed or set out in, or authorised or permitted by, other provisions of this Constitution; or

(c) limitations which are not expressly set out or authorised (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorised or permitted by a law or by actions taken under the authority of a law.

[29] When reading the provisions of Section 11 (3) it is evident that the rights stipulated therein must be distinguished from the rights enshrined in Sections 11 (1) and 11 (2), which may be categorized as absolute rights. If Section 11 (3) was an absolute right it would have simply read: *Every person has the right to freedom from scientific or medical treatment or procedures.*

[30] However, that is not the case. The rights enshrined therein are conditional. If the provisions of Section 11 (3) is to be further analysed, it is my opinion that the rights stated therein are subject to the following two conditions:

1. That every person has the right to freedom from scientific or medical treatment or procedures **without an order of the Court; OR**
2. That every person has the right to freedom from scientific or medical treatment or procedures **without his or her informed consent, or if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian.**

[Emphasis is mine].

[31] According to the second condition, every person has the right to freedom from scientific or medical treatment or procedures, without his or her informed consent. Meaning that the said person cannot be subjected to any form of scientific or medical treatment or procedures, without his or her informed consent.

[32] In the event of the said person refusing to grant his or her informed consent, then the first

condition would become applicable. Meaning that the said person cannot be subjected to any form of scientific or medical treatment or procedures, without an order of the Court.

[33] The provisions of Section 11 (3) of the Constitution must be distinguished from the provisions of Section 25 (2) of the 1997 Constitution, which read as follows:

Every person has the right to freedom from scientific or medical treatment or procedures without his or her informed consent, or if he or she is incapable of giving informed consent, without the informed consent of a lawful guardian.

[34] It is manifest from the reading of Section 25 (2) of the 1997 Constitution that the said provision only provided for the second situation. The portion *without an order of the court* or was not part of Section 25 (2). Therefore, if the person had refused to grant his or her informed consent the State would have had no other recourse.

[35] Therefore, the intention of the drafters of the 2013 Constitution is very clear. The intention was to provide for an alternative course of action in the event of the person refusing to grant his or her informed consent to be subjected to any form of scientific or medical treatment or procedures. The alternative course of action is that a person can be subjected to any form of scientific or medical treatment or procedures, with an order of the Court.

[36] As stated before, in the instant case, the order of Court the State is seeking is to obtain the bodily sample of the Respondent for the purpose of DNA analysis. More specifically, to obtain his buccal sample for the purpose of DNA analysis.

[37] It is understood that Deoxyribonucleic Acid or commonly referred to as DNA, is the hereditary material in humans and almost all other organisms. Nearly every cell in a person's body has the same DNA. DNA is the genetic information inside the cells of the body that helps make people who they are.

[38] DNA is the molecule inside cells that contains the genetic information responsible for the development and function of an organism. DNA molecules allow this information to be passed from one generation to the next.

[39] In the case of ***State v. (Kitione) Vakadranu*** [2019] FJHC 152; HAC 276.2016 (5 March 2019);

His Lordship Justice Rajasinghe stated:

“The Deoxyribonucleic Acid or commonly known as DNA is a genetic blueprint of the human body. When a criminal leaves a stain of blood or semen at the scene of the crime, it may be possible to extract from the stain sufficient DNA of the criminal, which later can be compared with the DNA samples obtained from the suspect. It is a scientific process of comparison of DNA obtained from the crime scene with the DNA of the suspect. DNA evidence emerged as a reliable scientific evidence in the mid-1980s and gained its popularity and the confidence of its accuracy in the 1990s. Fiji is now slowly embracing the DNA testing and evidence in criminal trials.”

[40] In ***State v (Raymond Rajendra) Singh*** [2008] FJHC 202; HAM060.2008 (5 September 2008);

His Lordship Justice Goundar confirmed that the DNA testing is a scientific procedure.

[41] A buccal swab, also known as buccal smear, is a way to collect DNA from the cells on the inside of a person's cheek. Buccal swabs are a relatively non-invasive way to collect DNA samples for testing. Buccal means cheek or mouth.

[42] It is the contention of the State that the procedure in taking the buccal sample from the Respondent would be physically harmless to him and that his physical autonomy will be duly respected.

[43] The objection of the Respondent to this application is primarily two fold. Firstly, that the Respondent has been already charged for the alleged offence and the State ought to have obtained evidence before charging him rather than charging him and now looking for further evidence. Secondly, the State compelling the Respondent to undergo DNA testing after having being charged for the case and before the hearing of his trial, may infringe his rights against self-incrimination.

[44] As to the first objection, it is clear from the Affidavit of D/Sgt Netava that during the course of the investigations into this case, the Respondent had been approached and his consent had been requested for obtaining of his buccal sample for the purpose of DNA analysis.

However, it is further stated that the Respondent had refused to provide his informed consent for the Police to obtain his buccal sample for the purpose of DNA analysis. Therefore, it is now unreasonable for the Respondent to submit that the State ought to have obtained this evidence before charging him.

- [45] The second objection by the Respondent is that compelling him to undergo DNA testing may infringe his rights against self-incrimination. This objection is premised on Sections 14 (2) (j) and 14 (2) (k) of the Constitution.
- [46] Section 14 (2) (j) provides that: *Every person charged with an offence has the right to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and not to have adverse inference drawn from the exercise of any of these rights.*
- [47] In terms of Section 14 (2) (k): *Every person charged with an offence has the right not to have unlawfully obtained evidence adduced against him or her unless the interests of justice require it to be admitted.*
- [48] Self-incrimination is the intentional or unintentional act of providing information that will suggest a person's involvement in a crime, or expose that person to a criminal prosecution. This right is associated with the right to remain silent and not to testify during proceedings.
- [49] However, the obtaining of the Respondent's buccal sample for the purpose of DNA analysis would not in any manner infringe his rights against self-incrimination. This is due to the fact that the obtaining of his buccal sample does not necessarily mean that the Respondent is confessing to the alleged murder. The result of the DNA testing may also assist the Respondent in his defence of the charge against him and may even exonerate him from the charge.
- [50] In any event, if the prosecution wishes to rely on the said DNA evidence during the course of his trial, the Respondent will still have the opportunity of challenging the admissibility of the said evidence, if there are reasonable grounds to do so.
- [51] In the case of ***State v. (Rusiate) Rokobulou*** [2020] FJHC 1038; HAC 063.2018 (5 November

2020); His Lordship Justice Perera held:

“15. I have a difficulty in accepting this contention that the providing of a bodily sample per se would amount to self-incrimination. Invariably, such a sample is only used to extract the DNA fingerprint of a suspect and the providing of such a sample is not analogous to making a confession. This DNA fingerprint extracted from the sample collected from a suspect is then used to compare with the DNA fingerprint extracted from the relevant biological evidence found in the crime scene. Therefore, on one hand, this sample taken from the accused have the potential of establishing the suspect’s innocence as well. On the other hand, even if the DNA extracted from the suspect matches with that extracted from the biological evidence found in the crime scene, the prosecution still need to establish beyond reasonable doubt the authenticity of the process and the procedure followed in obtaining the relevant DNA profiles through the relevant witnesses, in addition to adducing the evidence of the expert who compared the said profiles.”

[52] In *Saunders v. United Kingdom* [1997] 23 ECHR 313 the European Court of Human Rights observed:

“69. The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.”

[53] In *R v. Grant* [2009] SCC 32; 2009 2 S.C.R.; the Canadian Supreme Court opined that bodily evidence is evidence taken from the body of the accused, such as DNA evidence and breath samples. The Canadian Supreme Court further held:

“[105] The second and related objections to a simple conscription test for the admissibility of bodily evidence under s. 24(2) is that it wrongly equates bodily evidence which statements taken from the accused. In most situations, statements and bodily samples raise very different considerations from the point of view of the administrations of justice. Equating them under the umbrella of conscription risks

erasing relevant distinctions and compromising the ultimate analysis of system disrepute.....Nor does the taking of a bodily sample trench on the accused's autonomy in the same way as may the unlawful taking of the statement. The pre-trial right to silence under s. 7, the right against testimonial self-incrimination in s. 11(c), and the right against subsequent use of self-incriminating evidence in s.13 have informed the treatment of statements under s. 24(2). These concepts do not apply coherently to bodily samples, which are not communicative in nature, weakening self-incrimination as the sole criterion for determining their admissibility."

[54] Considering all the above facts and circumstances, I am of the opinion that the objections taken by the Respondent are without merit. The Applicant has sought this Court's intervention since the Respondent had earlier refused to provide his informed consent for the Police to obtain his buccal sample for the purpose of DNA analysis when requested. It is also stated that the obtaining of a buccal sample from the Respondent would be a physically harmless and a relatively non-invasive procedure.

[55] For all the aforesaid reasons, I am of the opinion that the application made by the State for obtaining of the buccal sample from the Respondent should be permitted in the interest of justice.

[56] Accordingly, I make the following orders:

1. I direct the Respondent, Ajay Kumar, to provide his buccal sample to the Police for the purpose of DNA analysis.
2. For this purpose, the Respondent is to make himself available at the Lautoka Police Station on Monday 24 October 2022, between 8.00 a.m. and 6.00 p.m. The specific time can be mutually agreed between the parties.
3. The buccal sample of the Respondent shall be taken by an authorised officer of the Forensic Department of the Fiji Police.
4. The said buccal sample of the Respondent is to be taken under the supervision of the Officer in Charge of the Lautoka Police Station or any other officer duly authorized by him.

5. Court makes further order that the Respondent is at liberty to have his Counsel or a representative of his choice present at the time his buccal sample is being taken.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 17th Day of October 2022

Solicitors for the Applicant : **Office of the Director of Public Prosecutions, Lautoka.**
Solicitors for the Respondent : **Messers Iqbal Khan & Associates, Lautoka.**