

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

HAC NO. 103 of 2021

BETWEEN: **STATE**

AND: **RONEEL ROHITESH RAJ**

Appearances: **Ms S Naibe for the State**
 Mr P Sharma for the Accused

Trial Dates: **25th March 2024 - 29th March 2024**

Ruling: **26th March 2024**

RULING

1. The accused in this case is facing charges for two counts of Rape as stated in section 207 of the Crimes Act 2009, as well as two counts of Sexual Assault as mentioned in section 210 of the Crimes Act 2009. The purported event reportedly took place at Ellington Rakiraki between 1st February 2016, and 31st December 2017. The individual making the complaint is a minor who was younger than 13 years old at the time of the alleged offending.
2. The trial for this matter was scheduled to take place from today to the 29th of March, 2024. My brother, Justice Hamza, scheduled the trial date for this case on 1st November, 2023. The case was later adjourned to the 22nd of February, 2024. On 22nd February, 2024, counsels requested a further adjournment until 18th March, 2024, in order to address any preliminary matters before the trial. The case was scheduled for 18th

preliminary matters to address. They were prepared for the trial as scheduled.

3. At the commencement of trial on 25th March 2024, the state counsel responsible for the case requested an adjournment. The basic reasons for the application is as follows:
 - No summonses were filed, let alone served.
 - She had overlooked to record the trial dates in her diary for this matter.
 - Despite this, the complainant and her parents were called and they expressed that this week was not convenient for them due to the delayed notification. In addition, the complaint juvenile was attending school in form 5 and specifically requested a trial date that falls within the designated school holidays.
 - The accused lawyer was also informed of this information, and she expressed her apologies for the circumstance.

4. Accused counsel objected to the application, stating the following reasons:
 - This case was scheduled for trial last year, but no summonses were filed or served to any of the witnesses. The defendant had been present at his court hearing and fulfilling the requirements of his bail conditions.
 - He is unable to get employment in Suva due to this pending allegation.
 - The matter was recently called last week to address preliminary matters, and they expressed their readiness for the trial this week.
 - They should have contacted earlier to resolve the issue.

5. I now turn to consider whether the adjournment application should be granted or otherwise.

6. The High Court has the authority to postpone or adjourn proceedings

provision allows the court to delay the start of a trial or adjourn it if there is a valid reason, such as the absence of witnesses or any other reasonable cause. The court has the discretion to determine the terms and duration of the postponement or adjournment.

7. The main argument put forth by state counsel for requesting an adjournment was that the witnesses, particularly the principal complainant, were not summoned and hence were not present for the trial. Furthermore, I observed that the state counsel had assumed accountability and expressed remorse to the court for the predicament.
8. Counsel for accused objected on the grounds that the accused had consistently attended court proceedings and adhered to the conditions of bail. Granting an adjournment will be prejudicial to his client.
9. The accused is facing charges for two grave sexual crimes, as previously stated. The trial dates set for this matter are the first scheduled dates. Undoubtedly, in prevalent situations of serious sexual nature, it is imperative in the interest of justice to have the main witnesses and other relevant witnesses present to testify. In the present matter, the absence of the witnesses for the trial this week is not due to their own actions, and it seems that the state counsel accepts complete accountability for this circumstance.
10. In my respectful opinion, denying the adjournment and proceeding with the trial would be unfair since it would prevent the alleged juvenile victim from presenting her account to the court and achieving resolution for her complaint. The witnesses are not at fault for their absence in court today.
11. I acknowledge that the accused had been present for his court proceedings and adhering to the bail conditions. Nevertheless, I fail to perceive any bias or prejudice against the accused if the case is

circumstances, it is reasonable to adjourn the proceedings in the interest of justice to ensure the presence of all essential witnesses for the trial.

12. However, the problem does not end there, and this court cannot ignore what happened in this case. In my opinion, the state counsel responsible for handling this case should be held personally accountable for the adjournment of the proceedings. Despite her apology to the court, her failure to take action and perhaps lax attitude warrant some form of sanction for the unnecessary use of court time in scheduling this matter for trial for the entire week.
13. I therefore order the state counsel responsible for this case to personally pay court cost of \$150.00 within 14 days from today.
14. In the interest of justice, I will allow the adjournment and reschedule the trial dates in this matter preferably over the school holiday period.
15. The application for adjournment is granted and state counsel to pay costs.
16. I rule so accordingly.



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Samuela D Qica
Acting Puisne Judge

High Court – Lautoka
Tuesday, 26th March 2024