

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: HAM 12 OF 2024**

**In the matter of an application for Bail Review  
pursuant to Section 30 (3) of the 2013 Bail Act 2002  
in Nadi Magistrate Court Case no. 091 of 2024.**

**BETWEEN: THE STATE**

**APPLICANT**

<b>AND:</b>	<b>JUSTIN S. M. HO</b>	<b>(1ST ACCUSED)</b>
	<b>DAVID O. HERITAGE</b>	<b>(2ND ACCUSED)</b>
	<b>LOUIE F.P. LOGAIVAU</b>	<b>(3RD ACCUSED)</b>
	<b>ISAAC LESIYANA WAI</b>	<b>(4TH ACCUSED)</b>
	<b>RATU APOROSA DAVELEVU</b>	<b>(5TH ACCUSED)</b>
	<b>SAKIUSA TUVA</b>	<b>(6TH ACCUSED)</b>
	<b>IOSEFO ROQICA</b>	<b>(7TH ACCUSED)</b>
	<b>MAIKA V. YABAKIVOU</b>	<b>(8TH ACCUSED)</b>
	<b>RATU OSEA N. LEVULA</b>	<b>(9TH ACCUSED)</b>
	<b>CATHY T. BAINISAVU</b>	<b>(10TH ACCUSED)</b>
	<b>NANCY MATEYAWA</b>	<b>(11TH ACCUSED)</b>
	<b>JALE AUKEREA</b>	<b>(12TH ACCUSED)</b>
	<b>KEANIE L. MCPHERSON</b>	<b>(13TH ACCUSED)</b>

**RESPONDENTS**

**Counsel : Mr. J. Rabuku (Acting DPP) for Applicant**

Mr. I Khan	for 1 <sup>st</sup> and 3 <sup>rd</sup> Respondents
Mr. Vakacakau	for 2 <sup>nd</sup> Respondent
Mr. M. Anthony	for 4 <sup>th</sup> Respondent
Ms. S. Ben	for 5 <sup>th</sup> Respondent
Ms. Raga,	for 6 <sup>th</sup> Respondent
Ms. L. Volau	for 7 <sup>th</sup> Respondent
Ms. L. Vateitei	for 8 <sup>th</sup> Respondent
Mr. M. Naivalu	for 9 <sup>th</sup> Respondent

Mr. E. Wainiqolo	for 10 <sup>th</sup> & 11 <sup>th</sup> Respondent
Ms. Taukei	for 12 <sup>th</sup> Respondent
Mr. P. Gade	for 13 <sup>th</sup> Respondent

**Date of Hearing :** 2 February 2024

**Date of Ruling :** 2 February 2024

## REVIEW ON BAIL

1. This is an application filed by the Director of Public Prosecution (DPP) for review of the Bail Ruling pronounced by the Learned Magistrate at Nadi on 30 January 2024 granting bail to the Respondents. Two affidavits, one by State Counsel Mr. J Nasa and the other by IP of CID, Mr. O. Tunidau, support the bail review application.
2. The Respondents were charged in the Magistrates Court as follows:

### Count 1

#### *Statement of Offence*

**UNLAWFUL IMPORTATION OF ILLICIT DRUGS** contrary to section 4(1) of the Illicit Drugs Control Act 2004.

#### *Particulars of Offence*

**JUSTIN STEVEN MASI HO AND DAVID OTTO HERITAGE** between 01<sup>st</sup> day of November 2023 to the 23<sup>rd</sup> day of December 2023 at Nadi in the Western Division, without lawful authority, facilitated the importation of 4,800 kilograms (4.8 tonnes) of methamphetamine, an illicit drug.

### Count 2

#### *Statement of Offence*

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(a) of the Illicit Drugs Control Act 2004.

#### *Particulars of Offence*

**DAVID OTTO HERITAGE AND LOUIE FRANK PENIJAMINI LOGAIVAU** on 23<sup>rd</sup> of December 2023 at David's Marine Repair Yard, Industrial Road, Denarau, Nadi in the Western Division, without lawful authority, were in possession of 4,800 kilograms (4.8 tonnes) of methamphetamine, an illicit drug.

### Count 3

#### *Statement of Offence*

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(b) of the Illicit Drugs Control Act 2004.

#### *Particulars of Offence*

**LOUIE FRANK PENIJAMINI LOGAIVAU** on the 23<sup>rd</sup> day of December 2023 at Nadi in the Western Division, without lawful authority, engaged in dealing for the transfer and transport of 4,800 kilograms (4.5 tonnes) of methamphetamine, an illicit drug, from David's

Marine Repairs, Industrial Road, Denarau, Nadi, to Subzero Car Wash/Café yard at Industrial Road, Denarau, Nadi.

**Count 4**  
***Statement of Offence***

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(a) of the Illicit Drugs Control Act 2004.

***Particulars of Offence.***

**JUSTIN STEVEN 2 MASIH HO AND LOUIE FRANK PENIJAMINI LOGAIVAU** on 24<sup>th</sup> day of December 2023 at Subzero Car Wash/Café yard at Denarau Industrial Road, Denarau, Nadi, in the Western Division, without lawful authority, were in possession of 4,800 kilograms (4.8 tonnes) of methamphetamine, an illicit drug.

**Count 5**  
***Statement of Offence***

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(b) of the Illicit Drugs Control Act 2004.

***Particulars of Offence***

**LOUIE FRANK PENIJAMINI LOGAIVAU, ISAAC LESIYANAWAI, RATU APOROSA DAVELEVU AND ANOTHER** between the 28<sup>th</sup> and 29<sup>th</sup> day of December 2023 at Nadi in the Western Division, without lawful authority, engaged in dealing for the transfer and transport of 4,800 kilograms (4.8 tonnes) of methamphetamine, an illicit drug, from at Subzero Car Wash/Café yard, Denarau Industrial Road, Denarau, Nadi, to Motorex Business Center, 15 Nadi Back Road, Nadi.

**Count 6**  
***Statement of Offence***

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(a) of the Illicit Drugs Control Act 2004.

***Particulars of Offence***

**LOUIE FRANK PENIJAMINI LOGAIVAU AND RATU APOROSA DAVELEVU AND ANOTHER** on 29<sup>th</sup> day of December 2023 at Motorex Business Center, 15 Nadi Back Road, Nadi, in the Western Division, without lawful authority, were in possession of 4,800 kilograms (4.8 tonnes) of methamphetamine, an illicit drug.

**Count 7**  
***Statement of Offence***

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(b) of the Illicit Drugs Control Act 2004.

***Particulars of Offence***

**SAKIUSA TUVA, IOSEFO ROQICA, MAIKA VAKANAWA YABAKIVOU, RATU OSEA NAVALUNILOTU LEVULA, CATHY TUIRABE, NANCY ELIA MATEYAWA AND ANOTHER** between 29<sup>th</sup> day of December 2023 to the 14<sup>th</sup> day of January 2024 at 3 Nadi, in the Western Division, without lawful authority, engaged in dealing for the transfer and transport of 4,800 kilograms (4.8 tonnes) of methamphetamine, an illicit drug, from Motorex Business Centre, 15 Nadi Back Road to Voivoi, Legalega, Nadi.

**Count 8**  
***Statement of Offence***

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(b) of the Illicit Drugs Control Act 2004

*Particulars of Offence*

**JALE AUKEREA** between the 13<sup>th</sup> to the 20<sup>th</sup> day of January 2024 at Maqalevu, Narewa, Nadi, in the Western Division, without lawful authority, engaged in the dealing for the transfer and transport of 1,100 kilograms (1.1 tonnes) of methamphetamine, an illicit drug.

**Count 9**  
*Statement of Offence*

**UNLAWFUL POSSESSION OF ILLICIT DRUGS** contrary to section 5(b) of the Illicit Drugs Control Act 2004.

*Particulars of Offence*

**SAKIUSA TUVA AND KEANIE LILO MACPHERSON** between the 13<sup>th</sup> to the 20<sup>th</sup> day of January 2024 at Nadi, in the Western Division, without lawful authority, engaged in the dealing for the transfer and transport of 1,100 kilograms (1.1 tonnes) of methamphetamine, an illicit drug from Voivoi, Legalega, Nadi, to Maqalevu, Narewa, Nadi.

**Count 10**  
*Statement of Offence*

**POSSESSION OF PROPERTY SUSPECTED OF BEING PROCEEDS OF CRIME** contrary to section 70(1) of the proceeds of crime act 1997.

*Particulars of Offence*

**JUSTIN STEVEN MASIHO** on the 23<sup>rd</sup> day of January 2024 at Taveuni in the Northern Division, possessed cash in the sum of FJ\$21,691.60, AU\$450.00 and US\$100.00 suspected being the proceeds of crime.

**Count 11**  
*Statement of Offence*

**POSSESSION OF PROPERTY SUSPECTED OF BEING PROCEEDS OF CRIME** contrary to section 70(1) of the Proceeds of Crime Act 1997.

*Particulars of Offence*

**LOUIE FRANCK PENIJAMINI LOGAIVAU** on the 23<sup>rd</sup> day of January 2024 at Taveuni in the Northern Division, possessed cash in the sum of FJ\$112.25 suspected being the proceeds of crime.

**Count 12**  
*Statement of Offence*

**POSSESSION OF PROPERTY SUSPECTED OF BEING PROCEEDS OF CRIME** contrary to section 70(1) of the Proceeds of Crime Act 1997.

*Particulars of Offence*

**JALE AUKEREA** on the 23<sup>rd</sup> day of January 2024 at Taveuni in the Northern Division, possessed cash in the sum of FJ\$2, 100.85 suspected being the proceeds of crime. The defendants was produced before this Court in Police custody on 29<sup>th</sup> January 2024.

**The Law**

**The relevant provisions of the Bail Act are as follows:**

3. **Section 30 (3)** - The High Court may review any decision made by a magistrate or by a police officer in relation to bail.

**Section 30 (7)** - A court which has power to review a bail determination, or to hear a fresh application under section 14(1), may, if not satisfied that there are special facts or circumstances that justify a review or the making of a fresh application, refuse to hear the review or application.

**Section 30 (8)** - The power to review a decision under this Part in relation to an accused person may be exercised only at the request of—

- (a) the accused person;
- (b) the police officer who instituted the proceedings for the offence of which the person is accused;
- (c) the Attorney-General;
- (d) the Director of Public Prosecutions; or
- (e) the victim of the offence.

**Section 30 (9)** - The power to review a decision under this Part includes the power to confirm, reverse or vary the decision.

**Section 30 (10)** - The review must be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review.

4. The Applicant must satisfy this Court that there are special facts or circumstances that justify a review.
5. The DPP appears to have advanced the following grounds for review:
  - I. That the Applicant was not given a proper hearing/ time to file an affidavit to support his objection for bail.
  - II. That the Learned Magistrate fell into error when he failed to exercise his judicial discretion in granting bail by not properly considering the provisions of the Bail Act.
  - III. The Learned Magistrate fell into error when he considered irrelevant facts and a case authority to grant bail to the Respondent.
6. The Respondents filed their objections supported by the affidavits. All the Respondents are represented by legal counsel who made submissions at the hearing. The grounds of objection can be boiled down to the sole ground that the Learned Magistrate lawfully and judiciously exercised his discretion in granting bail to the Respondents. Having given approximately 5 hours for the Counsel to get ready, I heard the counsel from each side for approximately two hours at the hearing from which I gathered information and evidence.

7. The Counsel for Respondents advanced two preliminary objections before the matter was taken up for hearing. First, they were denied adequate time and transcripts to respond to the application. Second, this Court has no jurisdiction to entertain this application, as the applicant has not exhausted the appeal process.
8. Let me deal with those objections at the outset. The Applicant had filed the notice of motion and the affidavits in this Court on 1 February 2024 and served to the Respondents. When the matter was called at 9.30 a.m. on 2 February 2024, almost all the Respondents and their counsel were present. When the Court indicated that the matter would be taken up for hearing at 2.30 p.m., the Counsel for Respondents vehemently objected stating that they needed adequate time and the transcripts to respond.
9. The application for bail review is straightforward. It does not involve any complex legal issues. The affidavit of IP Mr. Osea Tunidau runs into 10 pages and the one filed by Mr. J. Nasa runs into 6 pages. A window of five hours is quite adequate for the Counsel to respond to the application. The Magistrates Court copy record was made available to the Counsel for Respondents in the morning. However, it did not contain the transcripts of the Magistrates Court proceedings. What transpired at the Magistrates Court was privy to the Counsel as most of them were present in the Magistrates Court. The affidavit of Mr. Nasa contains a brief description of what transpired at the Magistrates Court. If that description is not accurate, the Counsel for Respondents had the opportunity to challenge its accuracy in their affidavits.
10. On top of that, Section 30 (10) of the Bail Act provides that a '*review must be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review*'. Therefore, no prejudice will be caused to the Respondents by taking up the matter for hearing without the transcripts of the Magistrates Court being made available to this Court or the counsel. Having considered the public interest involved in the matter and the repercussions the Court expected in the event of a postponement being granted, the Court, having overruled the objections, decided to proceed to the hearing as scheduled.
11. There are two schools of thought on the issue of whether the bail review is available only where the appeal process has been exhausted or could have been invoked. One school of thought represents the view that the power to review bail is independent of the appellate jurisdiction.

See: *Gadre v State*<sup>1</sup>. *Kumar v The State*<sup>2</sup>. The other school of thought represents the view that the power to review bail is not available where the bail decision could have been appealed. *Masirewa v State*<sup>3</sup> *Abhay Kumar Singh v State*<sup>4</sup>.

12. The Supreme Court in *Kumar v State (supra)* took the view that the court's jurisdiction to review a bail decision is independent of a party's right to appeal to the higher court. (Paragraph 4.8). The Supreme Court took the view that the right to review granted to parties can be exercised by the party irrespective of whether that party appeals the decision or not. (Paragraph 4.9). However, to address the issue of floodgates being opened, the Supreme Court as a matter of caution was of the view that the approach taken by Scott J in *Singh v State* is correct.
13. What can be gathered from the decided cases is that the Bail Act 2002 provides for two remedies, independent of each other, to challenge a bail decision. While on appeal, the decision on bail is considered for errors in the exercise of discretion by the lower court and on review, the decision on bail is considered afresh. This is clear in the reading of Section 30(10) of the Bail Act which states: *The review must be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review.*
14. Therefore, this Court has jurisdiction to entertain an application for bail review irrespective of whether the party invoking the jurisdiction has exhausted the appeal process or not. The appeal process is time-consuming and would generally be available to challenge final orders and not interlocutory orders like bail determinations which could be reviewed by the very court that issued them. If the view that the review process is available only where the appeal procedure has been exhausted is accepted, the whole purpose of the remedy provided by the Bail Act to have a bail determination reviewed could be defeated.
15. In any event, given the public interest involved in the matter, the application for bail review before this Court is not something that should be postponed until the appeal process is exhausted. The Bail Act allows this Court to rehear the matter even if the Learned Magistrate had exercised

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<sup>1</sup> [2018] FJHC 1154 (5 December 2018)

<sup>2</sup> [Supreme Court Criminal Appeal No CAV 20 of 2020 (5 February 2021)]

<sup>3</sup> [2017] FJHC 956 (29 December 2017)

<sup>4</sup> [Miscellaneous Application 1/2004 (23 June 2004)]

his discretion correctly, given the fresh evidence that has been made available to this Court on review. The correct approach on review is to check if there is a change in circumstances from the last bail determination or if there are circumstances which although then existed were not brought to the attention of the Court. (*State v Takiveikata*)<sup>5</sup>, *Nottingham Justices, ex parte Davies*<sup>6</sup>. The affidavit of IP Osea Tunidau produces circumstances which although then existed were not brought to the attention of the Magistrates Court.

16. Therefore, having dismissed the preliminary objections taken by the learned counsel for Respondents, I proceed to review the application filed by the State on rehearing. I would base my determination on the evidence and the information obtained on review as is required by Section 30(10) of the Bail Act to satisfy myself as to the availability of special facts or circumstances that justify a review.

**Ground i** - That the Applicant was not given a proper hearing/ time to file an affidavit to support his objection for bail.

17. The affidavit of Mr. Nasa contains a brief overview of what transpired at the Magistrates Court. The information provided in that affidavit has not been disputed by the Respondents in their respective affidavits although the Counsel were pleased to challenge it from the bar table. Therefore, in the absence of any evidence to the contrary, I must accept the information contained in the affidavit of Mr. Nasa to be true.
18. The affidavit of Mr. Nasa, reveals that the Learned Magistrate, after hearing oral submissions from the counsel on 29 January 2024, had adjourned the matter for Ruling in the afternoon. When the Learned Magistrate indicated his intention to grant bail to the Respondents, the Acting DPP had intervened and emphasized the seriousness of the offence allegedly committed in a joint enterprise, the large quantity of illicit drugs involved and the need to protect the witnesses and the wider public interest. His request to make further submissions and for time till the following morning to file proper affidavits to inform the Court of the circumstances that do not justify bail for the Respondents at that stage had been turned down. The Learned

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<sup>5</sup> [2008] FJHC 31 (4 March 2008)

<sup>6</sup> [1981]QB 38



Magistrate had proceeded to the Ruling which he delivered in the same evening for which he had given reasons on the following day, 30 January 2024.

19. The large quantity of hard drugs involved in the alleged offence, the sophisticated nature of the criminal enterprise, the maximum sentence and the sentencing tariff prescribed for the offence should have informed the Learned Magistrate that this was a matter that ought to be tried in the High Court. The material placed before the Magistrates Court appears to be quite sufficient for the Learned Magistrate to understand that the investigators would require adequate time to conclude the investigation and that the DPP would need adequate time to collect, compile and file all the information in court so that an informed decision on bail could be made in the best interest of justice. The Learned Magistrate appears to have taken an unwarranted risk in rushing to his Ruling by which he granted bail to all the Respondents.

**Ground ii** - That the Learned Magistrate fell into error when he failed to properly consider the provisions of the Bail Act in exercising his judicial discretion in granting bail to the Respondents

20. Under Section 13(h) of the Constitution, the Applicant has the right to be released on bail pending trial unless the interests of justice otherwise require. Section 3(1) of the Bail Act is to the same effect. The interest of justice requires a right balance being struck between the rights and the interests of the accused and those of the public and the protection of the community.
21. Section 18 (1) of the Bail Act provides that a person making submissions to a court against the presumption in favour of bail must deal with-
  - (a) the likelihood of the accused person surrendering to custody and appearing in court;
  - (b) the interests of the accused person;
  - (c) the public interest and the protection of the community.
22. The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her. [Section 17(2) of the Bail Act] in forming the opinion as regards the likelihood of surrender to custody a court must

have regard to all the relevant circumstances in particular required by subsection 19 (2) which are as follows:

- (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history);
- (ii) any previous failure by the person to surrender to custody or to observe bail conditions;
- (iii) the circumstances, nature and seriousness of the offence;
- (iv) the strength of the prosecution case;
- (v) the severity of the likely penalty if the person is found guilty;
- (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);

23. The Learned Magistrate in his Ruling from paragraphs 1 to 16 has reproduced the charge sheet, the law relating to bail as provided in the Constitution and the Bail Act, the objections raised by the State, and the submissions of the Counsel for the accused. In the discussion part, starting from paragraph 17, the Learned Magistrate has failed to have regard to any of the relevant circumstances listed in Section 19(2) except for paragraph 19 where he states that the defendants have no record of absconding bail.

**(a) The Likelihood of the Accused Person Surrendering to Custody and Appearing in Court;**

24. The weight of the illicit drugs involved in the offences according to the charge is 4,800 kilograms (4.8 tons). The charges against the Respondents are very serious carrying a maximum sentence of life imprisonment and a tariff of above 20 years imprisonment, if proven. In view of the seriousness of the charges and the strength of the prosecution case, there is a great likelihood that the Respondents will abscond.
25. The circumstances of the offence as revealed by IP Tunidau in his affidavit are alarming. There is evidence of foreign involvement and foreign currency in an organized and sophisticated criminal enterprise.
26. The affidavit of IP Tunidau reveals a strong case against the Respondents. The illicit drugs, the vehicles and the equipment used to commit the offence have been taken into police custody.

Eyewitness accounts, statements from minor participants who have been offered immunity, and admissions of some of the Respondents have been recorded. The CCTV footage, photographs and the report of the analyst scientifically confirming that the consignment contains 1,053.5 kg of Methamphetamine have been obtained. The availability of strong evidence to the prosecution is likely to motivate the Respondents to abscond.

27. The affidavit further reveals that the 1<sup>st</sup>, 3<sup>rd</sup> and 12<sup>th</sup> Respondents have been arrested under suspicious circumstances in which they were trying to flee the jurisdiction after the investigation began.

**(b) The Interests of the Accused Persons;**

28. The police surveillance team has received complaints from the 1<sup>st</sup> and the 3<sup>rd</sup> Respondents that their lives are in danger following the death threats they had received from two masked men who had visited them at night. The 13<sup>th</sup> Respondent has employed a bodyguard as he fears for his safety. The concern raised by the police for the safety of the Respondents is real because of the involvement of drug kingpins who would want to eliminate the witnesses and suppress their involvement in large-scale drug trafficking. It would be difficult to ensure the safety of the Respondents if they are released on bail. Therefore, the interests of the Respondents would be best served by keeping them in remand.

**(c) The Public Interest and the Protection of the Community**

29. The public interest is best served by ensuring that all the culprits involved in the drug chain from head to tail are brought to book and successfully prosecuted. The safety of the witnesses is equally important. The investigation is still ongoing to unearth the evidence and the players in the large-scale organised trans-border drug operation. The likelihood of evidence tampering, and witness interference is high. In an era of digital communication, it is extremely difficult to monitor communication between the various players, accused and witnesses given the limited resources available to the Fiji Police Force. Therefore, bail conditions restricting movements and curfews are of little help. The safety of some of the minor participants in the drug chain who have received immunity to be potential witnesses is at risk. Therefore, to prevent evidence


tampering and witness interference, it is in the interest of justice that the Respondents are kept in remand until the investigation is complete.

**Ground iii-** The Learned Magistrate fell into error when he considered irrelevant facts and a case authority to grant bail to the Respondent.

30. The Learned Magistrate has relied on the submissions made by the defence counsel that the suspects were detained in police custody for more than 48 hours and formed the opinion that the right guaranteed to a suspect under Section 13 (1)(f) was violated. It appears that the alleged rights violation has formed the basis of the Learned Magistrate's decision to grant bail to the Respondents. It does not appear that the allegation against police was properly analysed on evidence.
31. This Court concedes that the rights of the accused must be protected in the criminal investigation process and that the interests of the suspect, and those of the public and justice require that the suspects arrested are brought under judicial supervision within 48 hours of the arrest. However, weight given by the Learned Magistrate to the alleged rights violation is highly disproportionate to the objective to be achieved in a fair criminal justice system in the wider interest of justice.
32. The plain reading of Section 13 (1)(f) of the Constitution would inform that the right guaranteed under it is not absolute. The Section provides *that every person who is arrested or detained has the right to be brought before a court as soon as reasonably possible, but in any case, not later than 48 hours after the time of arrest, **or if that is not reasonably possible, as soon as possible thereafter.*** Before coming to a conclusion on whether this right is violated, it is imperative that the court look at the circumstances under which the delay occurred. There may be justifiable reasons that prevent the police from strictly adhering to the stipulated time frame. The issues of transport, complexity of the investigation coupled with the need to charge the suspect on his first appearance in court are some of the common issues the prosecutors confront that a judicial officer sitting in a jurisdiction like ours should be sensitive to.

33. The High Court Ruling on *State v Sailosi Cabenalawa Naivalurua*<sup>7</sup> cited by the Learned Magistrate has been pronounced in a context where the police has made an application to detain a suspect for more than 48 hours to complete the investigation. The High Court in that case has not held that the police detention in excess of 48 hours is *ipso facto* tantamount to a breach. There are authorities in this jurisdiction which have held that the time of police detention could be enlarged in the wider interest of justice. Therefore, the Learned Magistrate has applied an irrelevant case authority to justify the grant of bail to the Respondents.
34. Even if there is evidence of a rights violation, that is a matter to be considered in a constitutional redress application and not in a bail determination. It has been held time and again that right violations are given weight in criminal matters when it has been shown that the accused was prejudiced in securing his right to a fair trial.
35. The Learned Magistrate failed to properly exercise his judicial discretion by not rightly balancing the competing interests that come into play in a bail determination in accordance with the Bail Act. The information and evidence presented in this Court by the Applicant do reveal special facts and circumstances that justify a review.
36. The following Orders are made:
- (i) The application for bail review filed by the Director of Public Prosecution is allowed.
  - (ii) The Ruling dated 30 January 2024 of the Learned Magistrate of Nadi is reversed and quashed.
  - (iii). The Respondents are remanded to custody forthwith.



  
**Aruna Aluthge**  
Judge

**2 February 2024**  
**At Lautoka**

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<sup>7</sup> Crim Misc No HAM 075 of 2020 (8 May 2020)

**Counsel:**

- Office of the Director of Public Prosecution for Applicant
- Iqbal Khan & Associates for 1<sup>st</sup> and 3<sup>rd</sup> Respondents
- Falcon Chambers for the 2<sup>nd</sup> Respondent
- Millbrook Law for the 4<sup>th</sup> Respondent
- S. Nand Lawyers for the 5<sup>th</sup> Respondent
- Lal Patel Bale for the 6<sup>th</sup> Respondent
- Legal Aid Commission for the 7<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondent
- Asta's Law for the 8<sup>th</sup> Respondent
- Law Naivalu for the 9<sup>th</sup> Respondent
- Reddy Law for the 10<sup>th</sup> and 11<sup>th</sup> Respondents