IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE No. 70 OF 2025

BETWEEN: **LOUIE FRANK PENIJAMINI LOGAIVAU**

APPLICANT / ACCUSED

AND:

THE STATE

RESPONDENT

Counsel	:	Mr M. Anthony for Applicant
	:	Mr J. Nasa for Respondent
Date of Hearing	:	17 April 2025
Date of Ruling	:	17 April 2025

RULING

(Disqualification of Legal Counsel)

1. The Applicant and eight other accused persons are charged together in his substantive matter (No. HAC 22 of 2024) with numerous offences. The Applicant is charged with five counts of Unlawful Possession of Illicit Drugs contrary to Section 5(a) of the Illicit Drugs Control Act 2004 and Possession of Property suspected of being Proceeds of Crime contrary to section 70(1) of the Proceeds of Crime Act 1997.

2. The *voir dire* hearing and the trial are to commence from 22 April 2025. The pre-trial conference was held on 7 April 2025 and adjourned to 15 April 2025 for further pre-trial conference, because the State had not served the pre-trial checklist and the final witness list for the Prosecution's case.

3. On 31 March 2025, the 1st Accused through his Counsel Mr Iqbal Khan made an application to recuse the trial Judge from hearing the Applicant's substantive matter. This application was dismissed on 15 April 2025. In dismissing the recusal application, the Court was satisfied that the recusal application had been made without reasonable foundation and based on improper motive to scandalize the court and delay the trial. A cost was awarded against Mr Iqbal Khan personally, who is the Counsel for the 1st Accused Applicant.

4. On 14 April 2025, another Application was made by Mr Mark Anthony on behalf of the 3rd Accused and sought a postponement of the trial. This application was also dismissed on the same day (14 April 2025) because there was no reasonable basis for a postponement. As soon as the said Rulings were pronounced, Mr Mark Anthony, stood up and raised an issue of conflict of interests against Mr John. Rabuku, the State Prosecutor. To formally prosecute this objection, a Notice of Motion with a supporting affidavit was filed on 16 April 2025, seeking the following orders:

   (1) That the State Prosecutor, John Rabuku be recused from the trial of this matter.
   (2) Any other orders that the Honourable Court may deem just.

5. According to the affidavit filed, the Applicant on 14 April 2025 has advised his counsel of a potential conflict of interest involving the State Counsel, Mr John Rabuku, due to his familial relationship with two of the nine accused persons in the substantive matter, namely Cathy Tuirabe and Viliame Colowaliku, who are his niece and nephew.

6. The State filed objections and asserts that this application is an attempt to derail and delay the trial fixed for 22 April 2025 onwards. The matter was heard immediately when the State filed its objection as the outcome of this application had a direct bearing on the trial that was to begin in five days' time. Both sides made oral submissions at the hearing.

7. There was no dispute that Mr John Rabuku has a familial relationship with Ms Cathy Tuirabe and Mr Viliame Colowaliku who are respectively the 8th and 9th Accused in the substantive matter. This fact was revealed by none other than Mr John Rabuku himself when the matter was called before Mr Justice Sharma on 26 September 2024 in High

Court No. 2. Mr John Rabuku, having admitted the familial relationship, denies that there is a conflict of interest between himself and the said two accused persons.

8. The basis of the alleged conflict of interest can be found in paragraphs 12 and 13 of the affidavit of the Applicant. It is claimed that the relationship between the State Prosecutor and two accused persons may bring about a question of a fair trial taking place as the State is dealing with nine 9 different accused persons including the Applicant. It is also claimed that there is a perception that the other seven accused persons may not be treated or prosecuted fairly, given the State Prosecutor's decision to personally continue prosecuting his own relatives in a serious case involving nine accused persons.

9. It is also deposed that the Counsel for the 1st Accused had previously raised the issue of conflict of interest between Mr John Rabuku and the above named two accused persons before this Court but was not deliberated upon.

10. There is no evidence on the record that this issue had been raised previously before this Court. Neither Cathy Tuirabe nor Viliame Colowaliku has filed a recusal application on the basis of conflict of interest.

11. In the research I have hurriedly carried out or in the bundle of case authorities tendered by the Counsel for Applicant, I could not find any situation or case authority in this jurisdiction where a State Prosecutor had been disqualified by a trial Court from representing the State. However, there had been at least three instances where a defence counsel was disqualified from representing an accused when the trial court found a conflict of interest situation *vis-a-vis* the accused.

Jurisdiction of the High Court -Has the Court power to restrain counsel?

12. This question was asked by Mataitoga J (as he then was) in ***State v Alifereti***[1]. After considering English, Canadian, New Zealand and Australian cases, the Court affirmed this Court's inherent jurisdiction to restrain a legal practitioner appearing for a particular party in a criminal case. The inherent jurisdiction of the High Court is invoked to ensure

[1] [2008] FJHC 61; HAC18.2005S (2 April 2008)

the due administration of justice and to protect the integrity of the judicial process. The Court observed:

> It is now settled law in Fiji, that the High Court has the inherent jurisdiction to restrain a legal practitioner from appearing as counsel for one of the parties before it, if it is in the interest of protecting the integrity of the justice system, so requires. His Lordship Mr. Justice Gates held so in ***State v Khan & Singh*** *[2003] FJHC 225(HAM: 018/2003)* after discussing and adopting New Zealand and Canadian authorities referred to below.
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> Madam Justice Shameem in ***Shah v Nand*** *[2003] FJHC 205 (HAM 018/2003)*, admittedly in a different context to the present case, **held that the High Court has inherent jurisdiction to effectively control its procedures where there are no statutory provisions covering the same.** [Emphasis added]
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> In ***Taylor v Attorney General*** *[1975] NZLR 675*, Richmond J, said at page 682:
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> > 'But when one speaks of inherent jurisdiction of the Court, wide statutory powers of the kind now in question the problem really becomes one of powers ancillary to the exercise by the Courts of their jurisdiction in the primary sense just described. Many such ancillary powers are conferred by statute or by rules of court, but in so far as they are not so conferred, they can only exist because they are necessary to enable the Courts to act effectively within their jurisdiction in the primary sense.'
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> This principle was authoritatively settled by the New Zealand Court of Appeal in ***Black v Taylor*** *[1993] 3 NZLR 403*. In the judgment of Cooke P at page 406.26, his Lordship said:
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> > 'As to those who may be allowed to represent parties to argue cases, the Courts have an inherent jurisdiction: see **Re GJ Mannix Ltd [1984] 1 NZLR 309; Abse v Smith [1986] QB 536; Arbuthnot Leasing International Ltd v Havelet Leasing Ltd [1991] 1 ALL ER 591; and R v Visitors to Lincoln's Inn, ex parte Calder [1992] 3 WLR 994, 1007.** The jurisdiction extends to the propriety of a representative appearing in a particular case: it is not then a question of right of a representative appearing generally, which is governed in New Zealand by statute, but a question concerning what is needed or may be permitted to ensure in a particular case both justice and the appearance of justice. Obviously it is a jurisdiction to be exercised with circumspection.'
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> Richardson J in the same case, said of the due administration of justice in this regard:
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> > '**The High Court has an inherent jurisdiction to control its own process except as limited by statute.** As an incident of inherent jurisdiction, it determines which persons should be permitted to appear before it as advocates. In determining what categories of person may appear it does so **in accordance with established usage and with what is required in the public interest for the efficient and effective administration of justice** – Halsbury's Laws of England (4th Edition Para 396)'
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> > And further on at page 409.50:
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> > I would hold that **in principle where it is established that the interests of justice so require** the High Court has an inherent

jurisdiction to restrain a barrister from continuing to act as counsel for a particular party in proceedings before the Court'

A similar view was expressed by the Divisional Court in Ontario in **Everingham v Ontario** (1992) 88 DLR (4th) 755 at page 761 cited with approval in **Black v Taylor** (supra):

> It is within the inherent jurisdiction of a superior court to deny the right of audience to counsel when the **interest of justice so requires by reason of conflict or otherwise.** This power does not depend on the rules of professional conduct made by the legal profession and is not limited to cases where the rules are breached.....**The issue is whether a fair-minded reasonably informed member of the public would conclude the proper administration of justice required the removal of the solicitor**..... **The public interest in the administration of justice requires unqualified perception of its fairness in the eyes of the public ... the goal is not just to protect the individual litigant but even more importantly to protect public confidence in the administration of justice'** [Emphasis added]

13. These case authorities reveal that the inherent jurisdiction of the High Court to restrain a counsel can be invoked to effectively control its procedures where there are no statutory provisions covering the same.

14. The question is whether the inherent power of the High Court extends to restrain a State prosecutor from representing the State in a criminal matter. My considered view is that it does not. The reason being that there is a statutory provision that comes into conflict with the inherent power of the High Court to restrain a State Counsel in a criminal matter.

15. Mr John Rabuku has been appointed by the Director of Prosecutions (DPP) to conduct the trial in the Applicant's substantive matter as the State Prosecutor. Subsection 117(8) of the Constitution defines the powers of the DPP, which include initiating and conducting criminal proceedings. According to subsection 117(10) of the Constitution, the DPP is granted independence in exercising the powers conferred upon him, subject only to the authority of a Court of law. Subsection 117(10) of the Constitution states:

> In the exercise of the powers conferred under this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority, **except by a court of law or as otherwise prescribed by this Constitution or a written law**

16. Since there is no constitutional or any other written law that curtails the independence of the DPP to exercise his/her power conferred by the Constitution, it can only be subject to the authority of a court of law.

17. How then the authority of the court of law is exercised and on what basis? The DPP, when prosecuting and exercising his/her discretion in a criminal matter, no doubt discharges an executive and quasi-judicial function. When appointing a State Prosecutor to a particular criminal matter, the DPP's decision may be administrative in nature. The executive or administrative actions of the DPP may be reviewed by a court. The basis upon which the court's authority to review an executive or administrative action can be found in Section 16 of the Constitution which provides:

> Subject to the provisions of this Constitution and such other limitations as may be prescribed by law—
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> a. every person has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt;
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> **b. every person who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action; and**
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> **c. any executive or administrative action may be reviewed by a court**, or if appropriate, another independent and impartial tribunal, in accordance with law.

18. In ***Matalulu v Director of Public Prosecutions***[2] the Supreme Court, after considering the constitutional framework of the 1990 and 1997 Constitutions regarding the powers of the DPP, which is akin to the powers under Section 117 of the 2013 Constitution, held that the prosecutorial discretion of the DPP is reviewable under the civil jurisdiction of the High Court[3]. The Court ruled:

> It is not necessary for present purposes to explore exhaustively the circumstances in which the occasions for judicial review of a prosecutorial decision may arise. It is sufficient, in our opinion, in cases involving the exercise of prosecutorial discretion to apply established principles of judicial review. These would have proper regard to the great width of the DPP's discretion and the polycentric character of official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits. This approach subsumes concerns about separation of powers

[2] [2003] FJSC 2; [2003] 4 LRC 712 (17 April 2003),
[3] Quoted from the Ruling in Saneem v State [2025] FJHC 128; HAA01.2025 (17 March 2025) by Rajasinghe J

19. Having considered the legal provisions and the authority cited above, the Court concludes that the inherent power of the High Court does not extend to disqualify a prosecutor from representing the State in a criminal matter. This power is vested exclusively in the DPP.

20. The accused persons and their counsel involved in the substantive matter were fully aware since 26 September 2024 that Mr John Rabuku has a familial relationship with two of the accused persons. If they had any issue Mr John Rabuku prosecuting the matter on the basis of conflict of interest, the proper course of action would have been to make representations to the DPP. If the decision of the DPP on the representation went against them, they could have invoked the review jurisdiction of the High Court, exercising its civil jurisdiction. No accused has followed that course although all of them were represented by experienced legal practitioners.

21. Even if it is assumed that the High Court had inherent jurisdiction to restrain a State Counsel from prosecuting in a criminal matter, in determining what categories of person may appear, the Court would do so in accordance with established usage and with **what is required in the public interest for the efficient and effective administration of justice**[4].

22. This application was made by the Applicant at the eleventh hour when the Court, all other accused persons and their counsel were preparing for the trial / *voir dire* hearing scheduled for 22 April 2025 onwards. The Court was informed that the police witnesses based in Taveuni have already been brought to Nadi for trial preparations spending a lot of taxpayer's money.

23. Although the Applicant says it is not his intention to get a postponement, allowing this application will inevitably lead to a postponement. The ODPP may have other competent counsel to represent the State in this matter as suggested by the Applicant. However, I am not inclined to believe that any of them could make trial preparations in a case of this nature in five days' time, which includes the Easter holidays.

24. To justify this belated application, the Counsel for the Applicant claims that he was not aware that Mr John Rabuku would be the trial prosecutor in the substantive matter until 14 April 2025. The Court is unable to accept this justification. Mr John Rabuku has been

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[4] Halsbury's Laws of England (4th Edition Para 396)

appearing with Mr Nasa in the substantive matter from day one in all pre-trial matters and specifically at the Pre-Trial Conference that was held on 7 April 2025, in which all the trial counsel were supposed to attend. The trial date was set in December 2024, consulting trial counsel, including Mr John Rabuku, from either side. The Court and all counsel knew that Mr John Rabuku was to be the trial prosecutor in the substantive matter.

25. The Counsel for the Applicant is not entitled to say that he was not aware of the relationship between Mr John Rabuku and two of the accused persons only because he was not present in Court on 26 September 2024 or that he had come on board recently. The Applicant had been present when his relationship was divulged by Mr John Rabuku in open court. A Counsel, when accepting a brief from a client, is deemed to have been fully briefed and aware of everything that had transpired in Court. Matters not raised at the earliest often fails because the last minute applications may undermine the sincerity and veracity of the approach and affect case management.

26. Mr John Rabuku in paragraph 9 of his affidavit has disclosed the following as to the nature of the relationship he has had with Cathy Tuirabe and Viliame Colawailiku:

a. That there exists no potential or actual conflict of interest in my prosecuting this matter.

b. That Cathy Tuirabe and Viliame Colawailiku both hail from my village being Raralevu, Namata, Tailevu.

c. That both are not part of my nuclear family or even my immediate extended family and therefore we are not closely related.

d. That I have never met or had any dealings with both Cathy Tuirabe and Viliame Colawailiku at all prior to them being charged by the Police at the Nadi Police Station for the counts they now face on the Information.

e. That I only came to know that Cathy Tuirabe and Viliame Colawailiku were from my village when I was told by the Police during the Investigations that an arrest had been made from my village and potentially there were two suspects who were directly from my village.

f. That I found out subsequently that Cathy Toiyabe was arrested from Votualevu in Nadi and that Viliame Colawailiku was arrested from my village in Tailevu, Nausori.

g. That I only saw them for the first time when they were brought to Court for arraignment at Nadi Magistrates Court in February 2024. Cathy Tuirabe was part of the accused person's charged initially and Viliame Colawailiku was charged later as he was on the run around Nausori.

h. That I have never been to Cathy Tuirabe's house here in Nadi or Viliame Colawailiku's home in the village.

i. That I have never known them as children or even adults and have had no prior liaisons or meetings with them prior to the commencement of these proceedings. That for clarity and emphasis I don't even know who their parents are.

j. That I have not made any contact with any of their families in the village, in Fiji or overseas prior to these proceedings or during the course of these proceedings.

k. That the allegation that there is potential conflict of interest by me prosecuting this matter is ludicrous, vexatious and an attempt to scandalize my prosecutorial reputation and that of the office of the DPP.

27. These facts have not been disputed by the Applicant. The mere fact that there exists a familial relationship between the prosecutor and the accused in my opinion does not meet the test to refrain a State Counsel from appearing in a criminal matter. The Applicant must show that the prosecution of the case against him by Mr John Rabuku is prejudicial to his defence or his right to a fair trial in the sense that a fair-minded observer informed of all these matters would apprehend a real risk that John Rabuku would lack the objectivity required of a prosecutor in order to perform his duty or he would be biased.

28. As Mr Nasa submitted, the Fijian is such a small community that everyone is connected to everyone in one way or the other. Fijian People are often connected through kingship, clan, and traditional roles within the village, leading to a sense of interconnectedness and shared responsibility. If this application is allowed merely because the prosecutor is in a familial relationship with the accused, the Court is putting the ODPP in a difficult situation to find a counsel to represent the State. Furthermore, allowing this application will open floodgates to similar applications in the future. This is not what is required in the public interest for the efficient and effective administration of justice.

29. In Prosecutor Fiscal, Fort William v McLean[5] interpreting art 6(3)(b) The European Convention on Human Rights the Court held:

> **An accused who showed a mere theoretical, potential or possible risk of prejudice to the fairness of his trial had not thereby established that his trial was unfair unless he also showed that he was placed at a material disadvantage which involved an actual and material risk of harm to his defence.** A conflict of interest arose under the fixed payment structure because a lawyer's financial reward was inversely proportioned to the amount of work done but, because there was no suggestion that the accused's lawyers had omitted to do anything which was appropriate to his defence, the mere existence of the potential conflict of interest had not prejudiced the accused's right to a fair trial. The accused's allegation of prejudice rested entirely on the basis that the whole trial process and the legal assistance in particular were so tainted that art 6(3)(b), (c) had been breached even though no specific detrimental event occurred. The mere theoretical possibility of the accused's or the public's concerns as to the potential conflict of interests that arose under the fixed payment system did not mean that, in every case in which the possibility arose, the concern could be treated as a basis for deciding that art 6(3)(c) had been breached. [Emphasis added)

[5] (2000) Times, 11 August, 2000 JC 603, 2000 SCCR 682

30. Even in cases where the defence counsel had been disqualified from appearing for his/her client, the court was satisfied that allowing the counsel to represent the accused would be prejudicial to the defence or the right to a fair trial.

31. In ***State v Balaggan***[6], the accused, a young foreign lady of Indian origin, lodged a complaint with the police that she was raped by her counsel on numerous occasions while he was acting as her counsel and surety in her drug case. She later retracted her complaint, saying the allegation of rape was false. The Counsel tried to represent the accused in her trial despite the false allegation made against him. In exercising inherent jurisdiction of the High Court, the Trial Judge on his own motion considered the qualification of the defence counsel to represent the accused in her trial and found a conflict-of-interest situation between the accused and her counsel.

32. Based on the disclosures filed in Court, the Court considered the potential defence that the accused may run, which was duress founded on threats of rape and violence against her by the co-accused and another person who she said was complicit in the alleged offence. The Court observed:

> [11] It appears to me that there is a real possibility that allegation of rape will resurface in the trial either to found a defence of duress or to run a cut throat defence. **When a fair-minded person is informed of all these matters, he or she would apprehend a real risk that Mr Chaudhry would lack the objectivity required of counsel in order to perform his duty to his client and to the Court. This is because he himself was a victim of false allegation of rape by the accused.** Furthermore, the accused is entitled to explore all her possible defences objectively, without fear of causing embarrassment to Mr Chaudhry. If Mr Chaudhry continues to represent the accused, the possibility of the trial to miscarry is real.

33. In ***Alifereti***[7] the High Court disqualified a defence counsel when it found that the counsel was in a conflict of interest situation. The senior defence counsel Mr Iqbal Khan and his junior Mr Kevueli Tunidau had appeared for three accused in an abortive trial and withdrawn instructions to avoid embarrassment when the accused alleged that the admitted facts were settled by the counsel without their proper consent and consultation. Mr Tunidau tried to defend the three accused in the new trial despite the allegation they had made in the abortive trial.

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[6] [2012] FJHC 949; HAC49.2011 (16 March 2012)
[7] State v Alifereti [2008] FJHC 61; HAC18.2005S (2 April 2008)

34. The Court in restraining Mr Tunidau from defending the accused in the new trial observed at [36] as follows:

> Having carefully considered the relevant facts and having considered the relevant principles of the applicable law, I have discussed above, and also the right of the accused to retain counsel of their choice, I conclude that given the fact that there has been a mistrial in which Mr. Tunidau had withdrawn as a counsel for the same accused persons, on grounds that he was professionally embarrassed, that a fair-minded and reasonably informed member of the public would conclude that the integrity of the judicial process on these facts requires that Mr. Kevueli Tunidau be prevented from acting as counsel for the same three accused in the re-trial of the same charges. There is no prejudice likely to be caused to the accused persons in this trial to brief new counsel. The trial is fixed for hearing on 7 July 2009, some 3 months from now.

35. In ***Vereivalu v the State***[8], The trial concerned the alleged mistreatment by nine police officers of two men who had been arrested for robbery. Two police teams were involved in the arrest. Six of them were members of a team from Lautoka. The other three were members of a team from Suva. All nine defendants were represented at their trial by Mr Iqbal Khan. They were all convicted of raping and sexually assaulting the two men who had been arrested.

36. In their appeal to the Supreme Court, the members of the Suva team alleged that there had been a serious conflict between their cases and the officers from Lautoka. Their case was that the rapes and sexual assaults had been committed by the officers from Lautoka and not by them. They claimed that despite that Mr Khan represented all nine defendants at the trial (as well as on the appeal) when he should not have done so. They alleged that that seriously affected the way he represented them at their trial, and that his representation of all nine defendants tended to cast them in an unfavourable light when compared with the officers from Lautoka who were the defendants whose interests Mr Khan was really fighting for. The Court accepted the ground advanced by the appellants from Suva team and quashed the conviction.

37. Gates J (as he then was), concurring with Keith J's judgment, observed at 17 and 18 as follows:

> [17] These circumstances, and the lengthy post trial proceedings, would not have occurred if Mr Khan at the pre High Court trial stage had kept to his primary clients, those in the Western Team, the Lautoka officers. He should not have continued with the Suva Team because of the obvious conflict. He did them no service. Without their cases being put to the key identifying prosecution witnesses

[8] Vereivalu v State [2022] FJSC 48; CAV0005.2019 (27 October 2022)

> and without their accounts in sworn testimony being heard by the court at trial they had no chance of acquittal.
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> [18] Because of the conflict their lawyer was under in conducting their defence, and because of his failing to put their cases in cross examination and by failing to lead positive evidence to set against that of the prosecution, the trial miscarried. The miscarriage constituted a substantial and grave injustice, and pursuant to section 7(2) of the Supreme Court Act meets the criteria for the grant of leave to appeal. The petition must be allowed.

38. The case authorities cited above show how a court would like to look at a situation where a conflict of interest is alleged between the accused and his counsel. Although these cases are not directly relevant to the present case given the conflict alleged in the present case is between the accused and the prosecutor, they suggest that an existence of mere familial relationship between the prosecutor and an accused would not meet the test to raise the issue of conflict of interest.

39. I agree with the Applicant that the test that applies to an application for disqualification of a legal practitioner appearing for a particular party is an objective test. In Grimwade v Meagher [1995] VicRp 28; (1995) 1 VR 446, Mandie J said at 452:

> The objective test to be applied in the context of this case is whether a fair minded reasonably informed member of the public would conclude that the proper administration of justice required that counsel be so prevented from acting, at all times giving due weight to the public interest .....

40. The interest of a fair minded prosecutor in a criminal matter lies not in his determination to secure a conviction at all costs, but in fairly presenting evidence to help the Court to ascertain the truth. If the conduct of the prosecutor leads to a reasonable apprehension in the mind of a well-informed reasonable observer that he (the prosecutor) is biased, he must not prosecute. Has the Applicant been able to demonstrate to this Court that there is a real risk that Mr John Rabuku would lack the objectivity required of a prosecutor in order to perform his duty or that he would be biased?

41. The Counsel for Applicant submits that the words used by Mr John Rabuku in Court in respect of these two accused, namely, Cathy Tuirabe and Viliame Colowaliku leads to a reasonable apprehension that he is prejudiced. Mr John Rabuku remarked that these two accused persons were the 'most misbehaved people' out of all nine accused persons. This remark was made when the issue of conflict of interest was first raised by the Counsel for the 3rd Accused to show that he had done no favour to these two accused as a

prosecutor. However, neither Cathy Tuirabe nor Viliame Colowaliku have made an application to restrain Mr John Rabuku from prosecuting the trial against them on account of these remarks.

42. These two accused, Cathy Tuirabe and Viliame Colowaliku, breached their bail conditions and failed to show up in Court on 26 September 2014. Mr John Rabuku, having revealed his familial relationship with these two accused, had asked for bench warrants to get them arrested. An informed observer who knew these facts would take the remark 'most misbehaved' in the context in which it was made.

43. Mr John Rabuku had done everything in his disposal to have the bench warrants executed, which he is supposed to do in every case as a prosecutor. When they were arrested, Mr John Rabuku or Mr Nasa have not conceded to their bail for the obvious reason that they had breached bail conditions. These two accused are the only accused who are still in remand.

44. It is also alleged that Mr John Rabuku did not object to bail for Cathy Tuirabe and Viliame Colowaliku when they filed their first bail application but objected to the bail applications filed by the Applicant and three other accused. The State did not oppose bail not only for Cathy Tuirabe and Viliame Colowaliku but also for six other accused persons. This Court in granting bail was satisfied that the objection for bail for some selected set of the accused was based on an objective criteria.

45. It should be noted that some of the accused persons in the substantive matter have been granted immunity and made State witnesses but Cathy Tuirabe and Viliame Colowaliku were not amongst them. If Mr John Rabuku had an interest in them, he could have granted them immunity.

46. An independent and fair minded observer informed of these circumstances would not apprehend that Mr John Rabuku would be biased or prejudiced or would lack objectivity in conducting his duty as prosecutor in the trial.

47. I am satisfied that this application has been made without reasonable foundation. It is based on improper motive to delay the trial when the application for postponement was dismissed by this Court. This application should be dismissed.

Following Orders are made:

i. The application to restrain Mr John Rabuku from prosecuting the case No. HAC 22 of 2024 is dismissed.

ii. No order for Costs is made.

Aruna Aluthge

Judge

17 April 2025

At Lautoka

Solicitors:

Messrs Millbrook Law for Applicant

Office of the Director of Public Prosecutions for Respondent