

IN THE RESIDENT MAGISTRATE'S COURT
AT SUVA -CRIMINAL DIVISION

FCCC Case No. 27 of 2019

BETWEEN : Fijian Competition and Consumer Commission
Prosecution

AND : Semiti Qalowasa
Accused No.1
Chantelle Khan
Accused No.2
Suliana Siwatibau
Accused No.3
Samuela Alivereti Saumatua
Accused No.4
Mere Krishna
Accused No.5
Vijay Naidu
Accused No.6
Akuila Yabaki
Accused No.7
Kevin Barr
Accused No.8
Cama Raimuria
Accused No.9
Aisake Casamira
Accused No.10

For Prosecution : Mr. K. Gauna

Appearances

Accused No.1 : In-person
Accused No.2 : Ms. Qioniwasa (*O'driscoll & Co*)
Accused No.3, 4, 5, 7 and 10 : Mr. P. Katia (*Siwatibau & Sloan*)
Accused No.6 : Mr. R. Singh (*Parshotam Lawyers*)

Date of Hearing : 27th January 2022

Date of Ruling : 4th February 2022

RULING

1. All of the accused persons are jointly charged for the following offences:
 - a. Count 1 – *Accepting Payments without being able to supply* contrary to Sections 88, 132 and 129 (1A) (3) and (4) of the *Fijian Competition and Consumer Commission Act 2010*;

- b. Count 2 - *Misleading Conduct* contrary to Sections 88, 132 and 129 (1A) (3) and (4) of the *Fijian Competition and Consumer Commission Act 2010*;
 - c. Count 3 - *Unconscionable Conduct* contrary to Sections 88, 132 and 129 (1A) (3) and (4) of the *Fijian Competition and Consumer Commission Act 2010*
 2. At the outset it is prudent to state that Kevin Barr is now deceased whilst charges against Cama Raimuria have been withdrawn.
 3. Even though the contents of paragraph 2 are proved facts, Prosecution is yet to file any amended charges to reflect the change in circumstances as highlighted.
 4. Be that as it may, this is a decision with reference to an application sought by Prosecution seeking the following orders:
 - “1.A stop departure order for all the Defendants/Accused Persons.
 2. An Order for an early date to be given
 3. Any other Orders this Court deems fit and Fair”
 5. The ex-parte motion (later converted inter-parte) and supporting Affidavit were filed on 17th May 2019; a few days after the Complaint (Form 1), the charge (Form 2) and the Summons (Form 6) were filed¹.
 6. The motion however was dated to be called earlier than the summons on 23rd May 2019, whilst the summons was dated to be called on 30th May 2019.
 7. As such Order No.2 as sought has been dealt with as a result.
 8. Before this court moves to consider the remaining orders sought from the motion, there are a few other matters which need to be reflected in this ruling.
- Service of Summons**
9. Section 77 of the *Criminal Procedure Act 2009* requires personal service if practicable on a summoned person within 12 months from the date the summons was issued. If that is not possible than leave should be sought to extend time in order to serve.

¹ Filed on 8th May 2019

10. Prosecution has filed affidavits of service of all bar one of the remaining accused persons to highlight proof of service within the 12 months.
11. There is no affidavit of service filed to show that Chantelle Khan has been served however from the 16th of July 2019 onwards there have been appearances on her behalf by counsel.
12. As such this court is satisfied that all remaining accused persons have been served with the summons within the stipulated time.

Accused Appearance

13. This matter has been called seventeen (17) times following proof of service of the summons.
14. Out of the seventeen (17) times this matter has been called only the 1st accused has appeared on four (4) occasions.
15. Only on one (1) occasion was the presence of all remaining accused persons excused.
16. However, counsel has been appearing on their behalf at all times.
17. This court had queried the counsels on the continued absence of their clients wherein the court was advised that this was a matter which was begun by a Form 6 summons, which meant that counsel could appear on behalf of the accused person.

Form 6 Summons

18. A summons is a tool to compel the appearance of a person, party or witness taken in a criminal setting.
19. This case was instituted via the filing of a complaint (Form 1) and a charge (Form 2) and to ensure the appearance of the accused persons a Form 6 summons was filed.
20. Section 77 of the *Criminal Procedure Act 2009* gives a timeline of twelve (12) months from the date of the issuance of the summons via which the accused persons are to be served.
21. In this case as highlighted at paragraphs 10 to 12 above-herein this was accomplished by Prosecution.

22. As per the Form 6 summons², all the accused persons are required to appear unless their presence is excused as a result of either an admission in writing or an appearance on their behalf by a barrister or solicitor.
23. The representations made to the court from counsel appearing on behalf of the accused persons appears to suggest that for the entire duration of the matter, counsels can continue to appear on the accused's behalf.
24. This court does not agree with that position because the summons has a purpose and a life span which is clear from Section 77 of the *Criminal Procedure Act 2009*.
25. In this case the purpose (as it appears from the Form 6 summons) was to ensure the appearance of the accused persons on the 30th of May 2019 and later the 16th of July 2019 as a result of there being no proof of service of the first and second accused on 30th of May 2019.
26. The purpose was fulfilled as a result of counsel appearing on behalf of all the accused and this was achieved within the twelve (12) month timeline.
27. To this court, once the purpose of the summons has been fulfilled, the summons becomes redundant.
28. This is stated garnering the form of the summons itself which shows that the accused persons were to appear on the date assigned and their presence would only be excused on the assigned date as a result of either an admission in writing or an appearance on their behalf by a barrister or solicitor.
29. There is nothing from the command of the Form 6 summons to give rise to the notions of continued absence of the accused in lieu of an appearance by a barrister or solicitor as suggested by learned counsel/s.
30. As such the court views the continued absence of the accused in lieu of an appearance by a barrister or solicitor as suggested by learned counsel/s as erroneous because it only applied to the date as specified in the summons.
31. Although this has occurred, bail conditions were not imposed on the accused persons at any time by my predecessor in title.

² Copy of a Form 6 summons annexed herein as Appendix 1

32. It now becomes a valid consideration and gives credence to the Application before this court.

Prosecution's Application

33. This is highlighted at paragraph 4 above-herein and as discussed at paragraph 6 and 7, the order seeking an early date has been dealt with.

34. Therefore what remains to be considered is the following:

“1. A stop departure order for all the Defendants/Accused Persons.

2. ...

3. Any other Orders this Court deems fit and Fair”

35. The above mentioned prayers alert the court that Prosecution seeks bail conditions to be imposed.

36. By way of definition Bail, as defined at Section 2 of the *Bail Act 2002* is defined as follows:

‘bail for a person accused of an offence means authorization for the person to be at liberty instead of in custody, on condition that the person appears for trial, for sentence, for hearing of an application or appeal relating to the offence, or for an adjournment of any those matters’

37. In this case there are pending charges against all the remaining accused persons however they are at liberty without any authorization.

38. Prosecution wants this remedied by the imposition of a stop departure order and any other order which this court deems fit and fair.

39. In support of this request is the Affidavit of Ilimeleki Lomani who is a compliance officer for the Prosecuting body.

40. Mr. Lomani premises the need to have the above stated bail conditions on the following facts:

- a. That although one complainant is reflected in the current charges, there are two hundred and ninety (299) nine other complaints where charges have not been filed; and
- b. That the maximum penalty, that is, ten (10) years imprisonment or one million dollar (\$1,000,000.00) fine may result in the accused persons fleeing the country.

41. The 1st and 2nd accused have not filed any affidavit in opposition as such by default the affidavit of Mr. Lomani is not challenged by them.
42. The 3rd, 4th, 5th, 7th and 10th accused have filed their affidavits in opposition and they have based their opposition on the following:
- a. That Mr. Ilimeleki Lomani has no authority to depose the affidavit as he has not provided proof to support his authority;
 - b. That they were not responsible for the day to day running of the Charitable body as such are unaware of an complaint;
 - c. That there are misleading and irrelevant portions of the Affidavit which should be struck out; and
 - d. The basis of issuing a stop departure order has not been established.
43. The 6th accused has filed an affidavit in opposition and his opposition is noted as follows:
- a. That he has no knowledge of any of the allegations;
 - b. That he was never formally appointed as a board member;
 - c. That he is a Fiji Resident and has properties in Fiji; and
 - d. He has repeatedly travelled out of the country and has always returned.

Bail


44. Section 3(1) of the ***Bail Act 2002*** gives a presumption that every accused person has a right to bail unless the interest of justice otherwise requires.
45. The requirement which gives rise to the presumption is rebuttable if the conditions under Section 3(4) of the ***Bail Act 2002*** arises.
46. In this case the affidavit of Ilimeleki Lomani has not specified any of those conditions, as such this court now formalizes the granting of bail to all the remaining accused.
47. In the same vein this court is not satisfied based on the affidavit of Ilimeleki Lomani that all the remaining accused persons are a flight risk, as such the application seeking a stop departure order is dismissed.
48. However, noting the court's discussions at paragraphs 18 to 32, it is imperative to set some conditions to ensure the continued appearance of the accused persons to not only safeguard the proceedings but also reinforce public confidence in the judicial process.

49. Therefore bail is granted to all the remaining accused on the following condition:

- I. They are to be present in court on the next date that is, the 21st of November 2022 at 2.15pm and any other dates which the court assigns thereafter; and
- II. They are to sign their bail undertaking on or before the 21st of November 2022.

50. A copy of this ruling is to be served by Prosecution on each and every remaining accused person and the affidavit of service filed on or before the 21st of November 2022.

51. The court so orders.


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JEREMAIA .N.L SAVOU
RESIDENT MAGISTRATE

