

REGINA-v-HAROLD SAEA**HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)**

Criminal Case Nos: 157 and 258 of 2006

Hearing: 6 October 2006

Ruling: 20 October 2006

N. Swift for the Applicant

N. Mirou for the Respondent

RULING

Mwanosalua, J: This is an application for bail. The Applicant is Harold Saea. He was committed for trial to the High Court on two counts of murder, five counts of attempted murder, one count of robbery and one count of unlawful possession of a firearm. He has been remanded at Rove Prison in accordance with section 219 of the Criminal Procedure Code to wait for his trial. He now applies to this court to be admitted to bail.

It was alleged that he murdered Manesseh Tiva and Samua Pitakere on 3 October and 1 December 2001 respectively. He was arrested on 6 April 2005 and was committed for trial to the High Court for all the offences mentioned above on 20 September 2005.

Advocate for the Applicant submits that there are exceptional circumstances in this application which would warrant granting bail to the Applicant. Those exceptional circumstances are the weakness of the prosecution evidence and the delay in prosecuting the Applicant. The Respondent opposed the application.

Advocate for the Applicant pointed to the supporting evidence of alibi in John Palumuri Palua's statement to support the argument that the prosecution evidence against the Applicant is weak. Palua says that the Applicant was at Ngella on the Friday night when Samua Pitakere was murdered at Tetera on Guadalcanal. That evidence shows that by reason of the presence of the Applicant at Ngella on Friday night 1 December 2001, he was not at Tetera when Samua Pitakere was murdered.

Whilst the evidence of Palua may have bearing on the prosecution evidence against the Applicant on the alleged murder of Samua Pitakere, it does not affect the prosecution evidence against the Applicant in the alleged murder of Manesseh Tiva. The murder of Manesseh Tiva occurred on 3 October during day time. The prosecution witnesses know the Applicant well. He came to the scene of the offence in a canoe owned by his brother with other persons. He was armed with a firearm. A number of witnesses identified this firearm as an SR88 rifle. He raised the firearm in

the direction of Manesseh Tiva and pressed the trigger. The bullet which emerged from the firearm struck Manesseh Tiva at the right shoulder, traversing horizontally through the upper chest and exiting at the left shoulder, causing his death.

Advocate for the Applicant, points to the delay in the trial of the Applicant, as mentioned above, as another exceptional circumstance for granting bail to the Applicant. She refers to section 5(3) of the Constitution to support her submission.

The Applicant complains about the delay of his trial in the High Court. He was committed for trial to the High Court on 20 September 2005. He had waited for his trial for one year one month and ten days. He says he is entitled to his freedom from detention because he has not been tried within a reason time. Freedom from detention is a constitutional right – that being a freedom of personal liberty. But this right is not absolute. In *Alex Bartlett v. Regina*¹, Kabui J. said *"Any bail application is about freedom from detention. Freedom from detention is a constitutional right – that being a freedom of personal liberty. It is a right that can be denied by the Courts in certain circumstances. The circumstances in which a person may be denied his or her freedom of liberty are set out in section 5(1) of the Constitution. The right to freedom is therefore not an absolute right. It is a right that can be qualified by exceptions. Any application for bail is a relief that is only available to accused persons who have been charged with serious offences and are remanded in custody by the Court awaiting trial. The granting or otherwise of that relief depends upon the discretion of the court based upon the evidence before it."*

There is very strong prima facie evidence against the Applicant on his alleged murder of Manesseh Tiva. This court cannot rule out that he may interfere with witnesses if was granted bail in the light of that the fact that there is strong prima facie evidence against him in the alleged murder of Manesseh Tiva.

This court will not exercise its discretion to grant bail to the Applicant in this application. His application is refused and is dismissed. I order accordingly.

Having made my ruling, I make these observations. The informations in these cases have yet to be filed. The witness Statements in case No. 258 of 2006 are not in the court file. The Director of Public Prosecutions office needs to attend to these matters.

Francis Mwanalua
Puisne Judge

¹ *I ALEX Bartlett-v-Regina HC-CRC No: 22 of 2006*