

IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA

Criminal Case No. 381/2022



REGINA
V
NICOLAS LAUVERA

COURTS RULING

Before: Principal Magistrate Tearo Beneteti
Prosecution: Ms. F. Luza on behalf of Ms. Hellen Naqu (ODPP)
Defence: Mr Ron Dickey Pulekera (PSO) for the Defendant
Defendant: Appeared in custody
Date of Hearing: 10th November 2022
Date of written ruling: 21st December 2022

BACKGROUND

This case deals with a serious charge of attempt murder. The Defendant is Mr. Nicholas LAUVERA.

He first came to court after the charge was filed on 7th Sept 2022. Prosecutions also did the remand application for his matter on the same date. Ms. Naqu appeared for the Office of the DPP at the time.

Having perused the file, it appears on record that the grounds advanced by Prosecution when doing their remand application was on the following aspects:

- (1) The Defendant had no permanent address in town
- (2) **The investigation for the matter was still ongoing. Other related issues to this:**
 - (a) There were some statements that were yet to be taken from people on Aola.
 - (b) There is likelihood of interference.
- (3) Serious offence.
- (4) And finally, the Investigator provided the following information in court;
 - he is a criminal investigator;
 - he has been posted at Henderson Police Station and has been working for 6 years;
 - the Victim has been admitted at the National Referral Hospital ;
 - the Victims eye may be removed and is in a very serious condition;
 - he is of the view that the Defendant should be remanded for his safety;
 - he stated that the Victims name is Alexander;
 - **Investigation yet to be completed and the;**

- Medical report yet to be collected.

- He further explained that the Defendant was afraid when arrested
- Victim's village and Defendant's village are not too far from each other and
- Defendant was arrested at Lungga area.

The Defendant was remanded for investigations to continue and they will update the court.

All the above points were presented before the Magistrate who heard the remand.

The Defendant was therefore remanded in custody.

From that date of 7th Sept 2022 to the time of discharging the Defendant from custody and his matter dated 10th November 2022 is approximately 9 weeks and 1 day, which is about 64 days in total or about 2 plus months. This means the Defendant has been in custody for 64 days while no progress occurred on his file with police.

COURTS DELIBERATIONS:

By this date of dismissing the case, Prosecution provided very much similar updates as that advanced during the remand application. The following are issues updated on the date of discharging the Defendant;

- (1) Investigations not completed;
- (2) Statements still outstanding;
- (3) Photographs yet to be compiled; and
- (4) Knife plus medical report yet to be obtained

When I enquired as to what has caused the gross delay of this matter, prosecutions provided the following reasons';

- (1) Investigator had gone on leave
- (2) Investigator failed to give hand over notes and
- (3) The file has just been reallocated to another investigator to do the outstanding works.

I find it crucial that the court must again remind parties that delays are not entertained by the court in any way. Legislations like the Criminal Procedure Code does not have provisions that allow for delay to occur at all with no good reason. More especially when this is also entrenched in the supreme law of this land- the Constitution of Solomon Islands.

This is why when this matter clearly did not progress, did not develop and did not have valid reasons for all the delay caused to the Defendant for the 2 plus months, I had to stop the proceedings. More so when I am now being informed that the matter is just reallocated to a new investigator to complete what has never been worked on for 64 days which is in my view a very unfair act of investigating and prosecuting the matter.

To be more precise the following are a brief background of all the court proceedings for this case: From the 7th Sept 2022, the court mentioned this matter on the following dates:

- (1) 21.09.22
- (2) 5.10.22

- (3) 19.10.22
- (4) 3.11.22

When the case came to court on all these four occasions, the updates provided by Prosecutions was repeated with no progress and no good reason provided for the delay. The investigator had gone on leave and by the time this was mentioned on 3rd Nov 2022, Prosecution stated this to court and said that the Investigator should have come with additional statements but he had gone on leave. That was when I gave the final adjournment for investigations to be completed. By this time of 10th Nov, which is actually 1 week after 3rd Nov when I gave the last adjournment, nothing was progressing and they had just given the file to another investigator to do all outstanding work. Defence counsel Mr. Pulekera also confirmed representing the Defendant and stated that he only received partial disclosures on or about 10th Oct 2022.

LAWS APPLIED

- (1) Constitution-reasonable time for Defendant jeopardised by police who failed to do their part progressively and efficiently.
- (2) Criminal Procedure Code CPC purpose for adjournment was also affected and breached.

Furthermore, with the case authority of *R v Fafai*¹ it provides proper analysis of his lordship Chief Justice Palmer. This related to an appeal by prosecution against the presiding Magistrate who dismissed the case for want of prosecution. In his lordships analysis, which I also adopt in this case, he made it clear in his deliberations over the powers of the Magistrates for want of prosecutions. Paragraph 4 of page 4 of his analysis makes it clear that there is and may be implied powers that the Magistrate has jurisdiction to entertain application for dismissal for want of prosecutions.

I am satisfied after analysing this case that prosecution and more especially the police investigators have not performed to the standard required of them.

The Court will not tolerate such behaviour to prolong justice unnecessarily without good reasons being provided.

Since it is a serious charge, prosecution and police should equally be serious and be proactive as well than keep dragging the matter the way they did in this case.

This issue of delaying cases has been highlighted as one of the concerning factors raised by the Honourable Chief Justice Sir Palmer year in and year out during his Speeches for Legal Year Opening.

¹ [2010] SBHC 91, HCSI-CRC 120 of 2010 (30 December 2010).

It is therefore wrong for police to expect the court to hold onto a case while they do not progress at all and repeat the same updates for 2 plus months.

They have even contradicted themselves in saying at remand stage that the Defendant must be remanded for them to investigate when in reality the background proves otherwise. What has actually occurred on this matter is that the Defendant was remanded and then the file went to stagnant mode by the investigators for 63 or so days.

CONCLUDING REMARKS:

This is very much similar to the *Funubana*² CRC 132/2022 case I have already dealt with. The only difference between this matter and *Funubana* is that the *Funubana* matter did not have any evidence on file at all since his remand date. It was an empty file with no reasonable suspicion evidence and no form of any evidence at all. Police did not investigate nor provided proper updates for ODPP to progress and update court on their evidence. I therefore had to release the Defendant from custody after several months of being in custody with no evidence for his file at all.

Police need to understand that remanding Defendants does not give them lee way or room to just sleep over their files. It is to actually ensure that they investigate the matter expediently and close off investigations so that the matter progresses. They must progress to finalise investigation so Defendant's remand is valid and in line with laws governing remand. When it appears to the courts that police are just not being bothered in progressing investigations which is their job on cases without any good reason at all as found in this matter then there must be a stop to the abuse of the court process for such. For this matter, as stated, the police had reasonable time to progress investigations well from 7 September up until this date of 10 November, which is 63 days. We have an experienced Investigator of 6 years who spoke in court assuring court of the work he will do after remanding the Defendant. When he says that but we see no progress for the 63 days he had the file to work on, and then went on leave without leaving any hand over notes, these are all ingredients of abusing court process and must be stopped. I must not allow further abuse of the court process to give time to do the undone work by the original Investigator while the Defendant remains in custody waiting on any or some progress of his matter since he was remanded. This is totally unfair, unjust and unacceptable. Prosecution is reminded to continue pursuing its investigators to must act progressively on their files than allow what has occurred in this case. Prosecutions and the court cannot do investigations of the cases they work on. It is the police work. Therefore, Police must actively do all these so cases can be dealt with expediently and according to law.

² CRC 132 of 2022.

For the reasons explained in this ruling, I find no good reason or reasons to keep remanding the Defendant in this case. I will discharge the Defendant as the charge is a very serious matter. Prosecution can recharge the Defendant again when they are ready.

COURT ORDERS:

1. Discharge the Defendant accordingly;
2. Defendant to be released from custody at the rising of the court;
3. Prosecutions can recharge the Defendant when they are ready with his case again;
4. Right of appeal applies.



Miss Tearo Beneteti
Principle Magistrate

