

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU116 of 2011
(High Court Case No: HAC 115 of 2009)

BETWEEN : **ALIPATE VAKADEWAVOSA**
ILIASERI SAQASAQA
ISIMELI WAKANIYASI

Appellants

AND : **THE STATE**

Respondent

Coram : **Goundar JA**

Counsel : **Appellants in Person**
Mr. L. Fotofili for the Respondent

Date of Hearing : **14 March 2014**

Date of Ruling : **2 June 2014**

RULING

- [1] The three appellants apply for bail pending appeal. Their co-appellant, Iliaseri Saqasaqa was granted bail by the Full Court on 25 October 2013.
- [2] The principles regarding bail pending appeal are settled. Under the Bail Act, the presumption in favour of bail is displaced after an accused is convicted. The relevant considerations are set out in section 17(3) as follows:
- (a) The likelihood of success in the appeal.
 - (b) The likely time before the appeal hearing.
 - (c) The proportion of the original sentence which will have been served by the appellant when the appeal is heard.

- [3] In the present case, all three appellants are serving lengthy terms of imprisonment. Considerations (b) or (c) are not significant determinative factors as the appeal can be heard this year.
- [4] The test under consideration (a) is whether the appeal has every chance of success (*Mutch v State Cr. App. No. AAU0060 of 1999*).

Osea Vakacereivula

[5] Osea's grounds in summary are:

- (i) Inadequate directions on confession.
- (ii) Inadequate directions on accomplice evidence.

- [6] The directions on confession and accomplice evidence are contained in paragraphs 29, 31 and 34 of the summing up. The trial judge directed the assessors to consider the voluntariness of the confession before they could act on it. The law is that voluntariness of a confession is a matter that goes to its admissibility. After the voluntariness is determined by the trial judge in a voir dire, the assessors consider whether the confession was in fact made by the accused and that the confession was true. The trial judge did not give these directions.
- [7] The trial judge's directions on accomplice evidence contains a warning and the need for corroboration. The trial judge further directed the assessors that if they accepted the confession of the appellant, then the confession was capable of corroborating the accomplice evidence. The trial judge did not direct the assessors that if they found the confession to be true, then they may accept the confession was capable of corroborating the accomplice evidence.

Alipate Vakadewavosa

[8] Alipate's grounds in summary are:

- (i) Inadequate directions on confession.
- (ii) Defective charge.
- (iii) Inadequate directions on joint enterprise.
- (iv) Misdirections on accomplice evidence.

[9] Directions on confession and accomplice evidence have been dealt with above. The grounds are arguable. The charge was not defective. It contained all the essential elements of robbery with violence. This ground is not arguable. The trial judge's directions on joint enterprise are contained in paragraph 18 of the summing up. The directions are correct in law and therefore the fourth ground is not arguable.

Isimeli Wakaniyasi

[10] Isimeli's grounds are same as his co-appellants' arguable grounds.

[11] In addition, all three appellants argue that since their co-appellant, Ilaiseri Saqasaqa was granted bail, they should also be granted bail.

[12] The reasons Ilaiseri Saqasaqa was granted bail is contained in paragraph 18 of the Court's judgment:

'In assessing the chances of the Applicant/Appellant, appeal's succeeding, considering the prejudicial reference by the trial judge to the Applicant/Appellant as 'General in the Criminal World' in the summing up this court concludes that there is a very high likelihood of success in the Appeal. The appeal record has not been scrutinised but assessed on its likely outcome. That is an assessment of likelihood not a prediction or judgment in respect of the appeal against conviction.'

[13] The prejudicial reference was made only against Ilaiseri Saqasaqa. Otherwise, the trial judge clearly directed the assessors to consider the evidence against each accused separately. For this reason, the contention that the co-appellant was granted bail should operate in favour of the appellants must fail. Each case must be considered on its own merits.

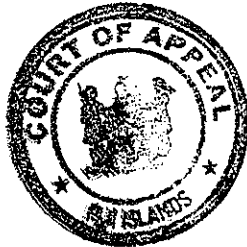
[14] As far as the appellants are concerned, while I find their grounds of appeal are arguable, they fail to meet the stringent test of every chance of success.

Result

[15] I make the following Orders:

- (1) Bail refused.
- (2) All three appellants are granted leave to appeal.
- (3) Iliaseri Saqasaqa is granted leave to appeal on the grounds contained at paragraph 5 of his bail ruling.

[16] Since the appellants are unrepresented and are denied bail, the Registrar is directed to expedite the filing of the Court Record so that the appeal could be heard in the September session of the Court of Appeal.



A handwritten signature in black ink, appearing to read "D. Goundar".

.....
Hon. Justice D. Goundar
JUSTICE OF APPEAL