

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 136 OF 2012S

1. ISIKELI NAKATO
2. ANTONIO MATAIRATU

VS

THE STATE

Counsels : Mr. J. Uludole for Accused No.1
Mr. A. Vakaloloma for Accused No.2
Ms. M. Fong & Mr. S. Vodokisolomone for State

Hearing : 12th October, 2012

Ruling : 1st November, 2012

Written Reasons: 12th April, 2013

WRITTEN REASONS FOR REFUSAL OF BAIL

1. In Suva High Court Criminal case No. HAC 284 of 2012S, both accused are facing the following information:

Statement of Offence

ARSON: Contrary to Section 362(a) of the Crimes
Decree No. 44 of 2009.

Particulars of Offence

ISIKELI NAKATO and ANTONIO MATAIRATU on the 25th day of June, 2012, at Suva in the Central Division willfully and unlawfully set fire to a building, namely government buildings, the property belonging to the Government of Fiji, at Suva.

2. They have been remanded in custody since their first appearance in the Suva Magistrate Court on 20th August, 2012. On 31st August, 2012, their case was first called in the High Court. Mr. A. Vakaloloma appeared for both of them. On the same date, both accuseds formally applied for bail. They filed a notice of motion and an affidavit in support, from both of them. The State replied with an affidavit from Detective Constable Napolioni Nakibo, and a written submission on 9th October, 2012. The Defence also filed a written submission on 11th October, 2012.
3. On 12th October, 2012, the court heard the parties on the bail application. It then adjourned to 1st November, 2012 for a ruling on the matter. After considering the parties' papers and their submissions, the court denied both accuseds' bail application, and said it would give its reasons later. Below are my reasons.
4. It is well settled that, an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise (section 3(1) of the Bail Act 2002). It is also well settled that, the primary consideration in deciding whether to grant bail is the likelihood of the accused person turning up in court to take his trial on the date arranged (section 17(2) of the Bail Act 2002). It is also well settled that, in order for the court to decide the above issue, it is mandatory for it to consider each of the factors mentioned in section 19 of the Bail Act 2002, that is, the likelihood of the accused surrendering to custody, the interest of the accused and the public interest and protection of the community.

(i) Factor No. 1: Likelihood of Accused Surrendering to Custody:
5. Isikeli Nakato (accused no. 1) was a security guard on 25th June, 2012. He reached Form 4 education and was 35 years old. He was working for Matrix Risk Company. Prior to the alleged

incident, he had been working for the company since February 2012. He earned \$160 to \$180 per week, and is married with two young children. He came out of prison in April 2009, after serving 6 years imprisonment for robbery. The allegation against him is very serious. He allegedly set fire to the structure of the Suva Magistrate Court No. 6 on 25th June, 2012. If found guilty on this charge, it is highly probable that he will spend a long time in prison.

6. As for Antonio Matairatu (accused no. 2), he was also a security guard on 25th June, 2012. He also reached Form 4 level education and was 47 years old, at the time. Like accused no. 1, he was working for Matrix Risk Management. He is married with 5 children, 3 boys and 2 girls. Like accused no. 1, he had been working as a security guard since February 2012. The allegation against him is very serious. Like accused no. 1, he allegedly set fire to the structure of the Suva Magistrate Court No. 6 on 25th June, 2012. If found guilty, he will spend a long time in prison.
7. For both accuseds, the chances of bail under this head are very slim.

(ii) Factor No. 2: The Interest of the Accuseds' Persons:

8. I will deal with both accuseds together under this head. This case will be heard later this year or early next year. They have been remanded in custody since 20th August, 2012, that is, approximately 8 months ago. However, time spent while been remanded in custody will be deducted from the final sentence, if found guilty. I understand both accuseds are represented by counsels, that is, accused no.1 is represented by Mr. J. Uludole, while accused no. 2 is represented by Mr. A. Vakaloloma. Both counsels can visit them in custody, as and when required, to take instructions. They do not complain of the conditions of custody. In any event, a new remand centre is about to be opened in Suva, thereby offering new facilities to the accuseds. There doesn't appear to be any reasons why the accuseds should be at liberty for any other lawful reasons. They are not incapacitated. Under this head, the accuseds' chances of bail are slim.

(iii) Factor No. 3: Public Interest and the Protection of the Community:

9. Again, I will deal with both accuseds under this head. The allegation against both accuseds are very serious. They allegedly set fire to the structure of Suva Magistrate Court No. 6 on 25th June, 2012. The court house is the symbol of justice according to the law, in this country. At a time

when Fiji, as a nation, is going through trying times, the court house is a symbol of hope, for its citizens. It prevents the possible descend into chaos. Although both accuseds are presumed innocent until proven guilty beyond reasonable doubt, in a court of law, because of the seriousness of the allegation against them, it would be in the public interest and the protection of the community that, they be remanded in custody.

Conclusion:

10. Given the above, I declined both accuseds' bail application on 1st November, 2012, and the above are my reasons.

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JUDGE

Solicitor for Accused No. 1 : Mr. J. Uludole, Barrister and Solicitor, Suva.
Solicitor for Accused No. 2 : Mr. A. Vakaloloma, Barrister and Solicitor, Suva.
Solicitor for the State : Office of the Director of Public Prosecution, Suva.