

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 028, 083 AND 105 OF 2014S

BETWEEN

1. LUKE KATA
2. AMINIASI DANFORD

APPLICANTS

AND

THE STATE

RESPONDENT

Counsels : Ms. T. Leweni for First Applicant  
Mr. E. Koroi for Second Applicant  
Mr. R. Prakash for Respondent

Hearings : 24 February, 16 and 30 July, 2014

Rulings : 27 March and 30 July, 2014

Written Reasons : 26 September, 2014

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**WRITTEN REASONS FOR DENIAL OF BAIL**

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1. I have considered all the three cases together because both applicants are facing the same information in the High Court. In Suva High Court Criminal Case No. HAC 043 of 2014S, the applicants are charged as follows:

**FIRST COUNT**  
**Statement of Offence**

**AGGRAVATED BURGLARY:** *Contrary to section 313 (1) (a) of the Crimes Decree No. 44 of 2009.*

**Particulars of Offence**

**LUKE KATA** and **AMINIASI DANFORD**, between the 10<sup>th</sup> day of January 2014 and 13<sup>th</sup> day of January 2014, at Villa 176 in Pacific Harbour in the Central Division, entered the dwelling house of **TIAN KUAI** as trespassers, with the intent to commit theft in the said dwelling house.

**SECOND COUNT**  
**Statement of Offence**

**THEFT:** *Contrary to section 291 (1) of the Crimes Decree No. 44 of 2009.*

**Particulars of Offence**

**LUKE KATA** and **AMINIASI DANFORD**, between the 10<sup>th</sup> day of January 2014 and 13<sup>th</sup> day of January 2014, at Villa 176 in Pacific Harbour in the Central Division, dishonestly appropriated property belonging to **TIAN KUAI** namely FJD \$45,000, USD \$5000, a Samsung laptop valued at \$2000, a wheelbarrow valued at \$190, a steel safe valued at \$1000 and a Brequet brand watch valued at FJD \$1,000,000.00; all to the total value of FJD \$1,057,190.00, with the intention of permanently depriving **TIAN KUAI** of the aforementioned property.

2. Mr. Luke Kata first appeared in the Navua Magistrate Court on 23 January 2014, and had been remanded in custody since then. He first applied for bail in Miscellaneous Case No. HAM 028 of 2014S, on 7 February, 2014. I heard the matter on 24 February 2014, and denied him bail on 27 March 2014. I said I would give my written reasons later. On 4 June 2014, he made a second bail application in Miscellaneous Case No. HAM 105 of 2014S. On 30 July 2014, I heard the matter and dismissed the application. I said, I would give my written reasons later. In this judgment, I will give my written reasons for both applications together.
3. As for Mr. Aminiasi Danford, he first appeared in the Navua Magistrate Court on 24 January 2014. He had been remanded in custody since then. He applied for bail in Miscellaneous Case No. HAM 083 of 2014S on 22 April 2014. I heard the matter on 16 July 2014, and dismissed his application on 30 July 2014. I said I would give my written reasons later. Below are my written reasons for both applicants.
4. It is well settled that an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for granting bail, is whether or not the accused will turn up in court, on the date arranged for his trial. In deciding the above, the court is duty bound to consider the factors mentioned in section 19 of the Bail Act 2002.

**Factors No. 1: The Likelihood of Surrender to Custody:**

(i) **Luke Kata**

5. Mr. Kata is 43 years old, unemployed and living in a defacto-relationship. He reached Form 6 level education at Ratu Sukuna Memorial School. He resides at Raiwaqa, Navua. At times, he works as a gardener. He is facing serious charges of aggravated burglary and theft, involving properties worth more than \$1,000,000. According to the prosecution, they have a strong case against him. He allegedly confessed to the crime, when caution interviewed by the police. If found guilty after trial, the accused faces a possible sentence of more than 10 years imprisonment. In my view, under this head, the accused's chances of bail are slim.

(ii) **Aminiasi Danford**

6. Mr. Danford is 36 years old, married with two children. He said, he is unemployed. He reached Form 6 level education. He and his family resided at Raiwaqa, Navua. He is facing a very serious allegation of aggravated burglary and theft. According to the prosecution, they have a strong case against him. He allegedly confessed to the crimes when caution interviewed by police. If found guilty, he faces a possible prison sentence of more than 10 years imprisonment. Under this head, in my view, his chances of bail are slim.

**Factor No. 2: The Interest of the Accuseds:**

7. Under this head, I will deal with both accuseds together. Both accuseds had been remanded in custody for the previous 8 months. They will be tried later February and early March in 2016. The 2015 court calendar is full of cases awaiting trials. In any event, the law allows the court to hold an accused in remand for 2 years, pending trial. However, time spent in remand will be deducted from the accused's final sentence, if found guilty after trial. They can enjoy the new remand facilities in Suva, worth approximately \$11 million. Their counsels can visit them in custody to take instructions and prepare their defences. Both accuseds are unemployed, and it appeared there is no need for them to be at liberty, for other lawful purpose. They are not incapacitated. Under this head, in my view, their chances of bail are slim.

**Factor No. 3: The Public Interest and the Protection of the Community:**

8. The charge of "aggravated burglary" carried a maximum sentence of 17 years imprisonment, while "theft" carried a maximum sentence of 10 years imprisonment. Society, through its lawmakers, view the offending seriously. Although the accuseds are presumed innocent until proven guilty beyond reasonable doubt, in a court of law, the allegations against them are serious. A member of society's home had been allegedly burgled, and properties worth more

than \$1,000,000 had been allegedly stolen from him. In my view, it is in the public interest, and the protection of the community that, both accuseds are remanded in custody, until further orders of the court. Under this head, their chances of getting bail, are slim.

**Conclusion**

9. It was for the above reasons I refused Mr. Luke Kata's bail applications on 27 March and 30 July 2014. It is also for the above reasons that, I refuse Mr. Aminiasi Danford's bail application. Both accuseds are remanded in custody until further orders of the court.



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**JUDGE**

Solicitor for Applicant No. 1 : T. Leweni, Barrister & Solicitor, Suva.  
Solicitor for Applicant No. 2 : E. Koroï, Barrister & Solicitor, Suva.  
Solicitor for State : Office of the Director of Public Prosecution, Suva.