

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**HAC NO. 140 OF 2015**

**BETWEEN :**

1. **RATU INOKE TASERE**
2. **JIMI KOROIBETE**
3. **SERU KUNALAGI**
4. **ADI CUVU GAVIDI ATAMA**
5. **ULAIASI RABUA TUIVONO**
6. **PENIASI NAQAU**
7. **SEMI TANIKILI**
8. **RATU OSEA BOLAWAQATABU**
9. **RATU TEVITA KHAIKHAIBOKOLAWALE MAKUTU**
10. **MOSESE NAVACI**
11. **ERONI RIKORIKO**
12. **ALIFERETI NAKUINIVOU**
13. **ALIFERETI GONEWAI**
14. **RAICULA ROKOVOU**
15. **ADI VASEMACA VEIKUNEKIBULU GONEWAI**
16. **JORAMA RATULEVU**

**AND :** **STATE**

**Counsel :** **Mr. A. Ravindra-Singh for Applicants**  
**Mr. S. Babitu for Respondent**

**Date of Hearing:** **16<sup>th</sup> of September, 2015**

**Date of Ruling:** **25<sup>th</sup> of September, 2015**

**BAIL RULING**

1. The two applicants namely Adi Cuvu Gavidi Atama and Adi Vasemaca Veikunekibulu file this notice of motion pursuant to Section 13 (1) (i) of the Constitution of the Republic of Fiji Islands, seeking following orders inter alia;

*I. The continued detention after 4p.m. on Monday the 7th of September 2015 of the two applicants at Suva Women's Prison is unlawful,*

- II. *The two applicants be released forthwith from the unlawful detention,*
- III. *This matter be listed for first call on Wednesday 9th of September 2015, and*
- IV. *Any other order or orders that the court may deem just in the circumstances of this application to facilitate the aforementioned orders sought,*

2. The notice of motion is not supported with any affidavit. The learned counsel for the two applicants informed the court that they were not allowed to meet him at the remand centre, and that had made them to file this Notice of Motion without any affidavit in support. The learned counsel urged that such denial amounts to a breach of the rights of remanded or detained persons as stipulated under Section 13 (1) (c) of the Constitution. However, during the course of the hearing of this matter, the learned counsel admitted that he has neither made any request to the prison authority to visit Suva Women Prison Centre, nor attempted to meet the two applicants. It is rather unfortunate to note that the learned counsel of the applicants raised such a serious allegation of breach of constitutional rights against the prison authority, when he has actually not visited the said prison centre and/or has not requested and/or has actually not been denied by the prison authority to meet the two applicants.
3. The Respondent filed four affidavits in response to this Notice of Motion. The Principle Correction Officer, Tanarusa Bosevou, ASP Bereta Naisua, Detective Inspector Saimoni Qasi, and Senior Administration Officer ( Litigation) of the Director of Public Prosecution filed these four affidavits, stating the backgrounds of the incidents that led to non production of the two applicants before the court on Monday, 7th of September 2015. The Applicants opted not to file any response, hence the matter was set down for hearing on 16th of September 2015. The learned counsel for the Applicants and the Respondent made their respective oral arguments and submissions during the course of the hearing. Having considered the Notice of Motions, the affidavits filed by the prosecution and the oral submissions of the counsel, I now proceed to pronounce my ruling as follows.
4. The two applicants were remanded by this court on 26th of August 2015 and ordered to be produce before the court on 7th of September 2015. However, they were not produced



before the court on the 7th of September 2015 and the learned counsel for the prosecution advised the court that the two applicants were on their way to Lautoka from Suva as they have been remanded in Suva Women Correction Centre. Accordingly, the matter was stood down till 3 p.m. Unfortunately, the court complex had to close down due to a power failure and at that time the two applicants were not present or no information was given to the court on the whereabouts of them.

5. In view of the affidavits filed by the prosecution, it appears that there was a serious communication breakdown and lack of coordination between the Prison Authority and the Police Department, which had caused the non production of two applicants in court on the 7th of September 2015. It appears that there was no any deliberate act of disobeying of court orders or deliberate intention of breaching the rights of the two applicants. In the absence of any evidential material of the applicants to substantiate their claim of unlawful detention, I find there is no sufficient ground to hold that the two applicants were detained unlawfully on the 7th of September 2015. Moreover, the court, having found this lack of proper co-ordinations between the stakeholders, promptly ordered the Officer in Charge of Suva Women Correction Centre to produce the two applicant before the Chief Magistrate in Suva and directed the Chief Magistrate to remand them till 11th of September 2015 and produce them in the High Court of Lautoka on the 11th of September 2015.
6. Justice Madigan in **State v Mani Lal and Others ( High Court Review Case No 001 of 2015)** held that;  
  
*“the granting of relief to a party on a purported constitutional breach is a serious decision by a court and not one that can be “spontaneously” thrown at the prosecutor without due process, without consideration of alternative remedies, and without taking time for considered reflection on the proposed order”.*
7. Having considered the observation of Justice Madigan in **Mani Lal ( supra)** and the absence of material evidence from the applicants of illegal detention, it appears that the non production of the two applicants before the court on 7th of September 2015 was not a

deliberate act of violation of constitutional rights, but a consequent of lack of professional communication and coordination among the relevant authorities.

8. The court has promptly intervened and remedied the non production of the two applicants and remanded them accordingly.
9. In view of the reasons discussed above, I refuse this Notice of Motion and dismiss it accordingly.



**R. D. R. Thushara Rajasinghe**  
**Judge**

**At Lautoka**

**25<sup>th</sup> September 2015**

**Solicitors : Office of the Director of Public Prosecutions for Respondent  
Aman Ravindra-Singh Lawyers for Applicants**