

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 95 OF 2015S

BETWEEN

KAMINIELI NAQELECA

APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Mr. P. Tawake for Applicant  
Mr. T. Qalinauci for Respondent  
Hearing : 16 October, 2015  
Ruling : 2 November, 2015  
Written Reasons : 1 April, 2016

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**WRITTEN REASONS FOR DENIAL OF BAIL**

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1. In Suva High Court Criminal Case No. 64 of 2015S, the applicant and another faced the following charge:

*Statement of Offence*

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section 5 (a) of the Illicit Drugs Control Act 2004.

*Particulars of Offence*

**WAISAKE KALOULIA** and **KAMINIELI NAQELECA**, on the 21<sup>st</sup> day of January, 2015 at Davecadra farm, Wainibuka, Tailevu in the Central Division, without lawful authority, cultivated 160.6 kilograms of cannabis sativa or Indian Hemp, being illicit drugs.

2. The applicant first appeared in the Nausori Magistrate Court on 5 February 2015. He had been remanded in custody since then. On 23 February 2015, he first appeared in the High Court. On 22 May 2015, the information was put to the applicant and his co-accused and both pleaded not guilty to the same. On 17 June 2015, the applicant applied for bail pending trial by filing a notice of motion and an affidavit in support.
3. The State replied with an affidavit in reply on 3 September 2015. I heard the parties on 16 October 2015. On 2 November 2015, I denied the applicant bail pending trial, and I said I would give my written reasons later. Below are my reasons.
4. It was well settled that an accused person is entitled to bail pending trial, unless the interests of justice requires otherwise. The test for granting bail was whether or not the accused will turn up in court on the date set for his trial. In deciding the above issue, it was mandatory for the court to consider the factors outlined in section 19 of the Bail Act 2002.

**Factor No. 1: Likelihood of Accused's Surrender to Custody:**

5. The applicant was 42 years old. He reached Form 3 level education, and farms for a living. According to him, he farmed dalo, yaqona, bananas, including marijuana. According to the prosecution, they had a strong case against him. He allegedly admitted the offence when interviewed by police on 3 February 2015 at Korovou Police Station. If found guilty after trial, the accused faced a possible prison sentence of 14 years and up. In my view, under this head, the accused's chances of bail are slim.

**Factor No. 2: Interest of the Accused:**

6. The applicant will be tried from 11 to 14 October 2016. That is approximately 6 months away. So, he would have been remanded in custody for approximately 1 year 8 months. If he's found guilty after trial, time spent in remand will be deducted from his final sentence. He is remanded at the new Suva Remand Centre. He is represented by Legal Aid lawyers and they can visit him at the Suva Remand Centre as and when they pleased to prepare his defence. There does not appear to be any reasons for him to be at liberty for any lawful purpose. He is not incapacitated. In my view, under this head, his chances of bail are slim.

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

7. The allegation against the applicant was very serious. It was alleged he was unlawfully cultivating 160.6 kg of cannabis sativa plants at Tailevu in the Central Division on 21 January 2015. This was one of the biggest cannabis sativa plants cultivation that had ever come before the courts. The evils of illicit drugs had been well covered in many publications. Although the applicant is presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it is in a public interest and the protection of the community that, he be remanded in custody, until further orders of the court. Under this head, the accused's chances of bail are slim.

**Conclusion:**

8. It was for the above reasons that I refused bail to the applicant on 2 November 2015.



A handwritten signature in blue ink, appearing to be "Salesi Temo".

**Salesi Temo**  
**JUDGE**

**Solicitor for Applicant** : **Legal Aid Commission, Nausori**  
**Solicitor for Respondent** : **Office of the Director of Public Prosecution, Suva.**