

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

**HAM NO. 78 OF 2016**

**BETWEEN : SAILOSI SERU**

**Applicant**

**AND : STATE**

**Respondent**

**Counsel : The Applicant in person  
Ms. Fatiaki for Respondent**

**Date of Ruling : 20th of July 2016**

**RULING**

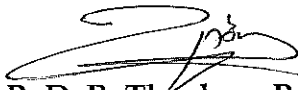
1. The Applicant files this Notice of Motion seeking an order to temporarily stay the proceedings of the Criminal Action No 723 of 2014 in the Magistrates' court at Lautoka. The notice of motion is being supported by an affidavit of the Applicant stating the grounds of this application.
2. The Respondent filed an affidavit of Detective Constable Vedh Prakash, stating the objection of the Respondent. Subsequently, both the parties were directed to file their respective written submissions, which they filed accordingly.
3. The Applicant has been charged with another for one count of Aggravated Burglary, contrary to Section 313(1)(a) of the Crimes Decree and one count of Theft, contrary to Section 291 (1) of the Crimes Decree. The Applicant pleaded not guilty for the charges and challenged the admissibility of his caution

interview in evidence. Hence, the voir dire hearing was conducted on the 23rd of April 2016. The Applicant claims that he was only served with the disclosures for the voir dire hearing, but he had no disclosures of the substantive matter, when the voir dire hearing was conducted. The Applicant states that he informed the learned Magistrate in this regards, but he disregarded his application and proceeded to the voir dire hearing.

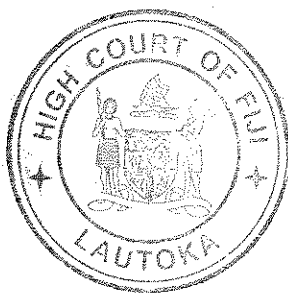
4. The Applicant was initially represented by a lawyer from the Legal Aid Commission. The prosecution has served the Applicant all the disclosures for the substantive matter. He has then given those disclosures to his counsel from the Legal Aid Commission. Subsequently, the Applicant decided not to retain the service of the Legal Aid Commission. The Applicant now appears in person. The Applicant claims that the Legal Aid Commission did not return him the disclosures for substantive matter
5. The Applicant submitted that this application is made pursuant to Section 290 of the Criminal Procedure Decree and Section 14 of the Constitution of the Republic of Fiji Islands. Having stated the background of this application, the Applicant seeks an order to temporarily stay the proceedings of the said criminal action until he is properly served with disclosures for the substantive matter.
6. The respondent submitted that the Applicant was properly served with disclosures for the voir dire hearing once he filed his grounds to challenge the admissibility of the caution interview in evidence. Hence, he was not prejudiced in conducting the voir dire hearing.
7. Section 290 (1) of the Criminal Procedure Decree states that;

*"Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to.."*

8. According to Section 290 of the Criminal Procedure Decree, any application of pre-trial issue must be filed in the court, that has the control of the proceedings. In this case, the Magistrates' court has the control of the proceedings of the criminal action 273 of 2014. Hence, I do not find that this court has jurisdiction to hear this application pursuant to Section 290(1) of the Criminal Procedure Decree. If the Applicant has any pre-trial issues under the Section 290(1) of the Criminal Procedure Decree, he could appropriately make an application to the Magistrates court.
9. Having considered the reasons discussed above, I refuse this application and dismiss it accordingly.

  
R. D. R. Thushara Rajasinghe  
Judge

At Lautoka  
20th of July 2016



Solicitors : Office of the Director of Public Prosecutions for Respondent