

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

**CRIMINAL MISCELLANEOUS NO. HAM 66/18**  
**[High Court Criminal Case No. HAC 84 of 2018]**

**BETWEEN** : **EMINONI BULUBULUTURAGA**

**APPLICANT**

**AND** : **STATE**

**RESPONDENT**

**Counsel** : **Applicant in Person**  
**Mr Z Zunaid for the State**

**Date of Hearing** : **15 June 2018**

**Date of Ruling** : **9 July 2018**

**RULING**

[1] This is an application for bail pending trial.

[2] Section 3(1) of the Bail Act states that an accused is entitled to bail unless it is not in the interests of justice to grant bail. Under the Bail Act, there is also a presumption in favour of the granting of bail but that presumption is displaced if the accused has previously breached a bail undertaking or a bail condition. The primary consideration to grant bail is the likelihood of the accused appearing in court to answer the charge (s 17 (2)). Regard must also be made to the time the accused may have to spend in custody before trial if bail is not granted (s 17(1)). Reasons are required for refusing

bail. Bail may be refused for either one of the following reasons outlined in section 19 (1):

- (a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
- (b) the interests of the accused person will not be served through the granting of the bail; or
- (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.

- [3] On 21 February 2018, the Accused was produced in the Magistrates' Court at Nasinu on charges of aggravated burglary, theft and escaping from lawful custody. He was remanded in custody and the case was transferred to the High Court for trial.
- [4] On 26 March 2018, the Accused waived his right to counsel and pleaded not guilty to the three charges contained in the Information by the Director of Public Prosecutions. He submitted a written application for bail on the same date. The case was adjourned to 3 April 2018 for bail hearing.
- [5] On 3 April 2018, the Accused did not appear for his bail hearing. When an enquiry was made with the remand centre, it was revealed that the Accused had not returned to the remand centre after his court appearance on 26 March 2018.
- [6] On 11 April 2018, the Accused was arrested at Nadera on a bench warrant issued by this Court. He was further charged with absconding bail and resisting arrest. He was remanded in custody.
- [7] The Accused has offered an explanation for his disappearance after his court appearance on 26 March 2018. According to the Accused, he was let off from the cell by a police officer. The officer in-charge of the cell denies releasing the Accused.

According to the police officer, the Accused never returned to the cell after his appearance before the High Court on 26 March 2018.

- [7] Counsel for the State strongly opposes the application for bail on the ground that the Accused's conduct of absconding and not appearing in court makes him a flight risk. I accept this submission. When the Accused appeared before this Court on 26 March 2018, he was well aware that he had not been granted bail. Instead of returning to the cell, he absconded. He knew his bail hearing was on 3 April 2018. He failed to appear for his bail hearing. He only returned into custody after he was arrested on a bench warrant at a location away from his residence. He is now facing an additional charge of resisting arrest. He has no stable employment. His community ties are not strong. Apart from this case, he is in custody on remand in six other cases pending before the Magistrates' Court at Nasinu.
- [8] The Court is satisfied that the Accused will not appear for his trial if he is released on bail. The Court is further satisfied that the Accused is likely to re-offend if granted bail.
- [9] The application for bail is refused. The Accused will remain in custody on remand pending trial. A priority trial date will be assigned to the case.



A handwritten signature in blue ink, appearing to read "D. Goundar".

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Applicant in Person  
Office of the Director of Public Prosecutions for the State