

IN THE HIGH COURT OF FIJI AT SUVA

KAMLESH ARYA

Applicant

CASE NO: HAM. 001 of 2019
[HAC 63/2017]

Vs.

FIJI INDEPENDENT COMMISSION
AGAINST CORRUPTION

Respondent

Counsel : Mr. V.Maharaj for Applicant
Mr. S. Savumiramira and Ms. Bokini L. for Respondent

Hearing on : 25 January 2019

Ruling on : 28 January 2019

RULING

1. The applicant is charged with one count of abuse of office (section 139 of the Crimes Act) and one count of general dishonesty (section 324(2) of the Crimes Act) in case number HAC 63 of 2017. The case HAC 63 of 2017 is fixed for trial from 04/02/19 to 01/03/19. The said trial dates were fixed on 31/10/17.
2. By way of this application, the applicant moves this court to vacate the trial fixed during the aforementioned period for the reason that his trial counsel is having a

medical condition which does not allow the counsel to appear for him during that period.

3. The appellant in his affidavit filed in support of the application states that *inter alia*;
 - a) He retained Mr. Ian Scott Lloyd QC of Scott Chambers, Sydney, Australia following his first appearance in the High Court on 17/02/17;
 - b) Mr. Lloyd QC had thereafter travelled to Fiji to have a consultation with him; and
 - c) Mr. Lloyd QC is experiencing an unexpected medical complication after a knee replacement surgery done on 12/12/18 which requires further treatment for 3 months and had received medical advice not to travel during the said 3 months.
4. The applicant has annexed a copy of an affidavit purported to be deposed to by Mr. Ian Scott Lloyd QC which confirms the above.
5. The respondent objects to the application stating that *inter alia*;
 - a) The applicant had not informed the court previously that he had retained Mr. Lloyd QC as his trial counsel;
 - b) There is no absolute right for an accused to have a counsel of choice; and
 - c) The applicant has not provided any evidence to support the facts relevant to the application.
6. Counsel for the respondent informed the court that he is relying on his oral submissions and he did not want to file written objections. He did not raise any objection in relation to the aforementioned affidavit of Mr. Lloyd QC. In the circumstances I have decided to accept the said document as a valid affidavit.
7. Counsel for the applicant in this case argued that Mr. Lloyd QC is the applicant's counsel of choice and therefore the adjournment sought by way of this application should be granted as the applicant has a right to have him represented by Mr. Lloyd QC in his trial.

8. Section 14(2)(d) of the 2013 Constitution does grant the right to an accused to defend himself at his own cost by a legal practitioner of his own choice. However, there is no right for an accused to have his or her trial adjourned on the basis that the trial dates are not suitable to his or her counsel of choice.
9. The right to counsel of choice is for a choice to be made from amongst counsel who are available to do the case on the trial dates fixed by the court. [**Fiji Independent Commission Against Corruption v Rabuka** [2018] FJHC 1071; HAA57.2018 (12 November 2018)]
10. Therefore, the submission made on behalf of the applicant's counsel who appeared in this case that Mr. Lloyd QC is the applicant's counsel of choice does not provide much assistance to the applicant as far as this application is concerned.
11. Counsel for the respondent tried his best to persuade this court that this application is simply a delaying tactic.
12. This is the first application for adjournment made by the applicant. I have carefully perused the two affidavits filed in support of this application. There is some merit in the objection raised by the respondent based on the fact that this adjournment is sought on the basis of medical reasons of a counsel who had never appeared for the applicant. It had not been disclosed in court that Mr. Lloyd QC was retained by the applicant to be his trial counsel until this application was filed.
13. On the other hand, I have no reason to doubt the truthfulness of the facts stated in the affidavit of Mr. Lloyd QC which is before this court. Given the material before me, I find myself unable to accept the respondent's contention that the purpose of this application is simply to delay the trial.
14. On the whole, I am of the view that this application should be allowed in the interest of justice.

15. In the circumstances, I hereby vacate the trial in the case HAC 63 of 2017 fixed from 04/02/19 to 01/03/19.



A handwritten signature in blue ink, which appears to read "Vincent S. Perera".

Vincent S. Perera
JUDGE

Solicitors:

MC Lawyers, Suva for the Applicant

Fiji Independent Commission Against Corruption for the Respondent