

IN THE MAGISTRATES' COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. 347 of 2023

STATE

v.

1. JOSAIA VOREQE BAINIMARAMA
2. SITIVENI TUKAITURAGA QILIHO

For the State: Ms. J. Prasad for the Director of Public Prosecutions
For the Accused: Mr. D. Sharma & Ms. G. Fatima of R. Patel Lawyers

BAIL RULING

1. **Josaia Voreqe Bainimarama** (the first Defendant) and **Sitiveni Tukaituraga Qiliho** (the second Defendant) are charged as follows:

Count 1

Statement of Offence

Abuse of Office: contrary to section 139 of the **Crimes Act 2009**

Particulars of Offence

Josaia Voreqe Bainimarama sometime in the month of July, 2020, at Suva in the Central Division, being employed in the public service as the Prime Minister of the Republic of

1. **Josaia Voreqe Bainimarama** (the first Defendant) and **Sitiveni Tukaituraga Qiliho** (the second Defendant) are charged as follows:

Fiji, directed the Commissioner of Police to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, in the abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of the University of the South Pacific, which is the complainant in CID/HQ PEP 12/07/2019.

Count 2

Statement of Offence

Abuse of Office: contrary to section 139 of the **Crimes Act 2009**

Particulars of Offence

Sitiveni Tukaituruga Qiliho on the 15th day of July, 2020, at Suva in the Central Division, being employed in the public service as the Commissioner of Police of the Republic of Fiji, directed the Director of the Criminal Investigations Department Serupepeli Neiko and Inspector Reshmi Dass to stop investigations into the police complaint involving CID/HQ PEP 12/07/2019, in the abuse of the authority of his office, which was an arbitrary act prejudicial to the rights of the University of the South Pacific, which is the complainant in CID/HQ PEP 12/07/2019.

2. The State made clear from the outset that they do not consider either Defendant to be a flight risk. This is perhaps informed by the Defendants' individual willingness, expressed through counsel, to surrender their travel documents to the Court and be subject to orders banning travel subject to the Court's leave.
3. However, the State asks the Court to subject the Defendants' to a court imposed curfew to have effect from 8.00pm to 5.00am every day. They premise their application on the fact that these Defendants' are people of influence who have the reach and the power to interfere with Police witnesses and the State's case in the lead up to trial.
4. In support of this specific application, they called Detective Sergeant 3413 Sunia Maniana to the stand. He is the Investigating Officer. In evidence, he said that around thirty witness statements have been taken, the Defendants' were interviewed and charged, and all that is left is to adduce the evidence gathered at trial. He said that there are other investigations against these Defendants currently afoot, and he testified that he believed that there had

been interferences with witnesses and the investigation process because the investigations were hard work.

5. He admitted, however, that most investigations involve a lot of hard work. He testified that witnesses rarely turned up at the times given, often rescheduled, sometimes refused to take their calls during the statement taking process. He admitted, however, that this was generally to be expected in most cases investigated by them. I note that most if not all of the witnesses were either Police Officers themselves or professionals in their own right. Clearly, scheduling conflicts can and should be expected. Even if they were not Police Officers or professionals, ordinary citizens have other concerns and responsibilities that may conflict with an investigator's preferred time frame. None of these factors are sinister or worthy of concern in and of themselves.

6. Detective Sergeant 3413 Maniana could not point to a single incident of interference in respect of these or indeed any other investigations against these Defendants. He was clear that neither of these Defendants had reached out to him or any member of his team to ask them to do or not do something in respect of the investigations against them. He testified that he was unaware of any specific incident or alleged incident of interference by either of these Defendants.

7. There was no evidence to substantiate an allegation that these Defendants' have or are likely to interfere with the State's case against them.

8. I invite the State to carefully think through applications like this before they make them. I respectfully point out that even if there were a likelihood of interference established, in today's world curfews would do very little to stop dedicated individuals from attempting to reach out to witnesses in an attempt to pervert the course of justice. That would require completely cutting them off from any means of communication and the best way to do that is an order of remand.

9. In any event, since interference is not established on the evidence before me, it is a moot point.

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10. In all the circumstances, I grant bail to each of the Defendants on the following terms and conditions:

- (a) bail in their own recognizance in the sum of \$10, 000.00;
- (b) two sureties for each Defendant to enter into an agreement, without security to forfeit a specified amount of money if the Defendant they enter into a surety arrangement for fails to comply with his bail undertaking;
- (c) each Defendant must attend court for every mention and for trial in respect of these criminal proceedings;
- (d) the Defendants must not, individually or through a third party, interfere or attempt to interfere with the State's case against them;
- (e) the Defendants must not commit a crime while on bail;
- (f) the Defendants must surrender their travel documents to the Court Registry and are prohibited from leaving the jurisdiction of the Republic of Fiji without leave of the Court; and
- (g) the Defendants must provide a fixed address and they are not to change address without the Court's permission.

11. The State having conceded that the Defendants are not, in its view, a flight risk, I am satisfied that these measures are sufficient to ensure their attendance each time their case is called.

12. Bail is granted to each of these Defendants in these terms.


Seini Puamau

RESIDENT MAGISTRATE



Dated at Suva this 10th day of March 2023.