

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 141 OF 2016S

KELEPI LEDUA

vs

THE STATE

Counsels : Accused in Person
Ms. L. Bogitini for State

Hearing : 8 September, 2016

Ruling : 21 October, 2016

Written Reasons: 23 December, 2016

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 302 of 2016S, the accused faced an “aggravated burglary”, “theft”, “damaging property” and “resisting arrest” charges. In the “theft” charge, \$30,000 Fiji dollars cash, and \$30,000 Australian dollars cash were allegedly stolen. He had been remanded in custody since 10 August 2016, when he first appeared in the Suva Magistrate Court. The above order was continued in the High Court. So, he had been in custody for approximately 4 ½ months.
2. On 29 August 2016, he applied for bail by filing a notice of motion and affidavit in support. The prosecution replied with an affidavit in reply on 8 September 2016. I heard the parties on 8 September 2016. I heard the parties’ verbal submissions. On 21 October 2016, I denied the accused’s bail application. I said I would give my written reasons later. Below are my reasons.
3. It is well settled that an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail was whether or not the accused will

turn up in court on the date arranged to take his trial. In considering the issue, the court was duty bound to consider the factors laid out in section 19 of the Bail Act 2002.

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

4. The accused is 59 years old, separated from his wife, with two daughters. He is a farmer by profession. He lives in Naitasiri. According to the prosecution, they had strong evidence against him. He allegedly confessed to the crime when cautioned and interviewed by police. If found guilty after trial, he faces a possible sentence of 12 years imprisonment and up. Under this head, his chances of bail are slim.

Factor No. 2: Interest of the Accused:

5. A trial date has not been set. We are still in the process of organizing a trial date. He had been in custody since 10 August 2016 when he first appeared in the Suva Magistrate Court. So, he had been in custody for approximately 4 ½ months. The court is empowered to hold the accused in custody for 2 years before trial. In any event, time spent in remand will be deducted from his final sentence, if found guilty. He is in the process of finding private counsel. Once he does that, his counsel can visit him in custody, to prepare his defence, as and when he pleases. There does not appear to be any reason why he should be at liberty, for other lawful reasons. He is not incapacitated. Under this head, his chances of bail are slim.

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

6. The allegation against the accused was serious. The complainant's shop was burgled at night, and \$75,744 worth of cash was allegedly stolen. In addition, the complainant's sale, worth \$20,000 was allegedly broken. This was a burglary in the city of Suva. Although the accused was presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it was in the public interest and the protection of the community, that he be remanded in custody until further orders of the court. Under this head, his chances of bail are slim.

Conclusion:

7. It was for the above reasons that I denied the accused's bail application on 21 October 2016.



Salesi Temo
JUDGE

Solicitor for Applicant : In Person
Solicitor for State : Office of the Director of Public Prosecution, Suva.