

DAVID AILI -v- REGINA

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Criminal Case No. 103 of 2004

Date of Hearing: 25th May 2004

Date of Ruling: 26th May 2004

C. Ryan for the Crown.

K. Averre for the Accused.

RULING

Kabui, J.: This is an application by David Aili, the applicant, seeking bail to be granted to him. He is currently in custody in the Rove Prison awaiting his trial in the High Court. He was arrested and charged with two offences under the Penal Code Act (Cap. 26) "the Code" being robbery, contrary to section 293(1)(a) of the Code and kidnapping/abduction, contrary to section 250 of the Code. He and one Thompson Kilatu have now been jointly charged for committing the two said offences.

These two offences are said to have been committed at a Company premises in the Ranadi area in Honiara on about 14th July 2000. The Prosecution alleges that the applicant, one Thompson Kilatu with others had gone to the premises of Red Beach Enterprises Limited and there threatened one Patrick Hampton and one Frank Loea with guns and carried away a number of items from that premises being the property of the Red Beach Enterprises Limited. The applicant and one Thompson Kilatu also took one Patrick Hampton away without his consent and confined him in a vehicle and later in his office. I have read the statements made by the persons who had given statements to the Police about the incident. The story in these statements is a harrowing one. But before I say more, I now turn to the applicant's case. The applicant has been remanded in custody since 17th September 2003 and so he has been in custody for a little over 8 months. He was committed to stand his trial in the High Court since 29th January 2004, (though one source places the date as being 19th January 2004) but no date has yet been set for his trial. Investigation by the Police had been completed without anyone attempting to interfere with witnesses since he was remanded in custody. So what is it that makes his application rather different from when he was before the Magistrate Court? I do take into account that investigation by the Police had been completed and any perceived interference with investigation no longer arises. I also take into account that he has a family and children and other relatives living in Honiara. I accept that he does not know how long he will be in custody before his trial comes up in the High Court. There is of course nothing to show that the incident had resulted in any injuries to one Patrick Hampton and one

Frank Loea or any others at the premises. The Prosecution opposes the application on the ground that the offences are serious in nature in that the maximum penalty for robbery as charged is imprisonment for life whilst kidnapping /abduction carries the maximum penalty of imprisonment for 7 years. Taking the evidence at its highest, conviction is assured and a custodial sentence inevitable. The victim of the incident was an expatriate man who had been put in great fear of his life. I have not seen his statement but from the evidence of others, he had been mistreated very badly indeed by the applicant and his co-accused. For a Police officer to behave like the applicant did is uncalled for and is totally unacceptable to the community. Section 5 of the Police Act (Cap. 110) states-

**“... The Force shall be employed in and throughout Solomon Islands for the maintenance and enforcement of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime and the apprehension of offenders, and shall be entitled for the performance of all such duties to carry arms:
Provided that no firearms shall be carried except with the authority of the Commissioner given under and in accordance with the general or special directions of the Prime Minister acting in his discretion...”**

This section however gives no authority for any police officer carrying any firearm in the performance of his duty to do what the applicant did at the Red Beach Enterprises Limited premises as alleged against him. Whether the provisions of the Amnesty Act and the Townsville Peace Accord do apply to the applicant is a matter best left for the trial. One matter is the fear by the Prosecution that the applicant may interfere with witnesses if he is let out of custody. The applicant says he will not do that because the witnesses have already spoken against him to the Police in their Police statements after his arrest and detention. The other matter is the risk of him absconding and not showing up at his trial. These matters are concerns to the Police. I cannot say they are trivial matters. I find myself in a position where I have to take the words of the Prosecution as against those of the Defence. I find that it is rather easy for me to justify the Prosecution's fear of the likelihood of the applicant interfering with witnesses or absconding because of the natural tendency for an accused person to try and escape conviction and custodial sentence by doing something to achieve that end. This is unfortunately not the same with the applicant's case. The upshot of the applicant's case is that I should just trust him for all he said in his affidavit, supported by the submissions by his Counsel, Mr. Avere. Whilst his wife lives in Mbua Valley and is an employee of SICHE, she has not said anything to the effect that the applicant will live with her and the children. As against that, he simply says he can live with his wife. I would have expected the wife to say something in support of her husband but I suppose she has not been asked to support her husband in affidavit evidence. Whilst he says he has community ties, he does not say anything specific than that general statement that he has community ties. What are these community ties? There is evidence that he separated from his wife. The suggested

surety, Mr. Magi, in his affidavit, does not really demonstrate any sense of positive and confident commitment to ensuring the return of the applicant to attend his trial if bail is granted. There is no evidence of that family commitment between himself and his niece who is the wife of the applicant to look after the applicant and to return him to the Court to attend his trial. Is this the second wife or the first one being reinstated? I am not also sure whether the applicant is a man who can and is able listen to his wife or uncle. There is no evidence of that before me. There is that atmosphere of unstable background surrounding him which he has not dispelled to my satisfaction. I cannot simply exercise my discretion in favour of the applicant on gut feeling. I look for evidence to satisfy me that I can safely grant bail to any person who asks for it. I find that the community interest in this case far outweighs the liberty of the applicant. I therefore refuse bail. This application is dismissed.

I am of course concerned about the delay in fixing a date for the trial of the applicant and his co-accused. There are I suppose many other cases that have passed the committal stage and are waiting to be listed for trial. The practice as I understand it is that upon the information being filed, a request by the DPP or the officer assigned to handle that file writes to the Registrar requesting him to set a date or even a specific date for hearing and the Registrar will do so. Defence counsel will also be informed. The understanding based on practice is that the prosecuting counsel will be ready to proceed on the date fixed for the hearing by the Registrar. There are also criminal trials which had been partly heard and adjourned for dates to be fixed prior to the arrival of RAMSI. These too need to be attended to by the DPP quickly. The DPP need to move on these matters as well otherwise the criminal justice system will be criticized by the public at large. Inaction or no action in this regard may well send out the wrong signals to the community.

F.O. Kabui
Puisne Judge