

PAUL AU, FRANCIS SIRA AND BILLY BAO-v-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Criminal Case No. 22 of 2007

Hearing: 21 February 2007

Ruling: 27 February 2007

*R B Talasasa, DPP, for the Respondent
D Evans or the Applicants*

RULING

Mwanosalua, J: This is an application for bail. The Applicants are **Paul Au, Francis Sira and Billy Bao**. **Paul Au** is charged with one count of murder, one count of accessory after the fact to murder and one count of hindering the burial of a dead body. **Francis Sira and Billy Bao** are each charged with one count of murder. The Magistrates' Court had committed them to stand trial before the High Court. The information on their case is yet to be filed. For the meantime, they are all being remanded at the Rove Prison to wait for their trial.

They apply to this court to be released on bail. Their application is based on the grounds that the evidence against them is weak and that there is delay in their trial. The Crown opposes the application on the basis that the evidence against the Applicants in the committal proceedings, plus the evidence in the postmortem report on the Deceased, and now in court, is strong and not weak. The Crown undertakes that the information will be filed in court soon.

The Applicants were former members of the Malaita Eagle Force. On 8 August 2000, they were part of a MEF – Paramilitary Joint Operation (MEF) carried out at the Kakabona area on Guadalcanal, west of Honiara. The MEF were comprised of up to approximately thirty men. The majority of them were armed with high powered rifles. Most of these firearms were removed from the Government ~~Armory~~ at Rove, in Honiara, on 5 June 2000.

The Crown says that there is prima facie evidence against each of the Applicants for the offence of murder. The Crown urges the court to read the materials produced at the committal proceedings and the autopsy on James Kuki (Kuki) to find that evidence.

The materials produced by the Crown show the following evidence being relevant to the charge of murder against the Applicants. The Applicants were part of a MEF – Paramilitary Joint Operation to clear cables and explosive devices planted by the Guadalcanal Revolutionary Army (GRA) in the area between the MEF bunker at Kakabona and the Poha Bridge. The MEF met six men at the eastern end of the Tanavasa Bridge, on the invitation of a MEF Leader. These six men were not armed. One of these men was Kuki. He wore a pair of trousers with no shirt. He and the Leader of the MEF sat on a coconut tree lying across the road. The place where they sat was near the eastern side of the bridge. There was some talk between the leader of the MEF and the six men. The meeting was in full view of some members of the MEF who were armed with high powered rifles. Four of the six men returned to the western side of the bridge, leaving only Kuki and another man with the MEF Leader.

For the meantime, some members of the MEF were clearing cables in the bush close to the eastern side of the bridge. One of them was shot and killed by an unidentified member of the GRA. There was exchange of gun fire between the MEF and the GRA. At that time, the other GRA man who sat with Kuki and the Leader of the MEF escaped to the western side of the bridge under heavy MEF gun fire.

Kuki remained, and took cover behind the coconut tree he was sitting on when the MEF and the GRA exchanged gun shots at each other. He became the focus of attention to some members of the MEF after the member of the MEF was shot.

The Leader of the MEF called out to his men to restrain Kuki from returning to the western side of the bridge. He was approached and escorted under gun point to a MEF hilux by three MEF men. Two of these men were Paul Au and Francis Sira. Billy Bao and other men placed Kuki at the back of the hilux. Billy Bao boarded the hilux and sat on Kuki. Kuki struggled to get out of the hilux, but was repeatedly punched and trampled on by Billy Bao. The driver of the hilux wanted Kuki removed from the hilux so as to make room for the MEF member who was shot. Billy Bao stripped Kuki of all his clothes so that he became completely naked before he was pulled down from the hilux. Billy Bao was one of the men who pulled Kuki out from the hilux onto the road.

Billy Bao continued to hold Kuki when Kuki stood on the road. Francis Sira held a knife and walked forward to stab Kuki at his backside. Kuki struggled with the men who were trying to restrain him to be stabbed. One of these men was Paul Au. The victim was finally held down to the ground. He was crying for his life as the men were stabbing him. He was bleeding from his body which trickled to his chest. Kuki struggled and managed to stand up on his feet. He attempted to escape, but was shot with an M16 rifle by the Leader

of the MEF who sat with him earlier on. He fell to the ground on the road. His attackers moved his body to the side of the road. Parts of Kuki's body were then cut off by his attackers. Billy Bao cut off Kuki's right ear with a knife. Paul Au kicked the right side of Kuki's head before the MEF left the scene.

Kuki was buried on 9 August 2000. However, his body was exhumed on 2 February 2006 for a postmortem examination by Dr. Malcolm John Todd, a Pathologist. His autopsy was compiled on 3 February 2006. In brief, that autopsy reveals that: the skull discloses extensive fracture with bone loss; the mandible discloses an anterior midline fracture with a triangular area of bone loss; the right and left scapulae show extensive fracture with bone loss; the sacrum discloses extensive fracture with subtotal bone loss; a spiral fracture was present through the proximal one-third of the left ulna; one-third of the right femur (including the articular surface) discloses an extensive shatter and splintering type fracture indicative of gun shot trauma, and the distal one-third of the right tibia and fibula shows extensive comminuted fracturing with bone loss. Dr. Dodd concluded that the death of Kuki was caused by **MASSIVE TRAUMA TO THE HEAD (BLUNT FORCE TRAUMA - GUN SHOT INJURY CANNOT BE EXLUDED) IN TANDEM WITH GUN SHOT TRAUMA TO THE PELVIS AND RIGHT LOWER THIGH.**

Other remarks by Dr. Dodd reveal that the cause of death would appear to be a combination of massive head trauma, in all likelihood, the result of repeated blunt force trauma, however high velocity gun shot injury cannot be exclude; the middle one-third of the face shows extensive trauma with subtotal bone loss. This pattern of injury is in keeping with repeated blunt force trauma to this area but may also be explained on the basis of a high velocity gunshot injury; the midline mandibular fracture is entirely in keeping with blunt force trauma (like kicking, forceful punch or blow with a gun butt); the extensive shatter pattern involving the distal one-third of the right femur and the sacrum, is indicative of high velocity gunshot injury; and stabbing injury to the abdominal area cannot be excluded as frequently, repeated stabbing to this area, does not translate as identifiable bony trauma.

Dr. Dodd's remarks show that Kuki's cause of death would appear to be a combination of massive head trauma, which pointed to repeated blunt force trauma. There is also the fracture of the mandibular which is in keeping with blunt force trauma, like kicking, forceful punch or blow with a gun butt. Then the fracture relating to both shoulder blades, the left fore arm and the left lower leg appear to be of blunt force type. There is evidence that Paul Au, Francis Sira and Billy, individually and together with other men, assaulted and attached Kuki on 8 August 2002 at the Tanavasa Bridge.

The eye witness evidence on the capture, detention, the concerted attack and the execution of Kuki before his death, all came from other MEF

members who went with the Applicants during the MEF-Paramilitary Joint Operation on 8 August 2000.

The Prosecution does not dispute that there was delay in the filing of the information. The Applicants were committed for trial to the High Court on 3 May 2006. There is a delay of more than ten months in filing the information to date. The information needs to be filled soon, so that this case can be listed for directions hearing. This court can only process this case for trial after the information is filed.

This court has considered the applicants' affidavit evidence; the evidence of other deponents supporting their application; and the submissions made by their Advocate on their behalf. All these have been considered with the submissions for the Crown, and the principles which this court is required to apply, in deciding whether or not bail should be granted, in the circumstance of this case.

The Applicants have been charged with murder. It is a very serious offence, carrying a mandatory sentence of life imprisonment. The prima facie evidence to support the murder charge against each Applicant is fairly strong. The court is not sure that Applicants will not abscond in view of the mandatory sentence for the offence. The eye witnesses to the murder charge against the Applicants will come from members of the MEF who went the Applicants on the MEF-Paramilitary Joint Operation on 8 August 2000. The Applicants know these witnesses. The court holds the view that the Applicants will most likely interfere with these Witnesses, if they were granted bail. The evidence of the surrendered weapons by the Applicants will be considered by the Judge during the trial. That evidence may be of some use to the Applicants.

The court holds the view that it should not exercise its discretion to grant bail to the Applicants in the circumstances of this case. Bail is refused for all Applicants. I order accordingly.

Francis Mwanosalua
Puisne Judge