

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No: HAC 144(A) of 2007

STATE

v.

LIVAI NAQERA

Hearing: 28th January 2009

Ruling: 2nd February 2009

Counsel: Ms L. Lagilevu for State
Accused in person

RULING

[1] This is a case of alleged robbery with violence and unlawful use of a motor vehicle. The Accused is unrepresented. The trial is due to start on Monday the 2nd of February 2009. There will be a trial within a trial and the Accused makes allegations of assault against Corporal Eremasi of the Valelevu Police Station, the investigating officer. State counsel has very properly brought to my attention that in 2008 I tried Corporal Eremasi on a charge of the murder of Tevita Malasebe. Although other police officers were found guilty by the assessors and were convicted by me, Corporal Eremasi was found not guilty by the assessors and acquitted. The evidence led by the prosecution in that case was circumstantial and Corporal Eremasi did not give sworn evidence. There was no determination of his credibility during the trial.

[2] The question at this trial is whether I should disqualify myself from hearing evidence which will require a finding on Corporal Eremasi's credibility. The test for bias in Fiji is whether an informed observer of the proceedings knowing the relevant facts, would have either a reasonable apprehension of bias, or would believe that there was a real danger of bias.

[3] In this case I have never assessed Corporal Eremasi's credibility. Nevertheless, the question of the evidence against Corporal Eremasi had to be considered by me at the close of the prosecution case and I held that there was a case to answer. That question required a determination of whether Corporal Eremasi was at the Valelevu Police Station on the night the deceased was taken into custody although his position was that he was not. I ruled that there was sufficient evidence for the matter to go to the assessors. The acquittal at the end of trial could lead the reasonably informed observer to believe that I had accepted his version of the facts. In these circumstances I consider that there is a reasonable apprehension of bias arising from my having acquitted Corporal Eremasi on allegations very similar to those being raised by this accused person.

[4] State counsel agrees in written submission. She says that the similarity of the allegations of assault in both cases, give rise to such an apprehension.

[5] In these circumstances I disqualify myself and transfer the case to Justice Maitoga to either hear the case himself or transfer it to Justice Goundar if he cannot.

Nazhat Shameem
JUDGE

At Suva
2nd February 2009