

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**MISCELLANEOUS JURISDICTION**

**Criminal Misc. Case No: HAM 106 of 2009**

**BETWEEN:**

**JOSUA TUINASAKEA**

***Applicant***

**AND:**

**THE STATE**

***Respondent***

Date of Hearing: 5<sup>th</sup> November 2009

Date of Ruling: 5<sup>th</sup> November 2009

Counsel: Applicant in person  
Ms T. Leweni for State

**RULING**

[1] The applicant is charged with an offence of house breaking and larceny. On 31 August 2009, he appeared in the Magistrates' Court and pleaded not guilty to the charge. He was refused bail and was remanded in custody. He has been in remand since then. His trial is pending in the Magistrates' Court.

[2] The applicant informs this Court that he was refused bail because the alleged stolen items have not been recovered. He did not appeal the decision of the Magistrates' Court because he was unaware of the appeal procedure. Instead, he applies for a review of bail in the High Court.

[3] Under the Bail Act of 2002, there are two ways to challenge a bail decision. One is by way of an appeal and the second is by way of a review. These two mechanisms are akin to the appeal and the review procedures contained in the Criminal Procedure Code against decisions from the Magistrates' Court to the High Court.

[4] An appeal against a bail decision can be made under section 31 of the Bail Act :

“(1) All grants or refusals of bail and all orders, conditions or limitations made or imposed under this Act are appealable to the High Court upon the application either of the person granted or refused bail or of the Director of Public Prosecutions.

(2) The High Court may –

- (a) in its original jurisdiction grant or refuse bail upon such terms as it considers just;
- (b) on an appeal under subsection (1), confirm, reverse or vary the decision appealed from.”

[5] A review of a bail decision in the High Court when the trial is pending in the Magistrates' Court is governed by section 30 of the Bail Act.

[6] Section 30(3) provides:

"The High Court may review any decision made by a magistrate or by a police officer in relation to bail."

- [7] The power to review a bail decision can be exercised at the request of an accused person (s.30(8) of the Bail Act). The review must be by way of a rehearing, and evidence on information given or obtained or the making of the decision may be given or obtained on review (s.30(10) of the Bail Act).
- [8] If the review is successful, the court has power to confirm, reverse or vary the decision (s.30(9) of the Bail Act).
- [9] The distinction between the two procedures was outlined by Scott J in **Abhay Kumar Singh v. The State** *Miscellaneous Application 1/2004 (23 June 2004)*. His Lordship, sitting as a single judge of the Court of Appeal, said:

"In the absence of any other guidance I have come to the conclusion that review is only available where, for one reason or another, the appeal procedure cannot be resorted to. This conclusion is consistent not only with Section 325(5) (which being a provision in a separate statute is of only limited assistance) but also with Section 120(6) of the Constitution 1997 which keeps a revisional jurisdiction for the High Court, as it were, in reserve."

- [10] In the present case, the applicant has not offered any reasonable explanation for not invoking the appeal procedure to challenge the decision of the Magistrates' Court. He could have appealed the decision. Instead, he has applied for a review. In a review, the jurisdiction of this court is restricted to matters such as legality of an order made by the Magistrates. That is not the case here.

[11] Review of bail is refused. The applicant may make fresh application for bail in the Magistrates' Court.

Daniel Goundar  
**JUDGE**

At Suva  
5<sup>th</sup> November 2009