

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0044 OF 2002S
(High Court Criminal Action No. HAC0010 of 1996L)

BETWEEN:

VIDALI YABA

Applicant

AND:

THE STATE

Respondent

APPLICATION FOR LEAVE TO APPEAL OUT OF TIME AGAINST CONVICTION

[1] On 16 September 1997 the applicant was convicted by the High Court at Lautoka for murder and robbery with violence. He was sentenced to mandatory life imprisonment for murder and seven years for robbery with violence, to be served concurrently.

[2] On 24 September 2002 he applied to this court for leave to appeal against sentence. That application was dismissed by Reddy P as frivolous and vexatious, inevitably since life imprisonment is an mandatory sentence.

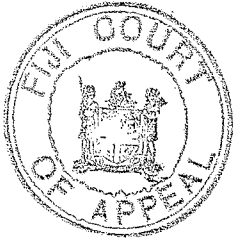
[3] He has now, by application filed in this Court on 12 September 2003, applied for leave to appeal out of time against his conviction. He has explained in his application that due to his lack of knowledge, he did not know that he had no right to appeal against the sentence.

[4] It is apparent from the grounds stated in his application that on appeal he wishes to submit that he should have been convicted of manslaughter not murder.

[5] The application is now over six years out of time. However, despite the length of the delay and having regard to the seriousness of the conviction for murder, I consider he should be entitled to have his appeal against conviction considered.

[6] Accordingly, pursuant to s 35 (1) of the Court of Appeal Act, I extend the time for the applicant to appeal against conviction to 12 September 2003. His application for leave to appeal out of time is to be taken as his application for leave to appeal.

Dated at Suva this 24th November 2003.



A handwritten signature in cursive script, appearing to read "Tompkins".

Tompkins JA