

IN THE COURT OF APPEAL FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0015 of 2005S
 (High Court Criminal Action No. HAA 22 of 2005L)

BETWEEN:

OSEA BALESAVU

Appellant

AND:

THE STATE

Respondent

Coram:

Smellie JA, Presiding Judge
 Penlington, JA
 Scott, JA

Hearing:

Tuesday, 15 November 2005, Suva

Counsel:

Appellant in Person
 Mr Kuruisaqila for the Respondent

Date of Oral Judgment: Thursday, 24 November 2005, Suva

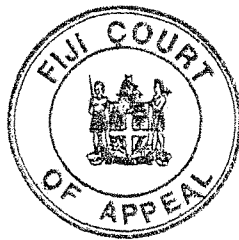
ORAL JUDGMENT OF THE COURT - DELIVERED BY THE PRESIDING JUDGE

- [1] This matter first came before us Tuesday 15 November 2005. What transpired then is recorded in the minute issued on 18 November 2005 which is attached to this judgment as a Schedule.
- [2] We have reconvened today to hear submissions on the issues raised in paragraphs 14 and 15 of the above mentioned minute.

- [3] After discussion with Counsel for State the State now concedes that the Judge in the High Court fell into error in that the penalty imposed in the Magistrates Court and effectively increased in the High Court offended the principle of consistency which must be observed to avoid disproportionately severe penalties being imposed resulting in injustice.
- [4] We then moved to consider with State Counsel what the appropriate penalty would have been taking into account the categories set out in the decision of Winter J. which are recorded on page 4 of the minute. Again after discussion with State Counsel it was accepted by the State that an appropriate penalty at the time of sentencing in the Magistrates Court would have been 2½ years imprisonment to be serviced consecutively with the other terms being served by the appellant at that time.
- [5] Counsel for the State assisted us by demonstrating that had a penalty of 2½ years been imposed, as indicated above, then as at today the appellant would be entitled to his freedom. The appellant agreed with State Counsel's calculation.
- [6] It follows that the appeal is allowed the sentence imposed in Magistrates Court is quashed and a sentence of 2½ years imprisonment to be served consecutively is substituted.
- [7] The appellant and the attendant prison officer are requested to remain in Court until this judgment is typed up and a copy is delivered to each of them. The appellant is then to be taken back to the prison to be signed off. The prison officer is to take a copy of this judgment to the Superintendent of the Prison immediately upon the return and to make it clear to the Superintendent and that Court requires the appellant to be released forthwith and no later than mid afternoon today.

Robert Smellie

Smellie, JA
PRESIDING JUDGE



Pennington

Penlington, JA

Scott

Scott, JA

Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva for the Respondent

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