

**IN THE COURT OF APPEAL, FIJI ISLANDS**  
**AT SUVA**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. AAU0045 OF 2007**

**BETWEEN** : SAULA LALAGAVESI *Appellant*  
**AND** : THE STATE *Respondent*

**BEFORE THE HONOURABLE JUDGE OF APPEAL MR JUSTICE**  
**JOHN E. BYRNE**

**Counsel** : Appellant – In Person  
: Ms A. Prasad for the Respondent

**Date of Hearing:** 27<sup>th</sup> September 2007  
**Date of Ruling:** 4<sup>th</sup> October 2007

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***R U L I N G***

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[1] In my Ruling of 23<sup>rd</sup> August 2007 I gave the Appellant leave to appeal to the Full Court of this Court on one ground only namely, whether in the Magistrate's Court and in the High Court, each court should have directed its attention specifically to the case of **R v. Turnbull & Anr.** [1977] 1Q.B. 224. In both cases the Court did not refer to Turnbull and the question which the Full Court will now have to answer is whether that failure was sufficient to

have the Appellant's conviction in the Magistrate's Court quashed.

- [2] On the 27<sup>th</sup> of September 2007 the Appellant applied for bail so that he could arrange to have a lawyer represent him in the Full Court. Further grounds were, that his appeal will succeed and that it would be unfair that if, by the time his appeal is heard and allowed by the Full Court, he will have served about one half of the two years sentence of the Magistrate's Court.
- [3] The law governing this application is found both in the Common Law of Fiji and the Bail Act No. 26 of 2002.
- [4] Section 3(4)(b) of the Bail Act states that the presumption in favour of the granting of bail is displaced where the person seeking bail has been convicted and has appealed against the conviction.
- [5] Section 17(3)(a) of the Act states that when a Court is considering the granting of bail to a person who has appealed against conviction or sentence the Court must take into account -

***(a) the likelihood of success in the appeal;***

*(b) the likely time before the appeal hearing;*

*(c) the proportion of the original sentence which will have been served by the Applicant when the appeal is heard.*

[6] There are also decisions of this Court including that of Ward P. in Criminal Appeal No. AAUOO41/O4S - **Ratu Jope Seniloli and Others v. The State**, given on the 23<sup>rd</sup> of August 2004. There the learned President referred to several of the relevant authorities but before doing so said that it was clear that the terms of sub-section 3 of the Bail Act make it mandatory for a court, when considering bail pending appeal, to take into account those three matters but he said he could not accept that it prevented the Court from taking into account any other factors it considered properly relevant. He also said, and I agree, that the general restriction on granting bail pending appeal as established by cases in Fiji and many other common law jurisdictions is that it may only be granted where there are exceptional circumstances. Some of those would be the applicant's personal circumstances such as extreme age and frailty or serious medical condition.

- [7] The President then referred to three cases first, the decision of Gould V P in Apisai Tora v. R. [1978] 24 FLR 28 where he said:

*“It has been a rule of practice for many years that where an accused person has been tried, convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pendency of an appeal. This is still the rule in Fiji. The mere fact an appeal is brought can never of itself be such an exceptional circumstance”.*

- [8] The rule was confirmed by Tikaram P in Koya v. State [1996] AAUOO11/96 and Reddy P in Mutch v. State [2000] AAUOO60/99. The latter case was decided after the Bail Act had come into force and Reddy P specifically accepted that bail would still only be granted in exceptional and rare cases.
- [9] The learned President then said at page 4 of his Ruling that the courts in Fiji have long required a very high likelihood of success in the appeal. It is not sufficient

that the appeal raises arguable points and it is not for a single Judge on an application for bail pending appeal to delve into the actual merits of the appeal.

[10] In my Judgment at best the Appellant has only an arguable point of law and, since I may be a member of the Court hearing that appeal, I do not want to raise his hopes unnecessarily. Judgment will be given on the appeal only after hearing full argument by the Appellant and the Respondent. I find nothing in what the Appellant has told me to justify my granting him bail pending his appeal. His application for bail is therefore refused.



A handwritten signature in cursive script, which appears to read "John E. Byrne". The signature is written in black ink and is positioned above a horizontal dotted line.

[ John E. Byrne ]

**JUDGE OF APPEAL**

At Suva

4<sup>th</sup> October 2007