

IN THE COURT OF APPEAL, FIJI ISLANDS

Criminal Appeal AAU0022 of 07
(High Court Criminal Action HAC20 of
2002)

BETWEEN: ELIKI MOTOTABUA Applicant

AND : THE STATE Respondent

Counsel: **Appellant in person**
 D Goundar for respondent

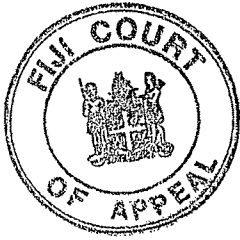
Hearing: **24 April 2007**
Ruling: **24 April 2007**

R U L I N G

- [1] This appeal came before the Court today as an application for bail pending appeal. However, for reasons I now set out, I have had to refuse to hear the application because the Court is not properly seised of the matter.
- [2] It is necessary to look briefly at the history of the case. The appellant was tried in the High Court on one count of abduction, one of wrongful confinement and five of rape; all involved the same victim and were committed between 5 and 8 April 2002. He was convicted on 5 April 2004 on all charges and sentenced, the following day, to a total of ten years imprisonment.

- [3] He appealed against conviction and sentence and the judgment was handed down on 18 March 2005. The Court quashed the conviction for wrongful confinement but dismissed the appeal against the other convictions. The judgment makes no mention of the appeal against sentence and, after the appeal, the appellant sought leave to appeal against the sentence out of time. He also applied for bail pending appeal.
- [4] The application was listed before me on 5 April 2007 and I gave leave. I ordered that the appellant should file clear grounds of appeal against sentence and, once they were received, I would list the case for the application for bail. That was the application listed for today.
- [5] At the hearing on 5 April 2007 Mr Goundar, for the respondent, had been hampered by the fact that the file had been mislaid in his office. However, he mentioned that the appellant had applied for special leave to appeal to the Supreme Court but he was unsure whether the application had included an appeal against sentence. When the case was called on 24 April 2007, Mr Goundar was able to advise the court that the application to the Supreme Court had included an appeal against sentence but that the decision had still not been delivered.
- [6] Clearly, in those circumstances, the application for leave to appeal sentence in this Court is premature. Until it delivers its decision, the Supreme Court remains seised of the matter. I had no power to hear the application or, in consequence, to grant leave as I did on 5 April 2007. Similarly, I have no power to consider bail pending appeal.
- [7] As a result, I must cancel my grant of leave to appeal and to appeal out of time and decline to hear the bail application. I order that this file be closed but, once the decision of the Supreme Court is known, the appellant has liberty to renew his application if the terms of the Supreme Court judgment make it appropriate so to do.

- [8] I order that the appellant be brought to Court on 1 May 2007 at 9.30am so I can explain the situation to him. I also direct the registrar to ascertain the position with the Supreme Court judgment before that date.



Gordon Ward

Gordon Ward
PRESIDENT