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IN THE COURT OF APPEAL, FIJI ISLANDS
APPLICATION FOR LEAVE TO APPEAL
FROM THE HIGH COURT OF FIJI

Criminal Appeal No. AAU0002/2008
[High Court Criminal Appeal No: HAC 20/2006]

BETWEEN:	**TUKAI YAVALA**	***Appellant***
AND:	**THE STATE**	***Respondent***

Coram: Hickie, JA

Date of Hearing: Tuesday, 29 April 2008

Counsel: Appellant in person
A.G. Elliot for the Respondent

Date of Decision: Thursday, 8 May 2008

DECISION

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[1] On 26 November 2007, the Appellant stood trial in the High Court at Suva for one count of "Robbery with Violence", contrary to Section 293 (1)(b) of the Penal Code, Cap 17. On 30 November 2007 he was found guilty by three assessors. He was convicted and sentenced on 6 December 2007 by Justice D. Gounder to three years imprisonment. The maximum penalty for this offence is life imprisonment.

[2] The Appellant appealed (by way of letter dated 11 December 2007) against his conviction arguing eight grounds of appeal.

[3] He also seeks bail pending appeal.

THE HEARING OF THE GROUNDS FOR LEAVE

[4] Mr Yavala appeared before me on 29 April 2008 at 9.30am. After waiting for 10 minutes and there was no appearance by a representative for the Director of Public Prosecutions, Mr Yavala was asked did he wish to proceed to in the absence of the DPP to which he indicated he did.

[5] Even though Mr Yavala indicated to the Court that he had a good command of English, it was found necessary to have the Court Officer who was in attendance to interpret because of language and/or hearing difficulties experienced by the Court and so that Mr Yavala's responses could be clarified and confirmed.

[6] After indicating to Mr Yavala that the Court had read his submissions, Mr Yavala was asked whether he wanted to add anything generally to which he declined.

[7] The hearing then proceeded by way of the Court reading out to Mr Yavala each ground of appeal and asking Mr Yavala whether he wished to say anything in support of that particular ground.

[8] **The First Ground reads:**

*"That the learned trial judge **erred in law and in fact** in failing to direct himself that the prosecution must prove beyond reasonable doubt that the confession was voluntarily given to [sic] me."*

[9] Mr Yavala did not want to add anything further to this ground.

[10] At that stage, the Court was advised by one of the staff of the Court that the Counsel for the DPP who was to be appearing on this matter was still with another judge. The Clerk was informed that we would be continuing.

[11] **The Second Ground reads:**

*"That the learned trial court **erred in law and in fact** in failing to direct himself that the prosecution must prove beyond reasonable doubt that the confession was voluntarily given to [sic] me."*

[12] Mr Yavala did not want to add anything further to this ground.

[13] **The Third Ground reads:**

*"That the learned trial judge **erred in law and in fact** in accepting my medical report after he has ruled on voir dire. It is submitted that this is a fatal defact [sic] and cannot be cured."*

[14] On this Ground, Mr Yavala added:

> *"Sir, at the trial within Trial they didn't accept my Medical Report. They only accept in the Trial proper.*

[15] **The Fourth Ground reads:**

*"That the learned trial court **erred in law and in fact** in failing to properly and carefully assess the evidence of assault by police during investigation. Although the doctor agreed that he found injuries on me, (please see page 3, para 11 of the learned trial judge ruling on voir dire). This was later supported by the prosecution whereas she states at page 3, para 12 of the voir dire ruling that I sustained injuries in the course of interview."*

[16] When the Court sought to clarify this ground in that the history given by Mr Yavala to the Doctor was that his alleged injuries were on the right side of his chest and arm but upon examination the Doctor had found no such injuries, Mr Yavala responded: "How can a Doctor know there is no injury as he didn't x-ray me?" and "I was complaining of body pain."

[17] The Court notes, however, that the Doctor stated in the medical report that he found that there was injury at Mr Yavala's right lower back and left buttock and that the DPP had submitted to the trial that the medical report said it was closer to when the interview had concluded. Mr Yavala submitted that these injuries occurred when the interview was about to occur or during the interview and the medical report said they had occurred in previous 24 hours. Thus Mr Yavala submitted that these

injuries occurred during the interview and therefore what he said in the interview was not voluntary.

[18] **The Fifth Ground reads:**

"That the learned trial judge ***erred in law and in fact*** *in failing to informed [sic] or asked me during trial proper (at defence case) whether I do wish to call any witness or not. Reference is made to the authority in R.V.Carter (19600 44 Cr APP.R.225) [sic]"*

[19] This was clarified with Mr Yavala in that he was saying that the Trial Judge didn't allow him any witnesses.

[20] Mr Yavala was then taken to the transcript of the recording of the trial, at 2.15pm, Thursday, 29 November 2007, page 20, which was then read out to him. In response, Mr Yavala explained that "I thought the learned Judge asking in trial within trial" and that he did not understand that he could call someone as a witness.

[21] **The Sixth Ground reads:**

"That the learned trial judge ***erred in law and in fact*** *in failing to immediately summon me as a witness in my case (defence case) after the prosecution has closed its case. Thus a result the learned trial judge erred in law and in fact in breaching the provision of Sec.2 of the criminal evidence Act, 1998 (Please see Cap 4, Sec.16,Para.580 of the Archibold 39th edition) and Section 29(1) of the constitution on the right of a fair trial."*

[22] This was clarified by Mr Yavala saying that the Trial Judge didn't allow him to speak as a witness in his own case.

[23] Mr Yavala was then taken to the transcript of the recording of the trial, at 2.15pm, Thursday, 29 November 2007, pages 16-20, which was read out to him. The Court noted that from a reading of the transcript it would appear was that Mr Yavala was given an opportunity which he in fact took; however, if he wished to maintain this ground it was a matter for him.

[24] Mr Yavala then indicated to the Court: "I want to exclude that ground".

[25] **The Seventh Ground reads:**

"That the decision made by the learned trial judge is wrong and unlawful since his appointment is unconstitutional. Therefore unlawful."

[26] When asked to explain this ground Mr Yavala added: "Judge Goundar was appointed by the present Government."

[27] On this ground, the Court responded: "He was appointed by the President. In any event, there is a presumption that until proven otherwise a judicial appointment is valid. That ground is a question of law."

[28] Mr Yavala indicated that he did not wish to add anything further and the Court noted that **this Ground is a question of law** and, as such, that he does not need leave to argue that ground: Section 21(1)(a) *Court of Appeal Act*, Cap.12.

[29] **The Eighth Ground reads:**

"That in light of all the above grounds your court feels ***that the conviction is unsafe and unsatisfactory*** *therefore* ***I apply for bail pending appeal*** *pursuant to Sec.17(3)(a) of the bail act no 26 of 2002,Sec.315(1) of the criminal procedure code,Sec.2(1)(a), Sec.2(2) and sec.19 of the criminal appeal Act (Please see Cap.7,Sec-2,Para.899 and Para,822 of the archbold 39th edition)."*

[30] This was clarified by Mr Yavala saying that the conviction is unsafe and unsatisfactory based on the other grounds which are a mixture of fact and law. So he is also seeking leave on that ground. He was also asked "were there any eye-witnesses called at the trial?" to which he responded in the negative.

[31] By this stage in the proceedings, Counsel for the DPP had attended and for whose benefit the Court explained:

(a) That the Court had already taken the Appellant through all the grounds and that he wished to withdraw Ground 6;

(b) That Ground 4 was in relation to the fact that the medical report of his injuries was not consistent with the history he gave of the alleged assaults, however, he did have an injury at his lower right back and left buttock – and it was the Court's understanding that this is what the DPP was saying at trial that the injuries happened after the interview, (however they occurred), and therefore, the interview and statements made during it were voluntary;

(c) That there was also Ground 7, and Mr Yavala questioned the appointment of Justice Goundar by the present Government. It was noted that it had been explained to Mr Yavala that Justice Goundar had been appointed by the President and in any event there is the presumption until proven otherwise that a judicial appointment is valid. As that ground is a question of law, Mr Yavala does not need leave to argue that ground.

THE SUBMISSIONS ON BAIL PENDING THE APPEAL

[32] Mr Yavala indicated that he was also seeking bail pending the hearing of his appeal to the Court of Appeal. His reasons for seeking bail:

> ***"This is my first offence and I find prison life difficult. Also, because I need to ask my family to help in finding legal assistance to conduct appeal. That is all, Sir"***

[33] Counsel for the DPP submitted that if there is no substantial merit to that ground, that is, that the normal process has been followed, then what is the basis of which he should be granted bail? He argued that one isn't to second guess the verdict of the assessors and referred the Court to ***Chamberlain v R (No. 2)*** (1984) 153 CLR 521 as to the role of an appellate court. He also questioned whether there was any merit to the appeal on any other ground?

[34] When it was pointed out by the Court that Mr Yavala claims that he was assaulted and the concern of the Court is that he did have an injury (albeit minor) within 24 hours, Counsel for the DPP submitted that a Court would normally not be persuaded to grant bail if satisfied as to the judgment. Further, one must question

the merits of the appeal, that this is at best a speculative appeal and that the threshold for leave is lower than the threshold to grant bail. Counsel also noted that the accused person had only been given a sentence of three years and questioned whether bail should be granted if his appeal might be heard soon?

[35] The parties were then advised that the Court would reserve its decision and judgment would be delivered on notice.

[36] Subsequent to the hearing, I have considered the following:

(a) ***Vasu v The State*** (2004) (HAM066 of 2004, Shameem J, High Court at Suva, 13 October 2004);

(b) ***Mudaliar v The State*** [2006] FJCA 50 (AAU0032U.2006S, Gallen JA, Ellis JA and Scott JA, Full Court of Appeal, 28 July 2006);

(b) ***Kurisaqila v The State*** (2008) (CAV0009.07, Gates J, Supreme Court of Fiji, 16 January 2008);

(c) The *Bail Act* 2002, in particular, Section 17;

(d) The Court file which, on its face, reveals:

(i) That the accused was brought before Magistrate S. Temo in the Magistrates Court at Nasinu on 29 September 2005 when bail was refused for the following reasons:

- This is a serious offence;
- The victim is an expatriate;
- The other accomplices are yet to be arrested;
- None of the property was recovered;
- The victim had serious injuries;

- **The accused was on a suspended sentence** on Naisnu File No.585/05, that is, a sentence of six (6) months suspended for two years as from 26 July 2005 **on a similar Robbery with Violence Charge;**

(ii) That the accused was brought before Magistrate S. Temo in the Magistrates Court at Nasinu again on 12 October, 25 October, 17 November and 22 November 2005 when bail was refused.

(iii) That as the accused had elected for a High Court Trial the matter was transferred to the High Court at Suva for mention (possibly on 13 February 2006) when it would seem that **the accused was granted bail by the High Court;**

(iii) That the accused appeared on 20 February, 6 March, 26 March, 12 April and 26 April 2006 and Bail was extended on each of those occasions;

(iv) That the accused failed to appear on 17 May 2006 before Magistrate S. Temo in the Magistrates Court at Nasinu and a Bench Warrant was issued, returnable on 7 June 2006 in the High Court (there may, however, been some confusion as to attendance);

(v) That there is **a letter on file dated 10 August 2006 from Ms H. Tabete for the DPP** to the Criminal Registry that she had been informed by the Police Investigative Officer, DC 2334 Maika Rauqera of Valelevu Police Station, that –

- The accused has moved out of the residential address he had provided;
- The accused did this without informing the Police and did not leave any forwarding address;
- **That he has not been reporting to Valelevu Police Station and the last reporting day he made was 7 June 2006;**
- That all of the above actions are in breach of his bail conditions;

- That the matter was set for trial on 16 August 2006 but now will need a Bench Warrant to be issued

(vi) **That on 11 August 2006 a Bench Warrant was issued by Shameem J, returnable on 16 August 2006 in the High Court at Suva;**

(vii) That the matter was returnable before **Shameem J to check on the Bench Warrant on six further occasions**: 19 January 2007, 31 January 2007, 16 March 2007, 13 April 2007, 5 July 2007 and 31 July 2007.

(viii) That the matter then came before Mataitoga J **in the High Court at Suva on 3 September 2007 when the Bench Warrant had been executed, the accused was remanded in custody to 24 September 2007** and continued to be so until his trial and subsequent conviction on 30 November 2007 after which he was sentenced to three years imprisonment on 7 December 2007.

(e) The Sentencing Judgment of Gounder J of 7 December 2007 differs in one major respect from the Court file in that, according to His Lordship, at paragraphs 16-17:

> ***"You are a first time offender. You deserve credit for previous good character. Your age, family and personal circumstances, and previous good character are the mitigating factors."***

REFUSAL OF LEAVE ON GROUNDS 1,2,3, 5 and 8

[37] Seven of the eight grounds of appeal, are of mixed fact and law and require leave to appeal to the Court of Appeal **(Section 21(1)(b) *Court of Appeal Act*, Cap.12).** Ground 6 was withdrawn by the Appellant during the hearing of the Application.

[38] **Leave is refused in relation to Grounds 1, 2, 3, 5 and 8 for the following reasons:**

(a) **Grounds 1 and 2**

During the hearing of the Application for Leave, Mr Yavala was taken to His Lordship's Ruling on the *voir dire* at paragraph 14 where it is clear that His Lordship did so direct himself as follows:

"Having considered the demeanour of the witnesses and of the allegations put to the police officers who arrested, interviewed and charged the accused, I am satisfied beyond reasonable doubt that there was no assault or threat by them. ***I am satisfied beyond a reasonable doubt*** *that the accused statements under caution and charge were obtained voluntarily and not be unfairness or oppression."*

(b) **Ground 3**

The Transcript of the hearing of the *voir dire* on Tuesday morning, 27 November 2007 at at 10.00am, shows that Dr Saimoni Nabiti gave evidence. Further, His Lordship's Ruling on the *voir dire* at paragraphs 10-11 made it clear that His Lordship considered the medical report of Dr Naibati from Valelevu Health Centre.

(c) **Ground 5**

During the hearing of the Application for Leave, Mr Yavala was taken to the transcript of the recording of the trial, at 2.15pm, Thursday, 29 November 2007, page 20, which was then read out to him and where it is clear that His Lordship did so ask Mr Yavala *"during the trial proper"* as follows:

"His Lordship: ***Do you want to call any witnesses?***
Mr T Yavala: ***No my Lord."***

(d) **Ground 8**

To say that a conviction is unsafe and unsatisfactory based on the other grounds without more, does not take the argument any further. Indeed, in ***Gipp v Queen*** (1998) 194 CLR 106 at 145, Justice Kirby said:

"The convenience of a shorthand expression is undeniable. However, it would, in my view, be preferable not to persist with it ... [as it] might encourage the view that there is but one consideration to be judged."

DECISION ON GOUNDS 4 and 7

[39] **This then leaves two grounds to be considered: Grounds 4 and 7.** It should be noted, however, that **both** the notice of appeal and the application for leave **can be dismissed** pursuant to Section 35(2) *Court of Appeal Act*, Cap.12, 1978, as amended by the *Court of Appeal (Amendment) Act* 1998, (Act No, 13 of 1998):

> *"Powers of a single judge of appeal*
> ***35 (2) If on the filing of a notice of appeal or of an application for leave to appeal, a judge of the Court determines that the appeal is vexatious or frivolous or is bound to fail because there is no right of appeal or no right to seek leave to appeal, the judge may dismiss the appeal."***

[40] Thus, Mr Yavala must be able to demonstrate:

(a) That in relation to Ground 4 that his application for leave to appeal is not vexatious or frivolous or bound to fail because there is no right to seek leave; and

(b) That in relation Ground 7 that the filing of his notice of appeal is a question of law and not vexatious or frivolous or bound to fail because there is no right to of appeal.

[41] Taking into account the above, the following decision has been reached in relation **Ground 4:**

(a) This Ground is to do with the medical report of alleged assault, and whether the confession was voluntary. The following has been considered:

(i) The Court notes that the learned Trial Judge spent two days holding a *voir dire* hearing in relation to Mr Yavala's allegations that he was assaulted by the police. It also has considered and rejected Grounds 1, 2 and 3 above in relation to the conducting of the *voir dire* and the confession later admitted into the trial proper. In the Court's view, His Lordship's behavior in the *voir dire* and trial proper was beyond reproach.

(ii) This Court is concerned, however, that although, His Lordship quite rightly noted the medical evidence revealed that the medical history provided by Mr Yavala and the actual injuries sustained were both different

and minor (a sore lower back and left buttock for which a mild analgesic in the form of Panadol was provided), there were very minor injuries sustained whilst in police custody.

(iii) Such injuries may well have occurred AFTER the interview as the DPP submitted to the Trial Judge and thus makes the statements given in interview voluntary. There may be a simple explanation for such minor injuries that have nothing to do with the police. On the other hand, **they have occurred whilst the Appellant was in custody** and the medical evidence is somewhat equivocal.

(b) As noted by the Full Court of Appeal in ***Mudaliar v The State*** (supra) at paragraph 9:

> *"It would be wrong for us to prejudge the appeal or give an opinion on any of the points raised. It must suffice for us to say that* ***these are arguable points of substance to be determined on appeal, but on the evidence the appellant faces a strong prosecution case.***"

[42] **Despite this Court's reservations, leave should be granted in relation to Ground 4.**

[43] **Ground 7** is a question of law. Although leave does not need to be granted for a question of law (S.21(1)(a) *Court of Appeal Act*, Cap.12), note must be taken of Section 35(2) *Court of Appeal Act* which requires that ***the appeal not be vexatious or frivolous***. In that regard, it should be noted:

(a) That the issue of the presumption of legality to any actions or rulings taken or made by judges appointed post-December 2006 has been considered in detail in ***Commodore Josaia Voreque Bainimarama & Others v Angenette Melania Herffernan*** (Civil Appeal No.ABU0034 of 2007, Byrne J, 30 July 2007) where His Lordship cited the following:

(i) ***Peniasi Kunatuba v The State*** (Misc.No.HAM66 of 2006, Shameem J, 25 September 2006) where Her Ladyship cited the legal maxim *"Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium" (Until the contrary is proved any person who acts in an*

official capacity is presumed to have been duly and properly appointed and has properly discharged, his or her official duties) in holding that the presumption of validity applied to the appointment of Mr J. Naigulevu as DPP and thus the Information which was signed by the Director was valid;

(ii) ***Campbell v Wallsend Shipway & Engineering Co.Ltd.*** (1977) Crim LR 351;

(iii) ***Middleton v Barned*** 4 Exch. 241; Per Parke B., at 243 ('the law will presume in favour of honesty and against fraud');

(iv) ***R v Te Kahu*** (2006) 1 NZLR 459 at 473 where the New Zealand Court of Appeal applied the doctrine of *de facto* officer to uphold the decisions of a trial judge relying upon ***Re: Aldridge*** (1893) 15 NZLR 361 (where a conviction and sentence were upheld even though the trial judge's appointment was later held to be invalid and was cited more recently in ***Wade and Forysth, Judicial Review*** (8th ed, 2000, pp. 292-293) as well as the more recent case of ***Coppard v Customs & Excise Commissioners*** (2003) 3 All ER 351;

(v) In ***Coppard v Customs & Excise Commissioners*** (2003) 3 All ER 351, the English Court of Appeal also applied the doctrine of *de facto* officer to confirm a judgment where the trial judge was later found to have been invalidly appointed.

(b) Despite the clear reasoning of Byrne J in ***Bainimarama & Others v Herffernan***, the Respondent in that case then commenced proceedings against the Judge personally as well as two others seeking Constitutional Redress: see ***Angenette Melania Herffernan v The Honourable John Edward Byrne & Others*** (Misc. Civil Action No. HBM105/2007, Pathik J., 11 April 2008). As Pathik J noted in that case (at paragraphs 29-30 and 35-367):

> *"The applicant's argument that the 1st Respondent is not a properly appointed Judge holds no water ... Byrne J had explained his position as a judge [in **Bainimarama & Others v Herffernan**] ... All of the*

above boils down to saying that until proven otherwise Byrne J was properly appointed by the President under section 132(3) of the Constitution ... In light of the law as stated above and under the provisions of the Fiji Constitution ***the applicant's application ... is frivolous and an abuse of the process of the Court*** *... The Courts are still intact and are functioning normally unaffected by the events of December 2006.* ***His Excellency The President of the Republic of Fiji Islands appoints and has appointed Judges."***

(c) This Court fully endorses the reasoning and judgments of Byrne J and Pathik J set out above and applies them in the present case in relation to Ground 7 of the Appellant's notice of appeal. In doing so, I note that I was also appointed by His Excellency, The President of the Republic of the Fiji Islands, post-December 2006. I can only presume that the same applies to the appointment of Justice Gounder (noting that no evidence to the contrary has been placed before me by the Appellant sufficient to be considered by the Court of Appeal).

[44] **For the above reasons, the notice of appeal in relation to Ground 7 is dismissed as being frivolous.**

[45] This leaves one ground to be heard by the Full Court of the Court of Appeal. The Court feels a responsibility to the Appellant (as he is unrepresented) that he be made aware that having, as it were, "opened up" the proceedings below, some issues touched upon in this decision may become highlighted on appeal. That is a matter for the Appellant. It is suggested that if he is proceeding, he apply for legal aid.

DECISION ON BAIL PENDING APPEAL

[46] In relation to bail pending appeal, **I have not taken into account the claim in the Court file which is inconsistent with the later Sentencing Judgment in relation to whether of not the Appellant is a first time offender** particularly whether this offence was committed whilst he was on a six (6) months sentence suspended for two years as from 26 July 2005 on a similar Robbery with Violence Charge. I note

that His Lordship considered him to be a first time offender and there has been no subsequent application from the DPP for leave to appeal the sentence nor were there any submissions from the DPP in this regard at the hearing before me on 24 April 2008 when they were asked to address the Court on the Appellant's application for bail pending appeal.

[47] **The following factors have been taken into account in a decision on bail:**

(a) "The presumption of the right to bail applies to Accused persons, not to persons who have already been convicted [section 3(4)(b) Bail Act 2002]": ***Kurisaqila v The State*** (supra) (paragraph 9);

(b) "The likely time before the appeal hearing" of the Court of Appeal (Section 17(3)(b) of the *Bail Act* 2002: The appeal is expected to be heard in the October-November 2008 sittings of the Court of Appeal which "is a reasonable period for disposal and does not demand his release on bail": ***Kurisaqila v The State*** (supra) (paragraph 12); see also ***Mudaliar v The State*** (supra) (paragraph 10);

(c) "The proportion of the original sentence which will have been served by the applicant when the appeal is heard" (Section 17(3)(c) of the *Bail Act* 2002: The Appellant was sentenced to a term of three years imprisonment in December 2007. He will have served 10-11 months when the appeal is heard in the October-November sittings of the Court of Appeal. As noted by the by the Full Court of Appeal in ***Mudaliar v The State*** (supra):

> *"The other two considerations under s.17 of the bail Act are in this case resolved by recording that the President has already directed that the appeal be heard in November and counsel agree there seems to be nothing that will prevent that ... we think the sense of proportion appropriate in such a case as his is to compare the sentence served with the total sentence."*

(d) Of his seven grounds seeking leave, the appellant withdrew one ground and has failed on five of the six remaining grounds. The sole ground for which he has been granted leave is more to do with the way the DPP left the matter

open at trial as to the fact that some minor injuries may have been suffered after interview and this is a matter for the Court of Appeal to be satisfied that there was no police impropriety. It is noted, however, that an extensive *voir dire* hearing was conducted over two days and that once His Lordship ruled that the statements were admissible, the Appellant was still able to put allegations of assault to the police in front of the assessors who still convicted him. Therefore, the likelihood of success in the appeal must be doubtful;

(e) "There are no exceptional circumstances shown to enable bail to be allowed": ***Kurisaqila v The State*** (paragraph 18); see also ***Vasu v The State*** (supra) citing ***Ratu Jope Senilqli & Others v the State*** **(Crim.App.No.AAU0041/04S);**

(f) That "the presumption in favour of the granting of bail is displaced where ... the person seeking bail has previously breached a bail undertaking or bail condition" (Section 3(4)(a) *Bail Act* 2002: this is particularly relevant noting the history of this matter and the breaching of bail conditions as outlined in the letter on file dated 10 August 2006 from the DPP such that a Bench Warrant had to be issued on 11 August 2006; followed by a further Bench warrant on 16 August 2006 which was returnable **on some six occasions while the Appellant evaded custody for at least 12 months until** he came before Mataitoga J in the High Court at Suva on **3 September 2007;**

(g) As the Full Court of Appeal concluded in ***Mudaliar v The State*** **(supra)** (paragrapgh11):

> *"Directing ourselves collectively to the three considerations required by s.17 and bearing in mind the accepted view that some extraordinary circumstance should be shown for bail to be granted a convicted applicant, we consider that the applicant has not satisfied us that he should be granted bail. The seriousness of the offence and the strength of the prosecution case outweigh the likelihood of success on appeal and time that would be served is not such that would tip the balance in favour of the applicant. Bail is accordingly refused."*

[48] **Accordingly,** although this Court is sympathetic to the genuineness of the applicant's statement that "I find prison life difficult", **the application for bail must be refused.**

[49] Before concluding, it is appropriate to make some remarks for the benefit of the Office of the Director of Public Prosecutions. Whilst the Court is well aware of the pressures of work facing the Office of the DPP, it is for Counsel appearing on behalf of the Director to ensure that they appear on time at the hearing of applications for leave both out as mark of respect to the Court and its staff as well as to an Appellant. In addition, Counsel so appearing should at least be familiar with the file so as to assist the Court in relation to the grounds of appeal and, where appropriate, in considering the criteria relevant to the *Bail Act* 2002. That said, the Court did appreciate in this application the honesty of Counsel who eventually appeared as to his little knowledge of the file which at least put the Court on notice that the entire file would need to be carefully read in detail in Chambers so the Court could be in a position to consider the application for bail (as well as the remaining six grounds of appeal requiring leave).

ORDERS

[50] This Court makes the following Orders:

1. Leave to appeal is refused in relation to Grounds 1, 2, 3, 5 and 8.
2. Leave is granted in relation to Ground 4.
3. Although leave does not need to be granted in relation to Ground 7, the notice appeal is dismissed as being frivolous.
4. The application for Bail pending appeal is refused.

COURT OF APPEAL

The Hon. Thomas V. Hickie
Judge of Appeal

Solicitors:
Appellant in Person
Office of the Director of Public Prosecutions for Respondent