

IN THE COURT OF APPEAL, FIJI ISLANDS
CRIMINAL APPEAL JURISDICTION

Criminal Appeal No. AAU 0015/08

BETWEEN:

EPELI LABALABA

Applicant

AND

THE STATE

Respondent

Ms . Resina Senikuraciri for the Applicant

Ms. Andie Driu for the Respondent.

Date of Judgment: 13 June 2008.

JUDGMENT

1. EPELI LABALABA, this is your application seeking leave of this court to appeal out of time. It is now before me for determination, pursuant to section 35(1)(2) of the Court of Appeal Act Cap 12.

Background

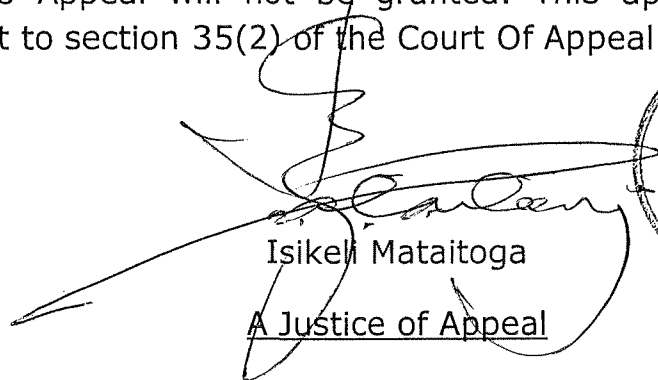
2. You were convicted and sentenced in the Suva Magistrates Court to 18 months imprisonment on 11 May 2005 for one count of Burglary and

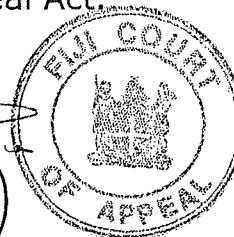
one count of Larceny in Dwelling House. At the time of this sentence you were already serving a prison term of 8 years for a conviction of Robbery with Violence. The learned magistrate ordered that the 18 months imposed on you on 11 May 2005 be consecutive to the term of imprisonment you were serving.

3. You appealed to the High Court against the order of the learned Magistrate that your sentence be consecutive. After a careful review of the facts and law in the High Court, your appeal was dismissed as having no merit on 2 September 2005 by Madam Justice Shameem.
4. On 7 January 2008 you filed this application for Leave to Appeal out of time. Section 26(1) of the Court of Appeal Cap 12, requires that your application be filed within 30 days from 3 September 2005 i.e. no later than 3 October 2005. Your application is 2 years 2 months out of time.
5. There are three core issues that this court must be satisfied with before it will grant you leave to appeal out of time. These are: (i) the applicant must show good cause to explain the inordinate delay in filing this application; (ii) that the ground of the proposed appeal covers issues of law, that has merit and (iii) there is no prejudice to the state: ***State v Patel [2002]FJCA 13; AAU 002 of 2002.***
6. This is an application for leave to appeal out of time against a decision of the High Court in its appellate jurisdiction. Section 22 of the Court of Appeal Act limits appeal only on grounds that the sentence was unlawful or was passed in consequence of an error of law: ***Paula Vura v. The State [2005] FJSC 7; CAV 001/05.***
7. With regard to the first issue of 'good cause', the applicant submits as follows:
 - a) That you were psychologically affected by the wording of your dismissal on 2 September 2005;
 - b) You were without a lawyer to assist you;
 - c) You were assisted by a fellow inmate with previous experience;

8. This court is not convinced that the above grounds show good cause to justify the length of the delay in this instance. It may have been sufficient to justify a delay of 2 -3 months. Apart from the concerns of the applicant, which must be considered, this court must balance that against the need for the due administration of justice and the need to deal with appeal in an expeditious manner. To allow leave to an appeal out of time for over 2 years would encourage others to do the same and it will unnecessarily overburden the administration of justice. There is simply no good cause evident from the applicant's submission to justify leave to be granted.
9. In reviewing the grounds of appeal submitted, they raise the same issues that were the subject of appeal from the Magistrates Court to the High Court. The core complain in these ground, is that the 18 months imprisonment for Burglary and Larceny from Dwelling should not be served consecutive to the 8 years term of imprisonment that the applicant was already serving.
- 10.** Having reviewed the High Court ruling on the issues that were the subject of appeal from the Magistrates Court, I am unable to find any basis to hold a different view to that of the learned Judge. The legal principles considered and applied were correct and proper consideration was given as regards the totality principle in sentencing.
- 11.** I agree that there is nothing in the submission of the applicant or evident from the court records, that would enable this court to disagree with the order of the learned Magistrate ordering that the sentence of 18 months imprisonment be consecutive to the existing terms of 8 years imprisonment: ***see Pauliasi Bote v The State [2005] FJCA 58; AAU 0011 of 2005.***
12. Under the terms of section 22 (1A) of the Court of Appeal Act, it has not been made out that the sentence passed by the Magistrates Court was unlawful or passed in consequence of an error of law.

13. Leave to Appeal will not be granted. This application is dismissed pursuant to section 35(2) of the Court Of Appeal Act.


Isikeli Maitoga
A Justice of Appeal



At Suva

13 June 2008.