

IN THE FIJI COURT OF APPEAL
SUVA, FIJI ISLAND

[Criminal Appeal No. AAU 0023/09]

BETWEEN : **LEDUA GUDRU**
APPELLANT

AND : **THE STATE**
RESPONDENT

BEFORE THE HONOURABLE
JUSTICE OF APPEAL : **Mr. JUSTICE JOHN E. BYRNE**

COUNSEL : **Ms N. TIKOISUVA (for the Respondent)**
: **Appellant in Person**

DATE OF HEARING and RULING : **24th September 2009**

***RULING ON APPLICATION FOR
LEAVE TO APPEAL OUT OF TIME***

[1.0] This is an application for leave to appeal out of time from a judgment of the High Court dated 28th December 2007 which confirmed the conviction of the appellant for a series of robberies with violence being part of a number of home invasions committed between April and August 2007, and the sentence of 5 years imprisonment imposed by the Magistrate's court following those convictions.

- [2.0] Like many Judges who are much older than the Appellant, who is now nearly 20 years old but at the time of the offences was 18, I find it an unwelcome euphemism to describe, as the law now requires, the conduct of the appellant in breaking into two homes as "a home invasion".
- [3.0] When I practised in the Criminal Courts years ago such an offence was called breaking and entering. Why it has been considered necessary to change the title of the offence to the more moderate sounding home invasion is a mystery to me. The present term seems to me to be an unnecessary and undesirable gloss on what the law has always regarded as a serious offence.
- [4.0] Just as an Englishman's home is said to be his castle, so too is the home of any Fijian or of any other nationality who lives in Fiji. Perhaps the powers-that-be or the Law Reform Commission if it is still functional might care to re-consider altering the current title of the offence to its former, more descriptive and less genteel title of breaking and entering.
- [5.0] Having said that I hasten to add that home invasion was not the only offence of which the appellant was found guilty. The actual charges against the appellant were of robbery with violence, committed in private houses in two of these, where the appellant and others accompanying him were armed with cane knives, timber and a pinch bar.
- [6.0] In one of these a 47 year old man and his 14 year old son who were visitors to this country were involved. The father was assaulted by the appellant with a stick and suffered head injuries.
- [7.0] In the second of these cases the appellant and his companions robbed an elderly expatriate couple who were aged 64 and 65 years, threatened both Mr. and Mrs. Stewart, and hit Daisy Stewart on the head with a piece of timber.
- [8.0] The other offences to which the appellant also pleaded guilty were of escaping from lawful custody and of larceny.

- [9.0] The Appellant appealed to the High Court against the Magistrate's Courts decision, where his main complaint was that his co-offenders received more lenient sentences. The Learned High Court Judge stated that this was probably because they were less culpable.
- [10.0] The appellant could give me no reason why he lodged his application to appeal out of time over 18 months after the High Court Judgment. For this reason alone I refuse his application for leave to appeal but there is another and probably equally compelling reason namely that I have no doubt the appellant's application for leave to appeal is vexatious and frivolous under Section 35(2) of the Court of Appeal Act.
- [11.0] Applications such as this are simply a waste of the Court's time and will not be countenanced. Furthermore, as I reminded the Appellant, the Court of Appeal has the power to increase any sentence imposed by a lower Court which it considers to be inadequate. As the Learned High Court Judge, Shameem, J said on page 4 of her judgment of the 28th of December 2007:

"Although he is 18 years old, a much heavier penalty might have been passed on him without criticism. Indeed, the learned Magistrate showed him a great deal of compassion when he ordered the sentences to be served concurrently".

- [12.0] For these reasons I refuse the Appellant leave to appeal.

Dated at Suva this 24th day of September 2009.

The image shows a circular official seal of the Fiji Court of Appeal. The seal features a central emblem with a building and the text 'FIJI COURT OF APPEAL' around the perimeter. Overlaid on the seal is a handwritten signature in black ink, which appears to read 'John E. Byrne'.

JOHN E. BYRNE

JUDGE OF APPEAL