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IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0002 OF 2010S  
(High Court Criminal Action No. HAC 33 of 2009S)

BETWEEN:            SHEIK MOHAMMED

Appellant

AND:                 THE STATE

Respondent

Date of Hearing:    Monday, 2<sup>nd</sup> August 2010

Counsel:            A. Kohli for the Appellant  
                             S. Puamau for the Respondent

Date of Decision:  Monday, 2<sup>nd</sup> August 2010, Suva

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**DECISION OF BAIL PENDING APPEAL**

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1. I have listened with care to the arguments advanced by Mr Kohli on behalf of the applicant for bail pending appeal. He rightly stressed section 17(3) of the Bail Act 2002 and the likelihood of success in the appeal. The other two criteria are not in favour of the grant of bail since on 15<sup>th</sup> October 2009 Sheik Mohammed the applicant was sentenced to ten years imprisonment. Mr Kohli argues that the chances of success are high and that there is every chance of success in the appeal. Armogam (2003) FJCA 32 was not followed when an application was made to declare a prosecution witness hostile.
  
2. Miss Seini K. Puamau on behalf of the State opposes bail pending appeal. With reference to her written argument filed on 1<sup>st</sup> April 2010 she referred the Court to Sarda Nand v DPP application 3 of 1979 and to Ratu Jope Seniloli v The State Criminal Appeal No. AAU0041 of 2004S. She also referred to R v O'Brien [2001] 2 NZLR 145 CA.

3. The points made by Miss Puamau are :

- 1) The very high test of likelihood of success on appeal.
- 2) While it may well be that Justice Madigan did not follow the procedure as laid down re declaring a key witness hostile, the procedure to be followed is at the discretion of the trial judge.
- 3) Not all failures of process are found to be fatal to the proceedings of the trial court.
- 4) Madigan J remedied the matter by his clear direction to the assessors.

4. Mr Kohli replied.

5. There is no doubt that I must not attempt to decide the appeal. I will not make such an attempt.

6. Bail application for bail pending appeal are different from applications pending trial because there is no presumption in favour admitting the person concerned to bail. See section 3(4)(b) of the Bail Act 2002.

7. I have decided to refuse bail in this case. Without deciding the appeal in my opinion the very high threshold for bail pending appeal has not been reached. While the appeal is arguable I do not think the appeal has every chance of success.

8. My order is that bail pending appeal is refused.



*William R Marshall*  
William R. Marshall  
Resident Judge of Appeal

**Solicitors:**

Messrs Kohli & Singh, Labasa for the Appellant

Office of the Director of Public Prosecutions, Suva for the Respondent