

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

**CRIMINAL APPEAL NO. AAU0031 OF 2010**  
(High Court Criminal Action No. HAM 22 of 2009)

**BETWEEN:** MESAKE SINU

**Appellant**

**AND:** THE STATE

**Respondent**

**Date of Hearing:** Monday, 18<sup>th</sup> October 2010

**Counsel:** Appellant in Person  
Mr. M. Korovou for the Respondent

**Date of Ruling:** Monday, 25<sup>th</sup> October 2010

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**RULING OF THE COURT**

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1. Mesake Sinu was convicted in Criminal Case No.317 of 2004 in the Resident Magistrates Court at Nadi in the Western Division on 26<sup>th</sup> July 2005 by Resident Magistrate Mr Syed Mukhtar Shah. On the second count he was sentenced to 12 months imprisonment for stealing motor parts to a value of \$3000.
2. In the hearing before me applying for leave to appeal to the Court of Appeal on a matter of sentence, I understood him at one point to say that he was never charged and convicted and then sentenced to 12 months for theft. However I may have misunderstood.
3. What is clear from the record in Criminal Case No.317 of 2004 is that three persons were involved. The other two were Savenaca Virivirisai and Jone Lomayaco. The taking of a car from a vehicle trader's yard and its stripping of valuable parts worth \$3000 took place between 31<sup>st</sup> March 2004 and 2<sup>nd</sup> April 2004. When arrested Mesake Sinu gave

the false name of Tevita Rayawa. This resulted in a third charge against him of "giving a false name to a police officer."

4. On 8<sup>th</sup> April 2004 Jone Lomayaco (D3) pleaded guilty. The court was told that similar offences were on the rise. The magistrate also said "Such offences are prevalent. He should have learnt his lesson by now." Lomayaco was given 6 months for the taking and 12 months for the theft. In respect of the latter the magistrate said "Clearly a deterrent required."
5. Mesake Sinu was given bail but did not appear. He was then brought before the Court on a Bench Warrant on 25<sup>th</sup> February 2005.
6. At trial on 12<sup>th</sup> July 2005 Mesake Sinu pleaded not guilty and was convicted on 26<sup>th</sup> July 2005. On that day he was sentenced to 6 months on the taking, 12 months on the theft and 2 months on giving a false name to a police officer. All sentences were made concurrent with each other. The sentence of the Court in totality was 12 months imprisonment.
7. The maximum penalty for a first offence of larceny is 5 years and it is ten years for subsequent offences. In 1991 Mesake Sinu had been convicted on six counts of larceny.
8. There is no mistake in law giving 12 months imprisonment for larceny of car parts worth \$3000 when it is given to a repeat larceny offender and it is a prevalent offence where a deterrent sentence is required. There can be no complaint that it is a higher sentence than the relevant tariff. The same sentence was imposed on both Jone Lomayaco and Savenaca Viriviraisai. Since the other offences were ordered to be served concurrently there is no issue upon the totality principle.
9. In these circumstances I am constrained by the rules granting jurisdiction to refuse leave to appeal to the Court of Appeal in respect of this 12 months sentence of imprisonment for theft.

10. However I note in addition that Mesake Sinu's appeal letter is dated 12<sup>th</sup> April 2010 which means that it is out of time by a small period short of five years. There is no acceptable explanation. I therefore order :

(1) The application to extend time for appealing is refused.

(2) The application for leave to appeal is dismissed as being out of time.



A handwritten signature in cursive script, reading "William R. Marshall".

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Hon. Justice William R. Marshall  
**Justice of Appeal**