

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT**

**CRIMINAL APPEAL: AAU 56 OF 2010**  
**(High Court HAC 108 OF 2009)**

**BETWEEN** : **MOHAMMED RIZWAN**

***Appellant***

**AND** : **THE STATE**

***Respondent***

**Coram** : **Calanchini P**

**Counsel** : **No appearance for the Appellant**  
**Ms P Madanavosa for the Respondent**

**Date of Hearing** : **9 October 2013**

**Date of Ruling** : **20 December 2013**

**RULING**

[1] On 22 September 2008 the Appellant was sentenced to six years imprisonment by the Nausori Magistrates Court. He had pleaded guilty to five counts of obtaining goods by false pretences contrary to section 309(1) of the Penal Code Cap 17.

[2] By letter dated 27 January 2010 the Appellant applied to the High Court for leave to appeal sentence out of time. In a written Ruling delivered on 6 August 2010 the High

Court refused the application on the basis that no good cause had been shown by the Appellant.

[3] By letter filed on 12 August 2010 the Appellant appealed against his sentence to this Court. Such an appeal falls under section 22 of the Court of Appeal Act Cap 12 being an appeal against a decision of the High Court exercising its appellate jurisdiction. Although this is an appeal against sentence, section 22 (1A) has no application to the present appeal.

[4] It should be noted that leave to appeal is not required under section 22 of the Act. However the right to appeal under section 22 is limited to a ground or grounds of appeal involving questions of law only.

[5] When the appeal was listed for call-over on 9 October 2013 to fix a hearing date for the appeal, there was no appearance by or on behalf of the Appellant. The Court was informed that the Appellant had been released from prison and could not be located.

[6] In my judgment the appeal can be appropriately dealt with under section 35(2) of the Act. This section provides that:

*“If on the filing of a notice of 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 \_ \_ \_ the judge may dismiss the appeal.”*

[7] Having carefully read the grounds of appeal against sentence that are set out in the Appellant’s letter dated 9 August 2010, I am satisfied that none of the grounds raise a question of law only. Consequently I have concluded that there is no right to appeal under section 22 of the Act and as a result the appeal is dismissed under section 35(2) of the Act.

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**HON. MR JUSTICE W.D. CALANCHINI**  
**PRESIDENT**

