IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 102 of 2010
(High Court HAC 13 of 2009)

BETWEEN	**:**	**KILIONI NAITINI** **ORISI RAOGO** **INOKE VUETIVITI**
		Appellants
AND	**:**	**THE STATE**
		Respondent
Coram	**:**	**Chandra RJA**
Counsel	**:**	**Appellant in Person** **Ms S. Puamau for the Respondent**
Date of Hearing	**:**	**17 June 2013**
Date of Ruling	**:**	**5 August 2013**

RULING

1. The Appellants were charged with one Count of Manslaughter contrary to section 198 and 201 of the Penal Code and one count of Robbery with Violence contrary to section 293(1)(b) of the Penal Code (Cap.17).

2. The Appellants pleaded guilty to the charges and they were convicted and sentenced as follows:

   Kilioni Naitini - 5 years imprisonment for Count 1; 8 years and 9 months imprisonment for count 2.

   Orisi Raogo - 5 years imprisonment for Count 1; 9 years imprisonment for Count 2.

   Inoke Vuetiviti – 5 years imprisonment for count 1; 8 years imprisonment for Count 2.

The sentences to run concurrently and a non-parole period of 6 years.

3. The Appellants have taken up the following grounds in their application for leave to appeal:

(a) That the pleas of guilty were equivocal.

(b) That the trial judge erred in law when he considered different sentences for the Appellants in a joint enterprise.

(c) That there is inconsistency of the sentences ordered by court when compared to their case which is too excessive.

(d) That the sentences ordered by court are too harsh and excessive.

4. The Appellants with another were charged on the counts of manslaughter and robbery with violence and the three appellants pleaded guilty while the other accused pleaded not guilty. The trial proceeded against the other accused before Assessors and on being found not guilty he was acquitted. The learned trial judge proceeded to convict and sentence the Appellants on their pleading guilty.

5. As regards the first ground of appeal on the guilty plea, they were represented by Counsel at the trial and had admitted the facts as presented. They had shown remorse as well which was taken into account by the learned trial Judge when sentencing. These facts would be against their first ground of appeal and therefore the first ground of appeal has no merit.

6. The sentences imposed on the three Appellants were considered in detail separately by the learned trial Judge. The learned trial Judge had started with 10 years imprisonment

for all three Appellants for the offence of robbery with violence which was on the lower end of the scale and then considered the aggravating factors and increased by five years and had then proceeded to consider the mitigating factors against each Appellant separately.

7. In the case of the 1st Appellant, Kilioni Naitini, for being sorry for what he had done, his early guilty plea, the period in remand and good behavior during the last 14 years as he had previous convictions 14 years prior to the commission of the present offences had been taken into account in arriving at the sentence of 8 years and 9 months.

8. In respect of the 2nd Appellant, Orisi Raogo, for being sorry for what he had done, early guilty plea and the period in remand had been taken into account but since he had two previous convictions he was not entitled to a discount for good behavior so that his final sentence was 9 years.

9. Regarding the 3rd Appellant, Inoke Vuetiviti, his remorsefulness, early guilty plea, the period in remand and the fact that he was a first offender, were taken into account and he was sentenced to 8 years imprisonment.

10. Considering the manner in which the learned trial Judge had imposed the sentences on the three Appellants, there does not appear to be any disparity in sentencing as the individual circumstances had been given due consideration. The early guilty plea has been considered separately from the mitigating factors as stated by the Court of Appeal in **Naikelekelevesi v State** [FJCA]11AAU0061.2007 (27 June 2008). In view of this position these grounds of appeal urged in respect of sentences have no merit.

11. In the submissions filed by the Appellant, they have also taken up the position regarding the fixing of the non-parole period. The Sentencing and Penalties Decree of 2009 deals with "Fixing of non-parole period by sentencing court". S.18 (1) mandates the fixing of a non-parole period where the sentence imposed is more than 2 years subject to s.18(2) which provides that the fixing of a non-parole period can be declined considering the nature of the offence or the past history of the offender. Where a court sentences an offender to be imprisoned in respect of more than one offence, the non-parole period that is to be fixed should be in respect of the aggregate period of imprisonment that the offender will be liable to serve under all the sentences imposed.

12. The limits within which the non-parole period should be fixed is not spelt out in section 18 except to state in section 18(4) that any non-parole period fixed must be at least 6 months less than the term of the sentence. This gives a discretion to the sentencing court in fixing the non-parole period. There are no guidelines set out in fixing the non-parole period and it may be appropriate to set out guidelines in fixing non-parole periods as very often questions are raised regarding the limits of non-parole periods.

13. In order to have consistency in fixing the non-parole periods it would be appropriate to lay down some guidelines to sentencing courts in fixing such periods. To consider laying down guidelines for fixing non-parole periods I would consider this as an appropriate case for the full court of the Court of Appeal to consider the same and leave is granted to appeal against the sentence.

Orders of Court:

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is allowed.

Suresh Chandra
Resident Justice of Appeal