

IN THE COURT OF APPEAL
[On appeal from the High Court]

CRIMINAL APPEAL NO. AAU132 of 2013
[High Court Case No. HAM358/13]

BETWEEN : ERONI VAQEWA
Appellant

AND : THE STATE
Respondent

Coram : Goundar JA

Counsel : Mr. S. Sharma for the Appellant
Mr. M. Delaney for the Respondent

Date of Hearing : 19 September 2014

Date of Ruling : 14 January 2015

RULING

- [1] This is an appeal against a judgment of the High Court in its appellate jurisdiction. On 28 May 2010, the appellant was tried and convicted on a charge of robbery with violence by the Magistrates' Court. On 4 June 2010, he was sentenced to 5 ½ years imprisonment, consecutive to a pre-existing sentence of 7 years' imprisonment. On 12 August 2013, the appellant filed an untimely appeal against conviction and sentence to the High Court. The appeal was out of time by 3 years and 2 months.
- [2] On 8 November 2013, the High Court refused the appellant's application for an extension of time to appeal. On 6 December 2013, the appellant filed this appeal against the decision of the High Court refusing an extension of time to appeal to the High Court. The appeal to this Court is timely.

- [3] This being a second tier appeal, the appellant's right of appeal is governed by section 22 of the Court of Appeal Act, Section 22 provides:

“22.(1) Any party to an appeal from a magistrate's court to the [High Court] may appeal, under this Part, against the decision of the [High Court] in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only....:

Provided that no appeal shall lie against the confirmation by the [High Court] of a verdict of acquittal by a magistrate's court.

[(1A)No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –

- (a) The sentence was an unlawful one or was passed in consequence of an error of law; or
- (b) That the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence].”

- [4] The sole ground of appeal advanced by the appellant is:

“The Learned Appellate Judge erred in law when he upheld the consecutive sentencing of he Learned Trial Magistrate which was contrary to:

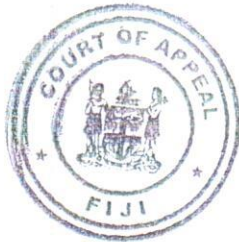
- (a) Sections 11 and 22 of the Sentencing and Penalties Decree; and
- (b) The Totality Principle.”

- [5] The learned High Court judge gave written reasons for refusing an extension of time to appeal. He referred to the factors enunciated by the Supreme Court in Kumar v. State; Sinu v. State (unreported Criminal Appeal No. CAV0001 of 2009, 21 August 2012) and concluded the appellant's appeal against sentence lacked merit. The appellant had a long string of convictions for robbery or house breaking. The consecutive sentence was justified to protect the community.

[6] It is clear that without an extension of time, the appeal to the High Court was incompetent. Any further appeal to this Court can only be brought on the ground that the High Court made an error of law in refusing the appellant an extension of time. The High Court applied the correct principles in refusing the application. For these reasons, I conclude that no point of law alone arises from the High Court's refusal to grant the appellant an extension of time to appeal. I am satisfied that this appeal is bound to fail because the appellant has no right of appeal under section 22 of the Court of Appeal Act.

Result

[7] The appeal is dismissed under section 35(2) of the Court of Appeal Act.



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Hon. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Director of Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State