

**IN THE COURT OF APPEAL, FIJI**  
**On appeal from the High Court of Fiji**

**CRIMINAL APPEAL AAU 137 OF 2014**  
**(High Court HAA 42 of 2013)**

**BETWEEN** : ALIFASI KIRIKITI  
*Appellant*

**AND** : THE STATE  
*Respondent*

**Coram** : Calanchini P

**Counsel** : No appearance for the Appellant  
Mr S Vodokisolomone for the Respondent

**Date of Hearing** : 11 July 2016

**Date of Ruling** : 28 October 2016

**RULING**

[1] The Appellant was charged with one count of escaping from lawful custody contrary to section 196 of the Crimes Decree 2009. On 5 September 2013 he pleaded guilty to the charge in the Magistrates Court at Suva and admitted the summary of facts. He was

convicted on 28 October 2013 and sentenced to a term of 6 months imprisonment to be served consecutively to the sentence he was then serving.

[2] On 15 November 2013 the Appellant filed an appeal against sentence in the High Court. On 10 September 2014 the High Court dismissed the appeal.

[3] Being dissatisfied with the decision of the High Court the Appellant filed on 23 September 2014 a timely appeal in the Court of Appeal. On 7 April 2016 the Appellant filed additional grounds of appeal. In total there are four grounds of appeal against sentence:

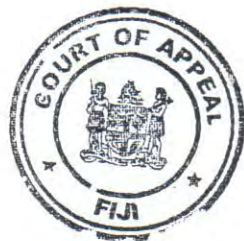
- “1. *That the learned judge erred in fact and in law in not considering the appellants evidence that his rights was violated resulting to the offence committed.*
2. *that the learned judge erred in law and in fact in not considering that the appellant was serving a 8 years 6 months sentence and the 6 months consecutive term which was imposed by the learned Magistrate will increase the sentence to 9 years which is against the principles of Harsh and excessive when comparing with the circumstances of this case.*
3. *that the learned Magistrates erred in law for punishing your humble appellant for the charge of Escape from Lawful Custody without properly assessing the appellants is not escape from prison or police custody but from saint Giles hospital.*
4. *The learned Magistrate was wrong in law for not giving a discount to my early plea of guilty and also failed to enquire the facts of the charge against me. As the duty of the Court to take care of the welfare.”*

[4] The appeal comes before the Court of Appeal under section 22 of the Court of Appeal Act Cap 12 (the Act). Pursuant to section 35(2) a judge of the Court may dismiss an appeal if he determines that the appeal is vexatious or frivolous or is bound to fail because there is no right of appeal.

- [5] Section 22 provides that a party to an appeal to the High Court from the Magistrates Court against the decision of the High Court exercising its appellate jurisdiction may appeal to the Court of Appeal on any ground of appeal that involves a question of law only. The further limitation to the right to appeal against sentence that is set out in section 22(1A) does not apply in this case as the High Court dismissed the appeal rather than impose a different sentence. Although the appeal to the High Court was as of right under the Magistrates Court Act and the Criminal Procedure Decree 2009, the appeal to this Court is a second tier appeal and the Court of Appeal assumes a role similar to that of a court of error under section 22 of the Act.
- [6] It would appear that by the time the appeal was listed before a Justice of Appeal to determine the question of jurisdiction, the Appellant had been released having served his sentence. The Appellant did not provide an address for service and showed no interest in pursuing the appeal after his release.
- [7] I am not entirely satisfied that the grounds of appeal involve questions of law only and under those circumstances it is doubtful that there is a right of appeal on those grounds. However the Appellant has not pursued the appeal and under the circumstances the Court is left with no choice but to dismiss the appeal as vexatious under section 35(2) of the Act.

Orders:

*Appeal dismissed under section 35(2) of the Court of Appeal Act.*



*W. Calanchini*  
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Hon. Mr. Justice W. D. Calanchini  
**PRESIDENT, COURT OF APPEAL**