IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO:AAU0078 of 2015
[High Court Case No: HAC113 of 2012]

BETWEEN	:	**MOHAMMED SHAHEEN**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Hon. Mr. Justice Daniel Goundar**
Counsel	:	**Mr M Fesaitu for the Appellant** **Mr L J Burney for the Respondent**
Date of Hearing	:	**15 June 2017**
Date of Ruling	:	**23 June 2017**

RULING

[1] This is a timely application for leave to appeal against both conviction and sentence. Following a trial in the High Court at Lautoka, the appellant was convicted of attempted murder and sentenced to life imprisonment with a minimum term of 8 years. The test for leave to appeal against conviction is whether the appeal is arguable (*Naisua v State* unreported Cr App No CAV0010 of 2013; 20 November 2013). The test for leave to appeal against sentence is whether there is an arguable error in the exercise of the sentencing discretion (*Naisua v State* unreported Cr App No CAV0010 of 2013; 20 November 2013).

[2] The facts are succinctly summarised in the State's written submission. The appellant had been in a relationship with the complainant, Ms L, for four years. The complainant had recently left the appellant, moving out of his house and going to live in Lautoka with her daughter. She found a new partner. On 7 September 2012, the appellant saw Ms L with her new partner and went to confront her about it. An argument escalated

and the appellant stabbed Ms L with a kitchen knife. When a bystander tried to intervene, the appellant tried to stab the bystander. The bystander punched the appellant and took the knife away from him. The bystander held the appellant until the police arrived and arrested him.

[3] The grounds of appeal were filed by the appellant in person. Unfortunately, after legal aid was approved, the grounds were not perfected by counsel. At the hearing of this application, the main complaint pressed on by counsel was that the trial judge's reasons for not agreeing with the unanimous not guilty opinion of the assessors are not cogent.

[4] At trial, the appellant did not dispute the physical element of stabbing. The defence case was that the appellant stabbed the complainant because he got angry after seeing her with another man. The appellant further contended that he did not to intend to kill but to cause grievous harm to the complainant. In other words, the defence case was that the appellant was not guilty of attempted murder but guilty of the lesser offence of act with intent to cause grievous harm. The assessors' opinions were that the appellant was not guilty of any offence. Arguably the unanimous not guilty opinion was perverse given the fact that the appellant did not dispute the act of stabbing. The issue was the fault element, that is, whether the appellant had an intention to kill or to cause grievous harm only when he stabbed the complainant with a kitchen knife.

[5] In his written judgment, the learned trial judge said he was satisfied that the prosecution had proved the intention to kill beyond a reasonable doubt. The learned judge referred to the medical evidence of the serious chest injuries sustained by the complainant and the doctor's opinion that if the knife had penetrated the chest cavity and abdomen, the complainant's vital organs would have been injured. The learned judge also referred to the evidence that the complainant was stabbed in the chest where the vital organs are located. There was evidence that the appellant came prepared with a kitchen knife when he confronted the complainant. He even tried to fend off a bystander who tried to intervene to stop the appellant from attacking the complainant further. The learned trial judge took all these circumstances into account to find that the appellant had an intention to kill. In my judgment, the reasons can withstand critical examination on an appeal and the decision to reject the unanimous guilty opinion of the assessors is

justified (see, *Roko & others v State* unreported Cr. App. No. 5 and 12 of 2002; 29 April 2004).

[6] Another complaint pressed on by counsel on behalf of the appellant is the Director of Public Prosecution's decision to charge him with attempted murder instead of act with intent to cause grievous harm which he was initially charged with by police. The discretion to charge an accused with an offence lies with the Director of Public Prosecutions. The courts have no power to review that discretion.

[7] Other complaints including the grounds against sentence lack necessary particulars to make an assessment whether they are arguable. The appellant has no right of appeal against the fixed sentence of life imprisonment. The learned trial judge took into account all the relevant factors to arrive at a minimum term of 8 years. The minimum term reflects the criminality involved in inflicting physical violence on a woman using a weapon. There is no arguable error in the exercise of the sentencing discretion to fix a minimum term of 8 years.

Result

[8] Leave refused.

COURT OF APPEAL FIJI

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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

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