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

**CRIMINAL APPEAL AAU 10 of 2015**
**(High Court HAC 322 of 2011)**

**BETWEEN** : **WATANASIO CAMAIRA**

*Appellant*

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

*Respondent*

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

**Counsel** : **Mr S Waqainabete for the Appellant**
**Mr M Korovou for the Respondent**

**Date of Hearing** : **13 June 2018**

**Date of Ruling** : **6 July 2018**

## RULING

[1] Following a trial in the High Court at Suva the assessors returned unanimous opinions of guilty on 6 counts of sexual assault and one count of incest. In addition he had pleaded

guilty to one count of sexual assault. The complainant in each case was the appellant's biological daughter. In a written judgment dated 25 April 2013 the learned trial Judge agreed with the unanimous opinions of the assessors and convicted the appellant as charged on all 8 counts. On 3 May 2013 the appellant was sentenced to 13 years imprisonment with a non-parole term of 12 years.

[2] The appellant subsequently filed in person a notice of appeal against conviction and sentence dated 26 January 2015. The appeal is almost 1 year and 8 months late under section 26 of the Court of Appeal Act 1949 (the Act). The Legal Aid Commission filed an application for enlargement of time on 14 February 2018 together with a supporting affidavit sworn on 14 February 2018 by Watanasio Camaira. At the same time the Commission also filed an amended notice of appeal against conviction. On 1 March 2017 the Court had been informed that the Appellant intended to abandon his appeal against sentence. Both parties filed written submissions before the hearing of the application for enlargement of time.

[3] In his sentencing decision the trial judge outlined in general terms the circumstances of the offences. The appellant was married with six children five of whom were girls and one son. The appellant was a subsistence farmer. On 7 August 2011 the appellant returned home late at night and woke his 16 year old daughter. He fondled her breasts and only stopped when she protested. For the next six nights (8 – 13 August 2011) he woke the same daughter. The appellant *"forcefully fondled and licked her breast and vagina."* The appellant warned the complainant not to tell her mother. The same happened on the nights of 9 to 13 August 2011. On 28 August the appellant forcefully engaged in sexual intercourse with the complainant at the family farm.

[4] This is the appellant's application for an enlargement of time under section 26 of the Act. Pursuant to section 35(1) of the Act the power of the Court to extend time may be exercised by a judge of the Court of Appeal.

[5] The principles to be considered when determining an application for enlargement of time are well settled and were conveniently summarised by the Supreme Court in **Kumar and Sinu –v- The State** [2012] FJSC 17; CAV 1 of 2009, 21 August 2012. They are (a) the length of the delay, (b) the reason(s) for the delay, (c) whether there is a ground of merit justifying the appellate court's consideration or, where there has been substantial delay nonetheless is there a ground of appeal that will probably succeed and (d) if time is enlarged, will the respondent be unfairly prejudiced. The appellant carries the onus of establishing that in all the circumstances it would be just to grant the application.

[6] As already noted the delay is about 1 year and 8 months late. The only explanation provided by the appellant in his supporting affidavit is that his being incarcerated made it difficult for him *"to get legal assistance."* This is not a satisfactory explanation. Most incarcerated appellants are able to file a notice of appeal in one form or another within the 30 days time limit prescribed by section 26 of the Act. Under those circumstances it becomes necessary to determine whether there is a ground of appeal that will probably succeed.

[7] In his amended notice of appeal filed on 14 February 2018 the appellant relies on the following grounds of appeal against conviction:

> *"1. The learned trial Judge erred in law and in fact when he did not consider the evidence of the complainant's mother that the appellant never did anything bad to the complainant otherwise she would have complained the matter to her.*
>
> *2. The learned trial Judge erred in law and in fact when he did not properly consider the consistency of the evidence of the appellant."*

[8] It is difficult to understand why the appellant seeks to rely on ground one since the complainant's mother/appellant's husband was not called to give evidence at the trial. At paragraph 22 of the summing up the learned Judge noted that the complainant had reported the matter to her sister and brother. The matter was then later reported to the

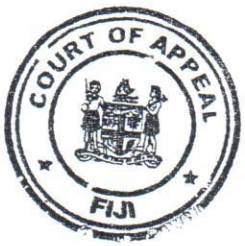
police. The summary of the evidence and the directions on how to consider the evidence in the summing up were sufficient and correct.

[9] So far as ground 2 is concerned the trial judge referred to the evidence given by the appellant when he summarized the evidence in paragraph 23 to 26 of the summing up. The trial judge also discussed and considered the appellant's caution interview that had been admitted into evidence. There is no merit to the second ground.

[10] In my judgment the appellant has failed to that either of his grounds of appeal is likely to succeed and as a result his application for enlargement of time is refused.

*Orders:*

1. *Application for enlargement of time to appeal conviction is dismissed.*
2. *Appeal against conviction is therefore dismissed.*
3. *Application to abandon the appeal against sentence is to be listed for hearing before the Court of Appeal on a date to be fixed in the September session.*




W. Calanchini

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