

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

**Criminal Appeal No. AAU 0120 of 2017**  
**(High Court Case No. HAC186 of 2013)**

**BETWEEN** : **KANITO MATAGASAU**

**Appellant**

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

**Respondent**

**Coram** : **Calanchini, P**  
**Gamalath, JA**  
**Fernando, JA**

**Counsel** : **Ms. S. Nasedra for the Appellant**  
**Mr. S. Vodokisolomone for the Respondent**

**Date of Hearing** : **19 September 2018**

**Date of Judgment** : **04 October 2018**

**JUDGMENT**

**Calanchini, P**

[1] I have read in draft form the judgment of Gamalath JA and agree with his conclusion and his proposed orders.

**Gamalath, JA**

[2] The Appellant by his hand written letter dated 21 July 2017 applied for leave to appeal against the sentence of imprisonment of 4 years imposed in the Magistrate's Court at Nasinu on 27 October 2016. The appellant's appeal against the sentence was based on the fact that the Learned Magistrate had failed to take into account that he was still a juvenile when the alleged offence of Aggravated Robbery was committed and therefore,

the sentence of imprisonment of 4 years (the Magistrate reduced the period of 6 months the appellant had already spent in remand custody and ordered that the period of actual imprisonment to be spent to that of 3 years and 9 months) was *ex facie* erroneous for it is contrary to the provisions of the Juveniles Act 1973.

- [3] By the time the appellant had sought to invoke the jurisdiction of this Court by his hand written letter, he was clearly out of time. However, the Learned Single Judge having disregarded the time factor, granted the application for enlargement of time along with the application for leave to appeal.

#### The Facts

- [4] The appellant faced trial in the Magistrate's Court at Nasinu on a charge of Aggravated Robbery, Contrary to section 311 (1) (a) of the Crimes Act No 44 of 2009. According to the Particulars of Offence "on 2 March 2016, the appellant along with one Petero Seniceva and some other persons had allegedly robbed one Shivam Chand of a black school bag, a music box, a mobile phone and a wallet, all to the total value of \$488.00".
- [5] On 25 July 2016, the appellant pleaded guilty to the charge and the learned Magistrate convicted him accordingly.
- [6] The learned Magistrate had clearly made a fundamental error in sentencing the appellant to 4 years imprisonment for the appellant was still under 18 years of age, a "young person" at the time of his committing the alleged offence.
- [7] This is evident having regard to his birth certificate, which shows that he was born on 28 July 1998, which means at the time of the commission of the alleged offence he was 17 years and 7 months old, and a young person, according to the definition in Section 2 of the Juveniles Act 1973 which states; "*young person*' means a person who has attained the age of 14 years but who has not attained the age of 18 years".

- [8] Under section 30 (3) of the Juveniles Act 1973, a young person shall not be imprisoned for more than 2 years for any offence.
- [9] At the hearing of the appeal on 19 September 2018, Mr. Vodokisolomone appearing for the State rightly conceded that the sentence of imprisonment imposed on the appellant is erroneous and contrary to the provisions of the Juveniles Act 1973.
- [10] This Court agrees with his submissions.
- [11] Accordingly, acting under section 23 (3) of the Court of Appeal and Rules Act (Cap 12), the sentence passed at the Magistrate's Court is quashed, and in substitution thereof a reduced sentence of 1 year 11 months and 07 days imprisonment is imposed. This in effect means he should be ending his sentence of imprisonment on 4 October 2018. Considering all the attendant circumstances of this case I hold that the need to consider the grant of non-parole under section 18(2) of the Sentencing and Penalties Act, 2009 is not a requirement in this appeal.

#### Conclusion


- [12] The appellant's appeal against the sentence is allowed and the sentence of imprisonment of 4 years is reduced to 1 year 11 months and 7 days period, so that the sentence of imprisonment shall expire on 4 October 2018.

#### **Fernando, JA**


- [13] I agree with the reasoning and conclusion of Gamalath, JA.

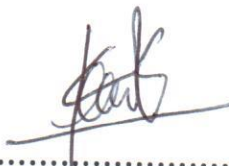
**The Orders of the Court are:**

1. *Appeal against sentence is allowed.*
2. *The sentence imposed by the Magistrates Court is quashed.*
3. *The Appellant is sentenced to a term of 1 year 11 months and 7 days imprisonment from 27 October 2016 up to 4 October 2018.*

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



  
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**Hon. Mr. Justice S. Gamalath**  
**JUSTICE OF APPEAL**

  
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**Hon. Mr. Justice A. Fernando**  
**JUSTICE OF APPEAL**