

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

CRIMINAL APPEAL NO.AAU 111 of 2016
High Court Criminal Case No. HAC 845 of 2015]

BETWEEN : THE STATE

Appellant

AND : SAMUELA LEA VULAONO

Respondent

Coram : Chandra, RJA

Counsel : Mr. S Babitu for the Appellant
Mr. S R Ali for the Respondent

Date of Hearing : 25 July, 2018

Date of Ruling : 4 December, 2018

RULING

- [1] This is an application by the State seeking leave to appeal the decision of the Magistrate's Court refusing the State's application to vacate the hearing date which resulted in the acquittal of the Respondent pursuant to s.178 of the Criminal Procedure Act 2009.
- [2] The Respondent was charged in the Magistrate's Court at Lautoka exercising extended jurisdiction on the following counts:
- (a) Aggravated Burglary contrary to Section 313(1)(b) of the Crimes Act, 2009.

- (b) Aggravated Robbery contrary to Section 311(1)(b) of the Crimes Act, 2009.
 - (c) Indecent assault contrary to section 212(11) of the Crimes Act, 2009.
 - (d) Assault causing bodily harm contrary to section 275 of the Crimes Act, 2009.
 - (e) Escaping from Lawful Custody contrary to section 196 of the Crimes act, 2009.
 - (f) Serious assault contrary to Section 277(b) of the Crimes Act, 2009.
- [3] The Respondent pleaded not guilty to the charges against him and had indicated his intention to challenge the admissions in his caution interview.
- [4] The Respondent had failed to file any grounds of voir dire and thereupon the learned Magistrate had proceeded to fix the matter for trial.
- [5] On 2nd May 2016 when the matter was taken up for trial the prosecution made an application to vacate the trial and adjourn the matter which was refused by the learned Magistrate. The learned Magistrate thereupon called upon the prosecution to call evidence.
- [6] An application had been made thereupon to have the matter stood down. When the matter was taken up again the Police Prosecution had informed Court that the State offered no evidence.
- [7] Thereupon the learned Magistrate acting in terms of section 178 of the Criminal Procedure Act dismissed the case and acquitted the Respondent.
- [8] By notice of application for leave to appeal dated 21st July 2016, the Appellant sought leave to appeal against the No Case to Answer Ruling. (The notice is captioned as “Notice of Application for leave to appeal against the Ruling of acquittal against the Respondent). The said notice was supported by an affidavit of Rukalesi Uce, Legal Officer.
- [9] Thereafter The Appellant filed a summons for leave to appeal out of time on 26th August 2016 pursuant to section 35(1)(b) of the Court of Appeal Act.

- [10] In its application seeking extension of time to file leave to appeal the following grounds of appeal have been proposed by the Appellant:
- (i) That the learned Magistrate erred in law and in fact in failing to consider that the prosecution had “good cause” to vacate the trial and adjourn the matter;
 - (ii) That the learned Magistrate erred in law and in fact in failing to consider the history of the proceedings in terms of the previous adjournments granted to both parties;
 - (iii) That the learned Magistrate erred in law and in fact in considering the fact that the accused was remanded in custody as the basis for refusing the adjournment;
 - (iv) That the learned Magistrate erred in law and in fact in failing to consider the seriousness of the offences charged and the circumstances surrounding the application to vacate the scheduled trial date.
- [11] In an application seeking extension of time the principles applicable for granting an extension are set out in **Kumar v State** [2012] FJSC 17; 2CAV0001.2009(21 August 2012) as follows:
- (i) Length of delay;
 - (ii) The reason for the delay;
 - (iii) Where there is a ground of merit justifying the Appellate courts consideration;
 - (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
 - (v) if time is enlarged, will the respondent be unfairly prejudiced?
- [12] The delay in seeking an extension of time is 87 days. The reasons for the delay have been set out in the affidavit filed in support of the application seeking extension of time. The reasons set out therein have been due to the delay in getting the necessary papers ready for filing which are not reasonable as the Officers of the Appellant should have been familiar with the appellate procedures and the fixed datelines for filing appeals.
- [13] As regards the merits of the appeal, the decision of the learned Magistrate in dismissing the prosecution case resulted in the Respondent being acquitted of the charges. The case was dismissed on the date on which the trial was fixed and the prosecution had moved to

vacate the trial and no reasons have been adduced by the prosecution as to why an adjournment was sought. For a trial to be vacated and adjourned good cause has to be shown by the party moving to vacate the trial (s.170 of the Criminal Procedure Act). In this instance there is nothing on record to show any cause being shown by the prosecution when seeking the adjournment.

[14] This Court has to go by the record and there is nothing on the record to show as to why the prosecution was wanting an adjournment. All that is recorded is the fact that the prosecution had wanted an adjournment and when it was refused, the prosecution wanted the matter stood down which the Magistrate has allowed.

[15] When the matter was stood down and taken up again the prosecution had stated that the State is not offering evidence. Even if the charges were considered as serious charges, the prosecution has not proceeded with prosecuting their case and left the presiding Magistrate with a situation where the prosecution has not proceeded with the case as the prosecution was not offering any evidence. In such a situation the dismissal of the case would be justified. I do not see any merit in the proposed grounds of appeal.


[16] Needless to state that if an extension of time is granted in the above situation, the Respondent will be prejudiced.

[17] Therefore the application for extension of time is refused and the application is dismissed.

Orders of Court:

Application seeking extension of time to file leave to appeal is dismissed.




Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL