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

CRIMINAL APPEAL NO.AAU 26 of 2019
[In the High Court at Suva Case No. HAC 210 of 2018]

BETWEEN	:	**KEPERIELI KETEWAI**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Mr. T. Lee for the Appellant**
	:	**Mr. R. Kumar for the Respondent**
Date of Hearing	:	**16 February 2021**
Date of Ruling	:	**26 February 2021**

RULING

[1] The appellant with two others had been indicted in the High Court of Suva on a single count of aggravated robbery contrary to section 311(1) (a) of the Crimes Act, 2009 committed on 04 April 2018 at Vunisea, Kadavu in the Southern Division.

[2] The information read as follows:

'***Statement of Offence***

AGGRAVATED ROBBERY: *contrary to section 311(1) (a) of the Crimes Act 2009.*

Particulars of Offence

> ***KEPERIELI KETEWAI, JOSAIA WARODO VATUNICOKO & LUKE TAVAIALU*** *on the 4th day of April 2018 at Vunisea, Kadavu, in the Southern Division in the company of each other robbed UTTAM KUMAR of 1X green bag containing $50 worth of coins, 1 green bag containing $100 worth of coins, $500 cash, 1x Samsung band J5 mobile phone valued at $ 500, 1x return boat ticket valued at $ 350, Hawkers License valued at $ 30; all to the total value of $ 1530, the properties of UTTAM KUMAR.*

[3] After the summing-up, the assessors had expressed a unanimous guilty opinion against the appellant as charged on 03 April 2019. The learned High Court judge in his judgment on 08 April 2019 had agreed with the assessors and convicted the appellant. He had been sentenced on 21 May 2019 to 08 years of imprisonment with a non-parole period of 05 years.

[4] The appellant being dissatisfied with the conviction had penned an application for leave to appeal and an enlargement of time on 18 March 2020 (received on 01 May 2020). The delay is about 09 months. The Legal Aid Commission had filed a notice of motion seeking an extension of time, affidavit and amended grounds of appeal against conviction and sentence along with written submissions on 17 June 2020. Thus, the delay in so far as the sentence appeal is almost 02 years. The state had filed its submissions on 15 February 2021.

[5] Presently, guidance for the determination of an application for extension of time within which an application for leave to appeal may be filed, is given in the decisions in **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4, **Kumar v State; Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17

[6] In ***Kumar*** the Supreme Court held:

> *'[4] Appellate courts examine five factors by way of a principled approach to such applications. Those factors are:*
>
> *(i) The reason for the failure to file within time.*
> *(ii) The length of the delay.*
> *(iii) Whether there is a ground of merit justifying the appellate court's 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?*

[7] ***Rasaku*** the Supreme Court further held:

> *'These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.'*

[8] The remarks of Sundaresh Menon JC in **Lim Hong Kheng v Public Prosecutor** [2006] SGHC 100 shed some more light as to how the appellate court would look at an application for extension of time to appeal.

> *'(a)……*
>
> *(b) In particular, I should apply my mind to the length of the delay, the sufficiency of any explanation given in respect of the delay and the prospects in the appeal.*
>
> *(c) These factors are not to be considered and evaluated in a mechanistic way or as though they are necessarily of equal or of any particular importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases.*
>
> *(d) Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained.*
>
> *(e) It would seldom, if ever, be appropriate to ignore any of these factors because that would undermine the principles that a party in breach of these rules has no automatic entitlement to an extension and that the rules and statutes are expected to be adhered to. It is only in the deserving cases, where it is necessary to enable substantial justice to be done, that the breach will be excused.'*

[9] Sundaresh Menon JC also observed:

> *'27…… It virtually goes without saying that the procedural rules and timelines set out in the relevant rules or statutes are there to be obeyed. These rules and timetables have been provided for very good reasons but they are there to serve the ends of justice and not to frustrate them. To ensure that justice is done in each case, a measure of flexibility is provided so that transgressions can be excused in appropriate cases. It is equally clear that a party seeking the court's indulgence to excuse a breach must put forward sufficient material upon which the court may act. No party in breach of such rules has an entitlement to an extension of time.'*

[10] Under the third and fourth factors in ***Kumar***, test for enlargement of time now is **'real prospect of success'**. In **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019) the Court of Appeal said:

> *'[23] In my view, therefore, the threshold for enlargement of time should logically be higher than that of leave to appeal and in order to obtain enlargement or extension of time the appellant must satisfy this court that his appeal not only has 'merits' and would probably succeed but also has a **'real prospect of success'** (see **R v Miller** [2002] QCA 56 (1 March 2002) on any of the grounds of appeal.....'*

Length of delay

[11] The delay is about 09 months and 02 years respectively in respect of conviction and sentence appeals. Both appeals are very substantially out of time.

[12] In **Nawalu v State** [2013] FJSC 11; CAV0012.12 (28 August 2013) the Supreme Court said that for an incarcerated unrepresented appellant up to 03 months might persuade a court to consider granting leave if other factors are in his or her favour and observed.

> *'In **Julien Miller v The State** AAU0076/07 (23rd October 2007) Byrne J considered 3 months in a criminal matter a delay period which could be considered reasonable to justify the court granting leave.'*

[13] However, I also wish to reiterate the comments of Byrne J, in **Julien Miller v The State** AAU0076/07 (23 October 2007) that:

> *'... that the Courts have said time and again that the rules of time limits must be obeyed, otherwise the lists of the Courts would be in a state of chaos. The law expects litigants and would-be appellants to exercise their rights promptly and certainly, as far as notices of appeal are concerned within the time prescribed by the relevant legislation.'*

Reasons for the delay

[14] The appellant's excuse for the delay is that he had lodged an appeal from the correction center earlier which had been misplaced. Going by his first enlargement of application received by the CA registry he had handed over his first appeal to the correction center out of time. However, such an appeal was never received by the CA

registry nor is there any evidence to show that it had been filed with the correction center. Still the appellant's explanation does not state why he did not appeal against sentence in the first instance even after 09 months when he appealed against conviction. The appellant had been defended by counsel at the trial and he had not stated why he could or did not seek legal assistance from the same counsel or Legal Aid Commission. Therefore, the appellant's explanation as a former police officer for the extraordinary delay is not convincing.

Merits of the appeal

[15] In **State v Ramesh Patel** (AAU 2 of 2002: 15 November 2002) this Court, when the delay was some 26 months, stated (quoted in **Waqa v State** [2013] FJCA 2; AAU62.2011 (18 January 2013) that delay alone will not decide the matter of extension of time and the court would consider the merits as well.

> *"We have reached the conclusion that despite the excessive and unexplained delay, the strength of the grounds of appeal and the absence of prejudice are such that it is in the interests of justice that leave be granted to the applicant."*

[16] Therefore, I would proceed to consider the third and fourth factors in ***Kumar*** regarding the merits of the appeal as well in order to consider whether despite the delay and the absence of a convincing explanation, the prospects of his appeal would warrant granting enlargement of time.

[17] Grounds of appeal against conviction and sentence are as follows:

> ***Conviction***
>
> ***Ground 1:***
>
> *That the learned Trial Judge may have fallen into an error in fact and law at Summing Up to direct the Assessor to place more weight on the evidence of the accomplice witness.*
>
> ***Ground 2:***
>
> *That the learned Trial Judge may have fallen into an error in law and fact to convict the Appellant without considering and assessing independently the totality of the evidence regarding the inconsistencies of the State's evidence thereby causing a substantial miscarriage of justice.*

Ground 3:

That the learned Trial Judge may have fallen into an error in law and fact to convict the Appellant without considering and assessing independently the totality of the evidence regarding the fabrication of Appellant's confession since a conflict of interest had existed between the interviewing officer and the charging officer.

Sentence

Ground 1:

That the learned Magistrate erred in law by imposing a sentence deemed harsh and excessive without having regard to the sentencing guideline and applicable tariff for the offence of aggravated robbery of this nature.

Ground 2:

That the learned Magistrate erred in fact and law allowing extraneous or irrelevant matters to guide or affect him when sentencing the Appellant.

Ground 3:

That the learned Magistrate erred in fact and law in improperly discounting for the mitigating factors to decrease the sentence.

[18] The prosecution evidence of the case as summarised by the learned High Court judge in the sentencing order is as follows. The appellant was an ex-policeman and accused No.1 at the trial where he gave evidence but not called any other evidence.

> 3. *The complainant in this matter is 38 years old businessman. On 21st March 2018, the complainant went to Kadavu on a business trip to sell second hand items at the Vunisea market. The complainant took all the sale items in his mini-van and also used his van to sleep at nights during his stay in Kadavu.*
>
> 4. *On 3rd of April 2018, at about 10pm, after closing business at the Vunisea market, the complainant went to his vehicle which was parked at the market roundabout. At about 1.30am, while he was sleeping on the driver's seat inside his van, Keperieli you knocked on his glass window asking for time. The complainant then opened his van's door and this is when you held him with one hand and tried to pull him out of his van. The complainant resisted and was struggling to hold onto the steering wheel.*
>
> 5. *Luke, you then approached the van and assisted Keperieli to pull the complainant out of the van. Keperieli, you punched the complainant on his nose, chin and back of his head. Both of you then dragged the complainant about seven metres away from his vehicle. While Keperieli was asking the*

complainant about the money, Luke went back to complainant's vehicle to check for money.

6. *The complainant felt blood coming out of his nose. When he felt that he was in danger, he told you that the money was in his shirt pocket which was kept inside his vehicle. One of you then dragged the complainant back to his vehicle and took away his money and his belongings. When you got occupied talking to each other, the complainant managed to lock his vehicle and run to the Kadavu Police Station to report the matter. All of you then ran away and thereafter shared the money.*

01st ground of appeal

[19] The appellant's complaint is based on paragraph 32 of the summing-up which is as follows:

> *'[32] Waro did not say that he was promised a pardon in return for him giving evidence for the prosecution. Therefore, you may attach a greater weight to his evidence than what is given to an accomplice who has been promised an incentive.'*

[20] Witness (PW7) Waro was the second accused at the trial who had pleaded guilty and sentenced to 05 years of imprisonment earlier. State counsel has submitted that Waro abandoned his appeal in the Court of Appeal on 23 December 2020. After he pleaded guilty, the state had made him one of its witnesses. Although PW7 was clearly an accomplice by the time he gave evidence he had admitted his guilt and sentenced by court and had no expectation of any pardon or other incentive to testify falsely against his co-accused. However, the trial judge had given full directions on how to assess the evidence of an accomplice at paragraph 31 and 33 of the summing-up regarding PW7's evidence.

[21] Obviously, there was additional evidence in the form of the cautioned interview and the charge statement of the appellant where he had made admissions of his involvement in and masterminded the robbery in addition to the evidence of PW7. The appellant and the interviewing police officer and possibly the charging officer had been colleagues in the police department. The complainant's evidence too had corroborated the evidence of PW7 in material particulars though the former had not

identified the appellant at the crime scene. The appellant's own evidence under oath had been that he had assaulted the complainant but not robbed him and in doing so he had acted alone. However, his counsel had taken up the position that the appellant was assaulting the complainant the other two accused had taken the opportunity to steal

[22] In any event, the judge had analyzed the evidence of PW7 at paragraphs 9-13 and accepted his testimony as reliable.

[23] Therefore, I do not think that there is merit in the appellant's criticism of what the trial judge had told the assessors at paragraph 32 regarding giving greater weight to PW7's testimony than what is usually given to an accomplice in the context of the totality of evidence stacked against the appellant and this ground of appeal has no real prospect of success. Justice Stock's comments at paragraph 49 in **Singh v State** [2020] FJSC 1; CAV 0027 of 2018 (27 February 2020) does not affect this position.

02nd ground of appeal

[24] The appellant submits that the trial judge had not independently analyzed the inconsistencies of the prosecution case. He relies on **Ram v State** [2012] FJSC 12; CAV0001 of 2011 (09 May 2012). This complaint has to be considered in the light of the trial judge's role in agreeing with the assessors.

[25] When the trial judge agrees with the majority of assessors, the law does not require the judge to spell out his reasons for agreeing with the assessors in a judgment but it is advisable for the trial judge to always follow the sound and best practice of briefly setting out evidence and preferably reasons for his agreement with the assessors in a concise written judgment as it would be of great assistance to the appellate courts to understand that the trial judge had given his mind to the fact that the verdict of court was supported by the evidence and was not perverse so that a judge's agreement with the assessors' opinion is not viewed as a mere rubber stamp of the latter ([vide **Mohammed v State** [2014] FJSC 2; CAV02.2013 (27 February 2014), **Kaiyum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014), **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015) and **Kumar v State** [2018] FJCA 136; AAU103.2016 (30 August 2018)].

[26] The applicable test in assessing the contradictions, inconsistencies and omissions was laid down in the case of **Nadim v State** [2015] FJCA 130; AAU0080.2011 (2 October 2015) as follows:

> *'[13] Generally speaking, I see no reason as to why similar principles of law and guidelines should not be adopted in respect of omissions as well. Because, be they inconsistencies or omissions both go to the credibility of the witnesses (see **R. v O'Neill** [1969] Crim. L. R. 260). But, the weight to be attached to any inconsistency or omission depends on the facts and circumstances of each case. No hard and fast rule could be laid down in that regard. The broad guideline is that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be annexed with undue importance (see **Bharwada Bhoginbhai Hirjibhai v State of Gujarat** [1983] AIR 753, 1983 SCR (3) 280)'*

[27] **Turogo v State** [2016] FJCA 117; AAU.0008.2013 (30 September 2016) the Court of Appeal further stated:

> *'[35]……..Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important "probabilities-factor" echoes in favour of the version narrated by the witnesses. The reasons are: (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; (2) ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details; (3) The powers of observation differ from person to person. What one may notice, another may not. ..... It is unrealistic to expect a witness to be a human tape recorder;"*

[28] The Court of Appeal followed the above decisions in **Chand v State** [2019] FJCA 192; AAU0033.2015 (3 October 2019).

[29] It is a paramount duty of the trial judge to direct and guide the assessors on how to act on the inconsistencies or contradictions or omissions (*vide* **Prasad v State** [2017] FJCA 112; AAU105 of 2013 (14 September 2017). The trial judge had fulfilled this obligation at paragraphs 11, 12 and 19 of the summing-up.

[30] The inconsistency the appellant complains about arises from what is stated at paragraph 40 and 56 of the summing-up. According to the complainant, he only saw two people participating in the robbery whereas PW7 had spoken to three accused

including the appellant and himself participating in the robbery. The complainant had further said that while the first person continued to assault him the second person went to the van to steal. The first person appears to be the appellant.

[31] When the evidence is analyzed it becomes clear that according to PW7 his primary role was to guard the place and for the other two to take the complainant out of the vehicle and rob him. When the complainant was being punched and held by the appellant, PW7 (02nd accused) and the 03rd accused had gone to the van looking for money.

[32] Thus, according to the complainant only two persons participated in the robbery whereas PW7 had implicated the appellant, himself and the 01st accused in the robbery. According to PW7 the complainant had not seen him.

[33] The trial judge had brought these matters clearly to the attention of the assessors. Given the time, place and the manner in which the whole incident happened it is quite possible that the complainant did not observe the presence of the third person.

[34] In any event, the above inconsistency between the complainant and PW7 would not have the effect of shaking the foundation of the prosecution case as the appellant himself had admitted participating in the robbery in his cautioned interview and the charge statement. Thus, the presence of three persons at the crime scene had been established by the appellant's confessions. He had even admitted under oath at the trial having assaulted the complainant.

[35] Therefore, there is no real prospect for this ground of appeal to succeed in appeal.

03rd ground of appeal

[36] The appellant challenges his confessional statement under this ground of appeal on the basis that the interviewing officer and the witnessing officer had been husband and wife. However, there is nothing to indicate that PW6 who was the wife of PW3 who conducted the appellants' cautioned interview, had been the witnessing officer. However, PW6 had recorded the charge statement of the appellant. The appellant had made submissions as if PW6 and PW3 were spouses. According to him, it had resulted in conflict of interest, abuse of process of natural justice and lack of 'good

faith'. It does not appear that the appellant had challenged the admissibility of the cautioned interview on this basis at the stage of *voir dire* (if there was one).

[37] The appellant's position in his written submissions is that the cautioned statements had been fabricated.

[38] The appellants' allegation that his cautioned interview had been fabricated by the spouses (if that be the case) consisting of PW3 and PW6 does not apply to his charge statement recorded by PW6 only.

[39] PW3 and PW6 had denied the appellant's allegations and the trial judge had placed the matter of recording his cautioned interview and the charge statement clearly before the assessors. Neither the assessors nor the trial judge had believed the appellant.

[40] I do not think the decision in **State v Pal** [2008] FJCA 13; AAU0036 of 2006 (08 February 2008) can be relevant to this case. In ***Pal*** the state had appealed against the issuance of a permanent stay of proceedings order by the trial judge in alleged violation of rules of natural justice/procedural fairness *i.e.* without hearing the state when the respondent had sought only to exclude video recording evidence at the *voir dire* hearing on grounds such as 'bad faith', inducement, coaxing, abuse of process, including entrapment. The stay had been issues at the end of *voir dire* inquiry without continuing with the trial. The observations relied on by the appellant made by the Court of Appeal should therefore be understood in the factual matrix of ***Pal***. The appellant's challenge to the cautioned interview and the charge statement is simply based on two grounds both of which had been ventilated in the summing-up and the judgment and rejected by the assessors and the trial judge.

[41] Therefore, there is no real prospect of success of this ground of appeal.

01st ground of appeal (sentence)

[42] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim**

Nam Bae v The State Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal filed out of time to be considered arguable there must be a real prospect of its success in appeal**. The aforesaid guidelines are as follows:

> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration.*

[43] The appellant complains that the sentence is excessive on the basis that the trial judge had not had regard to the sentencing guidelines and applicable tariff.

[44] The appellant seems to argue that the trial judge should have applied the sentencing tariff of eighteen months to five years for *'street mugging'* (see **Raqauqau v State** [2008] FJCA 34; AAU0100.2007 (4 August 2008), **Tawake v State** [2019] FJCA 182; AAU0013.2017 (3 October 2019) and **Qalivere v State** [2020] FJCA 1; AAU71.2017 (27 February 2020] in dealing with him but somehow wrongly applied tariff set in **Wise v State** [2015] FJSC 7; CAV0004.2015 (24 April 2015) *i.e.* 08 to 16 years of imprisonment for *'home invasions'*.

[45] The judge had not clearly applied the sentencing tariff for *'home invasions'* prescribed in ***Wise*** in picking the starting point at 07 years despite having stated that the van was used as complainant's temporary dwelling house which was, of course, a fact. He said in the sentencing order as follows:

> *[11] In assessing the objective seriousness of your offending, I looked at culpability of your offending and the harm caused to the complainant. In selecting the starting point, the court must strike a delicate balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person who is to be sentenced*
>
> *[12] Keperieli, you are the mastermind of this robbery. You planned this robbery and carried out your plan with two others. You assaulted the complainant brutally under influence of liquor. Your culpability level is high compared to that of Luke Tavialu and Josaia Warado. I pick a starting point of 7 years' imprisonment as the starting point.*

[46] This is clearly not an instance of mere *'street mugging'* either. Therefore, I see no fault in the trial judge picking 07 years as the starting point based on objective seriousness of the offending.

02nd ground of appeal

[47] The appellant also complains that the trial judge had taken extraneous matters into consideration in enhancing the sentence by 03 years. The aggravating features considered by the judge are as follows:

> *[15] ……..You robbed the complainant when he was sleeping in his van. At the material time, the van was used as complainant's temporary dwelling house. The complainant was attacked at night. The attack was premeditated. You were drunk and ruthless. The complainant was dragged out of his vehicle and physically beaten to a point where he feared for his life, forcing him to disclose the location where he kept day's earnings. The complainant received hospital treatment. Both of you were police officers and the guardians of rule of law. You committed this offence when you were supposed to prevent crimes and not commit them. You breached the trust the people had on you as police officers……*

[48] None of these matters are extraneous not do they amount to double counting. They, by and large, relate to subjective seriousness of the offending. It appears that the trial judge had considered the objective circumstances of the offending in picking the starting point at 07 years and added 03 years for subjective circumstances of the offender as prescribed in two-tiered sentencing approach [see **Naikelekelevesi v State** [2008] FJCA 11; AAU0061.2007 (27 June 2008) and **Qurai v State** [2015] FJSC 15; CAV24.2014 (20 August 2015)].

03rd ground of appeal

[49] The appellant criticises the trial judge regarding the mitigating features considered and the deduction of 02 years. The trial judge had stated:

> *[17] Keperieli, you are 26 years of age and single. You have been suspended from Fiji Police Force when you were charged for this offence. You are a first offender. Your Counsel has submitted that you are remorseful of*

your actions. I concede that you have expressed your remorse at the caution interview and the charge, but you have maintained the not guilty plea in court. I doubt if you have been genuinely remorseful. However, you will be given a discount for your clean record and youth. You had been in remand for two weeks and the remand period will be separately discounted in coming to your final sentence. I deduct your sentence by 2 years for mitigation and remand period to arrive at a sentence of 8 years' imprisonment. Having considered your rehabilitation potential as a young and first offender, I fix a non- parole period of 5 years.

[50] The trial judge had finally summed-up the sentence as follows:

> *'[19] The offence you committed whilst being in the Fiji Police Force should be denounced and adequately punished. The courts have a duty to deter this kind of anti-social behaviour using violence on innocent members of the public and to safeguard their propriety rights. Potential offenders should be sent a clear message. The primary purposes of this punishment are deterrence and denunciation.'*

[51] There is no sentencing error or a real prospect of success on any of the grounds of appeal urged against the sentence.

[52] On the other hand, it is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered **(vide Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range [**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015)].

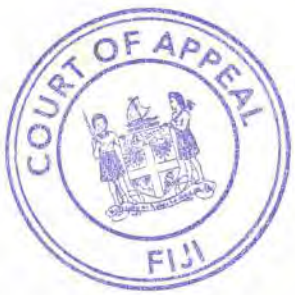
[53] When the appellant's sentence of 08 years is considered, given the facts of this case I am of the view that he has no real prospect of success in appeal as far as his sentence appeal is concerned.

Prejudice to the respondent

[54] No prejudice to the respondent by the extension of time had been averred.

Orders

1. Enlargement of time to appeal against conviction is refused.
2. Enlargement of time to appeal against sentence is refused.



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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL