

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

CRIMINAL APPEAL NO. AAU 035 of 2021
[In the Magistrates Court of Nasinu Case No. CF 1783 of 2020]

BETWEEN : **STATE**

Appellant

AND : **SUNIL SHARMA**

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Ms. S. Shameem for the Appellant**
: **Ms. M. A. Khan for the Respondent**

Date of Hearing : **08 August 2022**

Date of Ruling : **15 August 2022**

RULING

[1] The respondent had been charged in the Magistrates court at Nasinu on one count of assault causing actual bodily harm contrary to section 275 of the Crimes Act, 2009 and another count of damaging property contrary to section 369(1) of the Crimes Act, 2009.


[2] The case had been fixed for trial on 22 February 2021 and the police prosecutor had applied for an adjournment on the ground that he was not ready to proceed particularly because the witnesses had not been summoned. The Magistrate had refused an adjournment and directed the prosecution to call evidence. As the prosecutor could offer no evidence, the Magistrate had, purportedly acting under section 178 of the Criminal Procedure Act, found that there was no evidence for the respondent to answer and made an order acquitting him of both charges.

- [3] The appellant had filed a timely appeal against the acquittal in the Court of Appeal. Notice of Leave to Appeal against acquittal had been served on the respondent's counsel. The respondent himself did not appear in the Court of Appeal.
- [4] The appellant submitted to this court on 08 July 2022 that since both charges levelled against the respondent were summary charges, the appeal against acquittal should have been filed in the High Court and not in the Court of Appeal. This court granted time for the appellant to file written submissions on this point and move court for an appropriate order.
- [5] The written submissions filed on behalf of the appellant on 08 August 2022 further supported that position and prayed that the appeal be dismissed for want of jurisdiction so that the appellant could initiate an appeal in the High Court.
- [6] Section 35(2) of the Court of Appeal Act gives a single judge power to dismiss a frivolous or vexatious appeal, or an appeal that is bound to fail because there is no right of appeal. Accordingly, the present appeal is bound to fail for want of right of appeal to this court.

Order

1. The appeal is dismissed in terms of section 35(2) of the Court of Appeal Act, for there is no right of appeal against the impugned acquittal to the Court of Appeal.




.....
Hon. Mr Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL