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

CRIMINAL APPEAL NO. AAU 035 OF 2025
[Lautoka High Court: HAC 195 of 2016]

BETWEEN : **EMOSI BALEIDROKADROKA**

Appellant

AND : **THE STATE**

Respondent

Coram : Qetaki, RJA

Counsel : Mr. M. Fesaitu for the Appellant
Mr. S. Seruvatu for the Respondent

Date of Hearing : 29 September, 2025
Date of Ruling : 22 October, 2025

RULING

(A). Background

[1] The Appellant was charged with four others and tried in the High Court at Lautoka for two counts of aggravated robbery. Following a trial within a trial and subsequently the substantive trial, the learned trial judge had convicted the Appellant for the two counts of aggravated robbery.

[2] The Appellant was sentenced to an aggravated robbery term of 9 years and 6 months with a non-parole period of 8 years imprisonment.

[3] The Appellant filed an untimely appeal against sentence on 15th April 2025.

(B). Facts

[4] The facts are set out in paragraphs 3 and 4 of the Sentence as follows:

> *"The facts were that the complainant and his wife were running a business at the Lautoka Market. On the day of the incident, the complainant took his wife and the two kids, a son aged 10 years and a daughter aged 01, left for Kashmir in his Toyota Prado to pick up his sister, who had come from New Zealand. There were two bags containing clothes, a gold chain, $16,000+ money and two smartphones in the vehicle. His wallet was in his pocket. The money collected from his business was to be deposited in the bank the next morning.*
>
> *On their way the complainant stopped his vehicle in front of a shop in Khasmir at around 7. 20pm.While the engine was on, he went inside the shop to buy some stuff for the kids. His wife sat in the front passenger seat with his daughter and the son in the back seat. Suddenly he hear his wife scream. When he turned back, he saw an Itaukei guy sitting in the driving seat of the vehicle. He ran to the vehicle and forced himself* inside *it to get the Itaukei guy out. There were eight Itaukei men, and the others loomed soon. The 1st Offender and another started to assault the complainant in full view of the public. One of them picked up his wallet. The 2nd Accused kicked an onlooker Indian man. The complainant's wife managed to get out of the vehicle with their daughter. One robber dropped the son on the pavement. All the robbers got in the vehicle and fled the scene. The whole incident was captured by the CCTV camera installed at the shop. The CCTV footage displayed a Chicago-type systematic and coordinated brutal attack on the victims and their property rights."*

(C). Grounds of Appeal

[5] **Against Conviction-Ground 1**

> *The learned trial judge erred in law by admitting the Appellant's Record of Caution Interview Statement into evidence, in doing so, was erroneous in assessing the evidence.*

[6] **Against Sentence-Ground 1**

The learned trial judge had erred in law in not affording any deduction for the time spent in remand by the Appellant.

(D). Enlargement of Time Application

[7] The delay was over three months from the date of sentence on 23rd July 2024.

[8] The delay was explained in the Appellant's sworn Affidavit filed on 25th August 2025, which is that the appeal papers were prepared in a timely manner however, the prison authorities had lodged the documents late with the Court Registry.

[9] The reasons for the delay in filing the appeal as explained, is not convincing. As such, the grounds of appeal will have to be examined to see if there is a ground of merit.

(E). Appellant's Case

[10] **Ground 1 (Conviction)**- The Appellant challenged the admissibility of the Caution Interview Statement which was ruled admissible following the voir dire hearing. The basis for challenging the Ruling by the trial Judge in admitting the caution interview statement is on the limb that the trial Judge wrongly assessed the evidence. What the trial Judge had not properly assessed is the fact that the Appellant requested for medical examination when he first appeared in the High Court and there was reference made to an Ex-Ray done on the Appellant.

[11] The Appellant explained, he did not complain to the learned Magistrate before the case was transferred to the High Court, because he had forgotten as the court room was crowded with the media being present. This explanation was deemed implausible by the learned Judge. The question then is: Whether, when considering the totality of the evidence it was open for the trial Judge to have found the explanation implausible?

[12] The Appellant relies on **Tuilagi v State** [2018] FJSC 3; CAV0013.2017 (26 April 2018). The Supreme Court stated:

> *"46. Although it would seem unusual for a court sitting in appeal to reverse the decision of a trial judge who held the Voir Dire on the admissibility of alleged confessions, it was held in the case of **Nirmal v R***

(1972) Cr L. Rev 226 P.C; that it is not necessarily wrong to do so having taken into account the facts of the particular case. In the case of ***D.P.P v Ping Lin*** *(1975)3 A.E.R175; their Lordships expressed the view that the court should not interfere with the judge's ruling on the admission in evidence of the statement unless satisfied that the judge had completely wrongly assessed the evidence or had failed to apply the correct principles."*

[13] In **Hakik v The State** [2017] FJCA 184; AAU0047.2015 (17 October 2017), Justice Grounder had stated:

"Admissibility of evidence involves a question of law alone. Leave is not required to appeal on a ground that involves a question of law alone……

[14] **Sentence Ground 1-** The learned trial Judge erred in not giving the Appellant discount for the remand period- paragraph 53 of sentencing.

[15] In **Rogers's v State** [2017] FJCA 134; AAU0032.2011 (30 November 2017) the Court stated:

"Time spent in custody while on remand is a relevant factor in sentencing. There is a statutory obligation on the courts to consider the remand period in sentence, created by section 24 of the Sentencing and Penalties Act 2009."

Conclusion

[16] Considering the principles of granting enlargement of time, although the length of delay is considered substantial and the reason for the delay is not justifiable, the proposed appeal grounds are meritorious for the consideration of this Court, for enlargement of time to appeal conviction and sentence to be granted. There is no prejudice to the Respondent.

(F). Respondent's Case

[17] The Appellant's appeal is out of time by 266 days. The Appellant had to do more than blaming the prison authorities. He must base his reason on "some material upon which

the court can exercise its discretion". The claim is undermined by the fact that his co-Appellants had successfully filed their appeals in 2024.

[18] **Conviction Ground 1**- The Appellant's arguments that the trial judge had not properly assessed the fact that the Appellant requested for medical examination when he first appeared in the High Court and there was no reference made to an ex-ray done to the Appellant. Paragraph 14.3 of the Ruling completely undermines the Appellant's arguments.

[19] The Ruling to admit the Caution Interview Statement was not erroneous. It was the product of a careful, step by step analysis where the learned trial judge, as the trier of fact, made clear credibility findings in favor of the police witnesses and identified fatal inconsistencies in the Appellant's account. There is no merit on this ground and no prospect of success.

[20] **Sentence Ground 1**- Section 24 of the Sentencing and Penalties Act 2009 allows the learned trial judge to exercise his discretion whether or not to take into account the time during which the offender was held in custody. It is not a mandatory or compelling requirement. The phrase *"unless a court otherwise orders"* is pivotal as it establishes a discretion not a mandatory obligation. The learned judge had meticulously examined the Appellant's custodial history and provided clear and cogent reasons for exercising his discretion to decline a remand deduction which is detailed in paragraphs 47 to 54 of the Sentence.

[21] This ground of appeal is fundamentally misconceived with no real prospect of success.

(G). Discussion /Analysis

[22] In **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019) it is observed that, the threshold that an appellant had to reach in this heading is higher than that of leave to appeal. In timely leave to appeal applications the test is "*reasonable prospect of success"* to identify whether an arguable ground of appeal exists – see also **Caucau v State** AAU0029 of 2016; 4 October 2018[2018] FJCA 171, **Navuki v State** AAU0038 of 2016; 4 October 2018[2018] FJCA 172, **State v Vakarau** AAU0052 of 2017;4 October 2018[2018] FJCA 173 and **Sadrugu v State** Criminal Appeal No. AAU0057 of 2015:06 June 2019.

[23] In order to obtain enlargement or extension of time the appellant must satisfy the court that his appeal not only has "*merits",* and would probably succeed but also has *"real prospect of success"*: **R v Miller** [2002] QCA 56 (1 March 2002).

Conviction Ground 1 - *Error in Admission of Record of Caution Interview Statement and Error in Assessment of Evidences*

[24] The Appellant argues that the trial Judge had not properly assessed the fact that the appellant requested for medical examination when he first appeared in the High Court and there was no reference done to an X-ray done on the Appellant.

[25] On this issue, paragraph 143 of the Ruling states:

> *143. Emosi complained that he was not taken to hospital despite his request to Barbara. After the interview and the charge, he had been produced before two Magistrates respectively on 11th and 13th of October 2016. He admitted that he did not complain to either Magistrate. His explanation was that he forgot to complain because the Magistrates Court was very crowded with the media team. That explanation is implausible. Being in pain having received injuries on his lips and on knuckles, Emosi was expected to make a complaint at least to one of the Magistrates. He had finally requested a medical examination when the case was transferred to the High Court on 14 October 2016. No medical report is produced. The letter issued by MS Lautoka Hospital on the request of the ODPP(8DE1), confirms that Emosi was not admitted or seen by a doctor at the Lautoka Hospital in the month of October 2016 although he had obtained an X-ray. The Court can't speculate why an X-ray was obtained and on which day in October 2016 it was obtained.*

[26] The above account completely undermines the Appellants above argument. The Appellant had pointed to paragraphs [133] to [159] of the voir dire Ruling as containing the learned trial Judge's evaluation and assessment of the evidences regarding the Appellant's Caution Interview Statement. The Appellant did not challenged paragraph 143 of the Ruling where the learned trial Judge had carefully analyzed and made credible findings based on the factual evidence, which effectively

identified inconsistencies and implausibilities in the Appellants account, while the findings favour the police witnesses.

[27] Having considered the facts and circumstances that gave rise to the ground of appeal, and the submissions of the Appellant and the Respondent on the same, I am of the view that the arguments of the Appellants and this ground are not convincing also to support the contention that the admission of the caution interview statement was a mistake and that there was an error in the assessment of the evidence when he held that the Appellant's explanation on his omission to complain to the Magistrate was implausible. This ground has no real prospect of success.

Sentence Ground 1 - *(Time in custody not discounted)*

[28] An appellate court will only interfere with sentence if the learned sentencing Judge had made one of the following errors;

(i) Acted upon the wrong principle;
(ii) Allowed extraneous or irrelevant matters to guide or affect him;
(iii) Mistook the facts, or
(iv) *Failed to take into account some relevant considerations.* See **Kim Nam Bae v State** [1999] FJCA 21; AAU0015u.98s (26 February 2013)

[29] Section 24 of the Sentencing and Penalties Act 2009 states:

> *"24. If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall unless a court otherwise orders, be regarded by the Court as a period of imprisonment already served by the offender."* (Underlining for emphasis)

[30] The expression "*unless otherwise orders"* establishes that the power conferred on the court is discretionary and not mandatory. The learned trial Judge had meticulously examined the Appellant's custodial history and provided clear and cogent reasons for exercising his discretion to decline a remand deduction which is set out in paragraphs 47 to 54 of the Sentence.

[31] The denial of a discount for the remand period is justified in the circumstances of the case. Section 24 aforesaid was not breached. The Appellant, for the reasons given in paragraphs 58 and 59 of the Sentence was also declared a habitual offender in terms of sections 10, 11and 12 of the Sentencing and Penalties Act 2009. The Appellant has not demonstrated that the learned trial Judge had erred in any of the factors in **Kim Nam Bae v State** (supra). The ground has no real prospect of success.

(H). Conclusion

[32] The Appellant did not meet the threshold for grant of enlargement or extension of time. Leave to appeal against both conviction and sentence are denied.

Order of Court

1. *Application for enlargement/extention of time to appeal conviction is disallowed*
2. *Application for enlargement/extension of time to appeal sentence is disallowed.*

COURT OF APPEAL FIJI

Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors
Legal Aid Commission for the Appellant
Office of the Director of Public Prosecutions for the Respondent