

IN THE COURT OF APPEAL, FIJI

[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 0017 of 2024

[Suva Criminal Case No: HAC 265 of 2020]

BETWEEN : **SOSICENI RAQIO**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**

Counsel : **Appellant in Person**
: **Shameem S for the Respondent**

Date of Hearing : **23 September, 2025**

Date of Ruling : **3 December, 2025**

RULING

[1] The appellant [Sosiceni Raqio] was charged with two counts (Counts 1 and 3) of Rape and two counts (Counts 2 and four) of sexual assaults. The particulars of the offence were that the appellant between 1 May 2019 and 31 May 2019, had raped the complainant by penetrating her vulva with his fingers without her consent and for sexual assault counts, that during the same period the appellant sexually assaulted the complainant by touching her breasts.

- [2] At the trial in the High Court at Suva, the appellant was represented by Counsel and he was in attendance when judgement was delivered on 20 April 2023.
- [3] At the trial the appellant denied the allegations and pleaded not guilty to all 4 counts. The trial of the above referred charges was held on the 27 and 28 May 2023. The trial was before assessors and the trial judge.
- [4] Following the trial, the appellant was found guilty as charged and he was found guilty and was convicted in a judgement dated 20 April 2023. An appeal against conviction may be lodged within 30 days from the date of the judgment i.e. 20 April 2023.
- [5] On 2 June 2023 the appellant was sentenced to 12 years 3 months imprisonment. A non-parole period of 10 years imprisonment was fixed by the court. An appeal against sentence may be lodged within 30 days of the date of sentence i.e. 2 June 2023.

The Appeal

- [6] On 6 March 2024 the appellant submitted an application to seek enlargement of time to submit his leave application to **appeal against conviction and sentence**. The delay is 8 months late. This is a gross violation of the rules of the court in regard to procedures for seeking appeal to the appellate courts are not acceptable.
- [7] This matter was ready for ruling on 23 October 2025 but was adjourned to 20 November 2025 at the request of the appellant to give him more time to respond to the respondent's submission. The appellant's response to the respondent's submission have since been filed on 23 November 2025, this is part of the submission the court have considered in making this ruling.

Applicable law

- [8] In **Rasaku & Anr v State [2013] FJSC 4 (CAV 009 of 2013)**, the Supreme Court stated:

[19] Enlargement of time has generally been permitted by courts only exceptionally, and only in an endeavour to avoid or redress some

grave injustice that might otherwise occur from the strict application of rules of court. As McHugh J observed In Gallo v Dawson [1990] HCA 30; (1990) 93 ALR 479 at 480 to 481.

[20] *The grant of an extension of time under this rule is not automatic. The object of the rule is to ensure that those Rules which fix times for doing acts do not become instruments of injustice. The discretion to extend time is given for the sole purpose of enabling the court or justice to do justice between the parties: see Hughes v National Trustees Executors & Agency Co of Australasia Ltd [1978] VR 260; at 262. This This means that the discretion can only be exercised in favour of an applicant upon proof that strict compliance with the rules will work an injustice upon the applicant. In order to determine whether the rule will work an injustice, it is necessary to have regard to the history of the proceedings, the conduct of the parties, the nature of the litigation, and the consequences for the parties of the grant or refusal of the application for extension of time: see Avery v No 2 Public Service Appeal Board [1973] 2 86 at 92; Jess v Scott Burns v Grigg (1986) VR 871 at 872; Mitchelson v Mtichelson (1979) 24 ALR 522. It is t is also necessary to bear in mind in such an application that, upon the expiry of the time for appealing, the respondent has "a vested right to retain the judgment" unless the application is granted: Vilenius v Heinegar (1962) 36 ALIR 200 at 201. It follows that, before the applicant can succeed in this application, there must be material upon which I can be satisfied that to refuse the application would constitute an injustice. See also Rand & Rand [2009] FamCAFC 88 and Batey-Elton.*

[21] *In R v Knight [1998] 1 NZLR 58LR 583, at 589 the New Zealand court considered the following factors to be relevant considerations... the strength of the proposed appeal and the practical utility of the remedy sought, the length of delay and the reasons for delay, the extent of the impact on others similarly affected and on the administration of justice, that is floodgates considerations, and the absence of prejudice to the Crown.'*

[9] The two factors that are highlighted by the Supreme Court above, is that **untimely appeal is exceptionally granted**. When granted, it must be to avoid an injustice or to redress an injustice that may result with strict application of the rules of the court.

[10] The above statements of the applicable law factors were further refined for Fiji in **Kamalesh Kumar v State; Sinu v State** [2012] FJSC 17 (CAV0001.2009 (21 August 2012), wherein the Supreme Court had summarized the factors that will be considered by a court in Fiji for granting enlargement of time as follows:

- (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?

[11] 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.

Assessment of the factors

Length of the delay and reasons for failure to file on time

[12] The length of the delay is 8 months. This is significant delay and unless there are reasons to explain why the delay is reasonable it will not succeed. The appellant has not submitted any reasons to explain his failure to submit his appeal against sentence on time. In fact, the appellant submitted his appeal against conviction on time, negates the suggestion the appellant now make, that his incarceration in the maximum Correction Centre affected his ability to file his appeal against sentence on time. If the appellant was able to file his appeal against conviction on time, the court is unable to accept the reasons now advanced. He was represented by counsel who submitted his appeal against conviction on time. His incarceration in the maximum prison did not affect his appeal against conviction. This ground has no merit.

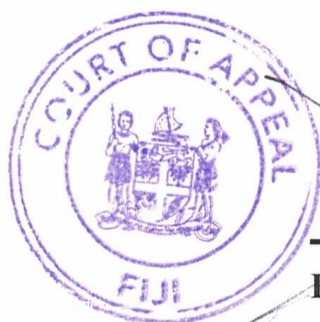
[13] In this regard, it must be stated again that procedural rules and timelines set out in the Court of Appeal Act Cap 12 must be obeyed. They are there for good reasons to serve not frustrate justice. While flexibility maybe exercised but the party seeking such an indulgence must put forward sufficient ground on which a court may act. There is none in this instance.

Any Ground that has merit and reasonable prospect of success

- [14] The appellant submitted four grounds in support of his application for enlargement of time to appeal against conviction and sentence. The 4 grounds submitted in support of this application filed on 6 March 2024, only relate to conviction issues and not one relates to challenge against the sentence.
- [15] Ground 2 submitted by the appellant is claiming that, as the complainant was the only witness who gave direct evidence on the actual rape and with no other evidence to corroborate it, the trial judge erred in law in accepting her evidence because there was no other evidence to scrutinize it. It is trite law that corroboration is not a requirement in sexual offences cases anymore in Fijian law. This ground will not succeed on appeal.
- [16] Ground 3 submitted by the appellant claim that the delay in reporting the offence warranted a requirement for the trial judge to give direction about the delay of 4 months. There is confusion about giving directions; this was a trial without assessors and the requirement for direction is misplaced. This ground has no merit; it has no reasonable prospect of success on appeal.
- [17] On the issue of delayed complaint, the trial judged dealt with this at paragraphs 28 to 31 of the judgement. In reviewing the judge's assessment there are no basis for supporting the claim made by the appellant because the submissions are vague and lacking specific details of the alleged errors in the appellant's claim. In that regard it does not comply with Rule 35(4) of the Court of Appeal Rules and it has no merit: **Kumar v State [2018] FJCA 37 (AAU 012 of 2016)**.
- [18] In conclusion the appellant has not been able to show from his submissions, that his application for enlargement of time to appeal against sentence, should be granted because failure to do so will cause injustice.

ORDER

1. The appellant's application for enlargement of time to appeal against conviction and sentence have no merit and is declined.





Hon. Justice Isikeli U. Maitoga
PRESIDENT, COURT OF APPEAL