

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

CRIMINAL APPEAL NO. AAU 006 OF 2025
[Lautoka High Court: HAC 090 of 2023]

BETWEEN : **RONEEL KUMAR** *Appellant*

AND : **THE STATE** *Respondent*

Coram : Qetaki, RJA

Counsel : Appellant In-Person
Ms. B. Kantharia for the Respondent

Date of Hearing : 3 September, 2025

Date of Ruling : 16 December, 2025

RULING

(A). Background

[1] The Appellant and a co-accused were jointly charged on the following information filed by the Director of Public Prosecution:

Count One

Aggravated Robbery: Contrary to section 313(1)(a) of the Crimes Act 2009.

Roneel Kumar and Gaston Kean on the 27th of March 2020, at Lautoka in the Western Division, entered the dwelling house of Diana Ali Nand with intention to commit theft.

Count Two

Theft: Contrary to section 29(1) and 45(1) of the Crimes Act 2009.

Roneel Kumar and Gaston Kean on the 27 of March, 2020 at Lautoka in the Western Division, dishonestly appropriated 1 x mini-Dell Laptop \$5750.00 cash, 1 x Rip Curl gold watch, 2 x gold bangles, 1 x 22 carat gold chain and 1 x gold coin, the properties of Diana Ali Nand with the intention of permanently depriving Diana Ali Nand of the said properties.

- [2] The appellant and co-accused were unrepresented at the trial. They pleaded guilty to the charges. The prosecution called six witnesses. At the close of the case for the prosecution, the Court, being satisfied that there was a case for the Appellant and co-accused to answer on each count, put them to their defence. Both accused elected to give evidence under oath. The Appellant called one witness.
- [3] In a judgement delivered on 29th November 2024, the trial Judge (per Aruna Aluthge, J) concluded that the prosecution proved the identity of each accused and proved its case beyond reasonable doubt. He found each Accused guilty on each count and recorded a conviction accordingly.
- [4] On 12 December 2024, the accuseds were sentenced as follows:
- Mr. Roneel Kumar was sentenced to 5 years and 4 months imprisonment with a non-parole period of 4 years. Mr. Gaston Kean was sentenced to 4 years and 6 months imprisonment with a non-parole period of 4 years.
- [5] The appellant has appealed his conviction and sentence.

(B). Facts

[6] The victim is the General Manager at her husband's law firm. In 2023, she was residing at Pickering Place with her husband and daughter. On 27 May 2023, they left home for dinner at a friend's place at around 7:15 pm. and returned at around 10:00 pm. Upon arrival, they noticed that the kitchen grilled door was cut open. She screamed and asked her husband to move out because she suspected that someone must be inside the house. Her 5 year old daughter started crying. She was three months pregnant at that time. The police arrived in 10 to 15 minutes. She was shocked to see that the entire house was in a mess. Her bangles, gold chain worth \$5000, laptop, cash around \$5,700 and duty-free liquor were found missing. Nothing has been recovered to date. After the incident, they decided to relocate to Simla.

(C) Grounds of Appeal

[7] The grounds of appeal are as follows:

Against Conviction

Ground 1: *That the learned trial Judge erred in law when his Lordship did not make, pronounce and/or deliver a written voir dire ruling with reasons in respect of the admissibility of the disputed unloaded USB and two CD's into trial proper. In doing so, Roneel Kumar and Gaston Kean was gravely and substantially prejudiced and was denied a fair trial. A miscarriage of justice in the circumstances of the case to the Appellant Roneel Kumar and Gaston Kean.*

Ground 2: *That Roneel Kumar and Gaston Kean did not receive fair trial by reasons of the learned trial Judge incorrectly and wrongly taking into consideration evidence adduced only on voir dire enquiry to be evidence in trial proper as per judgment dated 29th November 2024. In doing so, Roneel Kumar and Gaston Kean were gravely and substantially prejudiced and denied a fair trial. A miscarriage of justice in the circumstances of the case.*

Ground 3: That Roneel Kumar and Gaston Kean did not receive a fair trial by reason of the prosecution failure in not calling Yu Hin Chiu, Savenaca Joape and exhibit writer Solomoni to give evidence on trial proper with respect to the whereabouts of the original CCTV NVR System, downloading of footage as per USB and two copy CD's. In doing so, Roneel Kumar and Gaston Kean and likewise the Hon trial Court was denied and deprived of the benefit of the evidence produced on cross-examination. In doing so, Roneel Kumar and Gaston Kean was gravely and substantially prejudiced and was denied the right to a fair trial, a miscarriage of justice in the circumstances of the case.

Against Sentence

Ground 1: That the learned trial Judge erred in law when his Lordship did not give credit and make deduction for being of good behaviour and first offender after more than ten (10) years of no criminal conviction.

Ground 2: That Roneel Kumar and Gaston Kean had spent time in custody on remand and was considered as time already served by the trial Judge. The question of law that is sought on appeal is: "Whether the non-parole term of 4 years must operate with effect and commence from when the remand period first commence. Whether the learned trial Judge erred in law in imposing a non-parole term as per section 18 of the SPA when it is a dead I filter with no effect and benefit since 2009."

Additional grounds filed on 23 June, 2025 (From page 8 of DPP submissions)

Against Conviction

Ground 1: Error in Judgment: At paragraph 2, it could be dismissed by saying that it is always a misprint or error in the typing. However the appellant leaves it to the better judgment of this Court to decide whether the judge erred in law in convicting me

Ground 2: Did the learned trial Judge erred to ever correctly scrutinize carefully that the complainant's given testimony (see paragraphs 19-23 respectively), was fully uprooting the roots of the truth to the collective contradictions and ingredients to the alleged offence.

Ground 3: *Was his Lordships Judgment or paragraph 64, professionally being impartial on an even keel to a silent observer without any ramification of bias and prejudicial that dictates judges findings in error.*

Ground 4: *At the pre-trial stage, did the Judge inquire as to why was there no evidence of any forensic officers and a report from K9 unit in respect of their findings to help support the allegation become a veracity and probity to the course of justice glancing the arms of probability.*

Ground 5: *Did the trial judge erred in law when he failed to direct his mind in respect of the appellants alibi?*

Ground 6: *In England the year 1999, Home Affairs Minister claimed that; "...the word "unsafe is sufficient to deal with conviction which are unacceptable because of flaws in which a case is prosecuted or tried and because of evidence which undermines the prosecution case. If a procedural flaw is sufficiently serious to cast a doubt on the safety of a conviction, the Court will allow the appeal.*

(D). Appellant's Case

Against Conviction

[8] **Grounds 1 and 2:** The trial Judge did not pronounce a *voir dire* ruling and give reasons on why the CCTV footage(s) evidence were deemed admissible. This results in great injustice and the appellants were substantially prejudiced by it. The trial was not fair. Under the circumstances miscarriage of justice had occurred. The appellant did not receive a fair trial as the trial Judge only took into account the evidence adduced at the *voir dire* enquiry to be evidence in trial proper, not taking account of appellant's evidence. Appellant was substantially prejudiced and denied a fair trial.

[9] **Ground 3:** The appellant did not receive a fair trial due to the prosecution not calling a number of "key" individuals involved in the investigation of the offences. These were people who could give evidence on trial proper with respect to the whereabouts of the original CCTV NVR System, downloading of footage as per USB and two copy CD's.

In not calling those individuals, the appellant is being denied and deprived of the benefit of the evidence produced for the purpose of cross-examination. He was gravely and substantially prejudiced and was denied his rights of fair trial, resulting in a miscarriage of justice.

Against Sentence

[10] Ground 1 and 2: The trial Judge did not give credit to appellant for good behavior and being a first offender after more than 10 years of no criminal conviction. Secondly, there is a question of law on the application of section 18 of the Sentencing and Penalties Act 2009 with respect to fixing of the non-parole period in this case.

On Additional Grounds

[11] The appellant's main grounds of appeal assert that: (1) Pre-Trial Procedures violated rights of the appellant protected under section 14(2) (k) and (l); section 13 (1) (f) and section 15 (1) of the Constitution; (2) Lack of fairness in the conduct of trial, and (3) Inconsistent evidence and inadequate assessment.

[12] The appellant submits he did not have a fair trial and evidence against him was obtained unlawfully and unfairly. He challenged the admissibility of the footages from the CCTV. There was no expert in Technology to assist the Court. The Fiji Police lacks the expertise to give evidence on CCTV footages. The Judge fell into error when he failed to explain the reasons, he allowed the prosecution to prejudice the defence, resulting in the conviction being unsafe and unsatisfactory.

[13] The appellant submits that the trial was not conducted fairly. The trial Judge did not sufficiently direct himself on the evidence of both the prosecution and the defence. The trial Judge erred in not directing his mind to the accused evidence generally and to the alibi defence. His reasons for rejecting the alibi defence was unreasonable and without any support based on independent evidence. The prosecution failed to disprove the alibi evidence.

[14] The appellant submits there were inconsistent evidence, and they were inadequately assessed by the trial Judge. The State conducted its case based on joint enterprise without any evidence to substantiate that both the appellants were seen anywhere before the commission of the offence. That the learned Judge failed to draw his mind to the doctrine of joint enterprise which caused a fatal error in convicting the accused. Overall, the trial Judge erred in rejecting the evidence of the appellant.

(E). Respondent's Case

Against conviction

[15] Grounds 1 and 2 are related and are dealt with together. The respondent submits that there is nothing readily available to verify whether a *voir dire ruling* was given by the trial Judge- “*we need to look at the court record to confirm this*”. However, the trial Judge discussed the *voir dire* at paragraphs 67 to 78 of the judgment dated 29 November 2024. The reasoning does not suggest that the acceptance of the cautioned statement had prejudiced the appellant in any way as the CCTV footage retrieved and produced in court substantiates the evidence of the witnesses who were all acquainted with the appellant and could identify the distinguishing features on their hands, such as tattoos and amputated thumb in court. There was no miscarriage of justice or any prejudice caused to the appellant.

[16] On Ground 3, the respondent submits that any witnesses who would have been compelled witnesses at the trial they would have been called by the prosecution as its witnesses. It was open to the appellant to have called their witnesses who would favorably testify in support of their case.

[17] The trial Judge had considered the evidence in its totality and decided to accept the evidence of the witnesses for the prosecution as being honest, truthful and reliable and held accordingly. The prosecution had proved the charges beyond reasonable doubt. The trial Judge had highlighted all the evidence of all the witnesses and the appellant was given the opportunity to cross examine the prosecution witnesses. There was no basis for

the trial Judge to have acted otherwise for a fair trial. The necessity to deal with the ground of appeal against the conviction does not arise.

Against Sentence

[18] It is submitted that Ground 1 is baseless. Any discount on the sentence is far-fetched given the appellants culpability and planning was involved in executing the offences. Previous convictions are relevant only to assess the offenders' character and not to take it as aggravating factor. In paragraph 13 of Sentencing, it is clear that the 15 previous convictions of similar nature were viewed as of the past 10 years, and were not taken into account to avoid double counting. Only one (1) active previous conviction remain relevant. Previous convictions are likely to be relevant when they share characteristics with the current offence. Examples of such characteristics include, but are not limited to: dishonesty, violence, abuse of position or trust, use or possession of weapons, disobedience of court orders. In general, the more serious the previous offending the longer it will retain relevance. In this matter, the appellant and another's culpability is high given the degree of planning and sophistication involved in the offence. The offenders had entered the house at night with prior knowledge and that the house was not occupied. They were equipped with a pinch bar, which they used to force open the grill gate.

[19] On Ground 2, the respondent submits that, remand period is separately dealt by the courts as time served and deducted from the ultimate sentence whilst the purpose of fixing a non-parole period is:

*“...to fix a minimum term that the appellant is required to serve before being eligible for any early release. Although there is no indication in section 18 of the Sentencing and Penalties Act as to what matters should be considered when fixing the non-parole period, it is my view that the purpose of sentencing set out in section 4(1) should be considered with particular reference to rehabilitation on the one hand and deterrence on the other. As a result the non-parole period should not be so close to the head sentence as to delay or discourage the possibility of rehabilitation. No should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent.” Calanchini JA in **Paula Tora v The State** Criminal Appeal No. AAU0063/2011.*

[20] The respondent submits that the amendment to section 27 of the Sentencing and Penalties Act must be considered as it affects this ground. Given the totality of the material available, there are overwhelming reasons why there should be no interference with the non-parole period fixed by the trial Judge which on the face of it does not offend the provisions of the Sentencing and Penalties Act. The non-parole period fixed in this matter does not result in a substantial miscarriage of justice.

Additional Grounds Against Conviction

[21] The respondent submits as follows:

- (i) **Ground 1**: It is based on the fact that the trial Judge at paragraph 2 states that the date of the offence as being 27th March 2020, the charge is therefore defective and there is a miscarriage of justice. The date is different from the evidence lead at the trial in that it established that the offending happened on 27th May 2023. But the issues to be determined are whether (i) the appellant was embarrassed or prejudiced due to the defect in the judgment; (ii) Was there a miscarriage of justice on any grounds? The state submits that there was no embarrassment to the appellants nor prejudice, and (iii) there was no miscarriage of justice suffered by the appellant. The appellant had a copy of the charge from the beginning of the trial. A copy of information was provided to appellant on transfer of case to the High Court. The error was a typo one.
- (ii) **Ground 2**: The respondent submits this ground is misconceived. At paragraphs 19 – 23 of judgment, the evidence adduced of the witness is what the witness had observed and what she knows through her acquaintance of the appellant.
- (iii) **Ground 3**: The respondent submits that based on the judgment which reflects the findings of the trial Judge, the ground has no reasonable prospect of success. The passages referred to clearly establishes the evidence in support of the charges, and there is no basis in the claim by the appellant implicit in this appeal ground.

- (iv) **Ground 4:** The respondent submits the learned Judge had adequately explained at paragraph 104 of the judgment as to why he did not find it necessary for the disclosure of the forensic and K9's report. He stated:

“I do not think any of them is important in a case in which plausible evidence is available by way of CCTV footage indicating that the accused were present at the crime scene at the time of the offence..... In a scenario like this, I do not expect an unsophisticated police force to take pain in collecting so many pieces of evidence when the intruders have been recognized not by one but by four witnesses from the footage.”

- (v) **Ground 5:** The respondent submits that the trial Judge had addressed and covered the appellant's concerns at paragraphs 105 to 110 of the judgment. There is no miscarriage of justice.
- (vi) **Ground 6:** The respondent submits that the grounds upon which the trial Judge accepted the credibility and reliability of the witness's evidence are unimpeachable. Once their evidence was accepted, it was inevitable that the Judge would find the charges proved.
- (vii) The *Additional Grounds* of appeal should be dismissed as lacking in merit. The grounds of appeal against conviction and sentence should not be allowed as they are unmeritorious.

(F). Analysis

[22] The appeal grounds against conviction are to be assessed in the context of the appellant's posture, who completely denies the allegations in the information by the police, and who relied on mistaken identity. The primary issue at the trial is identification/ recognition of the Accused where the prosecution relied entirely on the footage extracted from CCTV cameras installed at the complainant's house to prove the identity of the accused. In the additional grounds of conviction, the appellant submits that his constitutional rights (protected under section 14(2)(k) and (i) and section 13(1)(f) and section 15(1) of the Constitution), had been violated by the Pre-trial Procedures; unfairness in the conduct of the trial, and the inconsistencies in evidence which were not adequately assessed.

[23] The following cases which are cited and discussed in the judgment provide the principles and guidelines on the use of CCTV footage in identification and recognition of Accused generally and in this case in particular: **R v Smith and Others** [2008] EWCA Crim. 1342 (2009) 1 Crim App R 36 ,The Court of Appeal (England); **R v Lariba and Others** [2015] EWCA Crim 478; **R v Henry McGrath** [2009] EWCA Crim 1758,The English Court of Appeal, and **R v Moss** [2011] EWCA Crim 252

Grounds Against Conviction

[24] Grounds 1 and 2 are related and will be discussed together. The appellant complains that he did not receive a ruling and the reasons why the trial Judge accepted the CCTV footage evidence, at the end of the *voir dire* hearing. That he was denied a fair trial and there was a miscarriage of justice. He was thereby prejudiced. It is clear that the purpose of the conduct of the *voir dire* was to provide the court with an opportunity to view the footages before trial to test their quality - (paragraph 67 of the judgment). 4 prosecution witnesses adduced evidence at the hearing and the accused was given the right to challenge their evidence in cross-examination. Having heard the evidence of the prosecution witnesses, the Court found the CCTV footages to be admissible at the trial. There was no written ruling given after the *voir dire* that sets out the reasons for admitting the CCTV footages at the trial. However, at paragraph 67 of the judgment, the trial Judge did touch on that by saying, “*Before delving into trial issues, I must give reasons, albeit briefly, for the voir dire Ruling*”, which he did set out in paragraphs 68-73. He was sure that the quality of the films was not the best, but they were sufficiently clear for the purpose intended.

[25] The trial Judge’s reasoning does not suggest that his acceptance of the cautioned statement had prejudiced the appellant in any way. The CCTV footage admitted in court substantiated the evidence of the witnesses who were all acquainted with the appellant and who are able to identify his distinguishing features on their hands, such as tattoos and amputated thumb in Court. There was no miscarriage of justice or prejudice caused to the appellant in respect of a fair trial. The Court I believe had properly considered the purpose and the implications on the trial of the CCTV footages as evidence.

[26] The court is aware of its duty under the circumstances. It recognized the need for it to be cautious in identification and recognition cases and had the opportunity to warn itself of the dangers associated with identification /recognition through a video. At paragraphs 73 and 74 of the judgment the learned trial Judge stated;

“73. Four witnesses who viewed the footage(s) testified that they recognized one or both of the Accused in the CCTV footage(s). Since the prosecution relies solely on the visual identification of these witnesses to implicate the Accused, the Court took extra caution because of the dangers associated with poor quality visual identification, given that even honest witnesses sometimes make mistakes. Although this is a case of recognition rather than identification, it would be appropriate to direct the Court itself to the need for caution. However, a full Turnbull direction would be inappropriate.

74. I must admit the quality of the footage(s) was not the best. Courts have allowed prosecution to establish the identity of offenders through CCTV footage without them first being tested for quality. Whether it is clear enough to identify the offender is a matter for the Court to decide after considering the evidence of the witnesses. The Court can properly warn itself about the dangers associated with the identification/recognition through a video.” (Underlining for emphasis)

[27] The above grounds must fail. They are not arguable.

[28] Ground 3 - The prosecution has the right to determine which witnesses to call at the trial and the appellants cannot dictate to the prosecution which witness it should call to prove its case. If a witness is a compelled witness, he/she would have been called. The “right” of cross-examination of a witness arises only after a witness called by the prosecution or defence, has already given evidence in chief, and it does not arise when a witness is not called. There is no miscarriage of justice or prejudice suffered by the appellant. The ground is not arguable.

Grounds Against Sentence

[29] An appellate court will only interfere with a sentence from a lower court, if one of the following had been contravened. That the Judge had:

(i) Acted upon a wrong principle;

(ii) Allowed extraneous or irrelevant matters to guide or affect him;

(iii) Mistook facts;

(iv) Failed to take into account some relevant considerations: **Kim Nam Bae v State** [1999] FJCA 21;AAU0015.98 (26 February 1999) and reaffirmed in **Naisua v State** [2013] FJSC 14;CAV0010.2013 (20 November 2013).

[30] Ground 1 - The appellant's expectation for a discount in sentence is unrealistic and far-fetched under the circumstances. In Fiji, sentencing is regulated under the Sentencing and Penalties Act 2009, whereby, the "only purpose" of sentencing is set out in section 4 of the Act. Paragraph 13 of sentencing is clear and cannot be faltered on the basis of the sentence imposed. This ground fails, it has no merit. It is not arguable.

[31] Ground 2 - has to be considered in light of the Sentencing and Penalties Act 2009 and the case **Paula Tora v State**, Criminal Appeal No. AAU0063/2001. In that case, per Calanchini JA, stated:

".....it is my view that the purpose of sentencing should be considered when fixing a non-parole period, it is my view that the purpose of sentencing is set out in section 4(1) should be considered with particular reference to rehabilitation on the one hand and deterrence on the other. As a result the non-parole period should not be so close to the head sentence as to delay or discourage the possibility of rehabilitation. Nor should the gap between the non-parole term and the head sentence be such as to be ineffective as a deterrent." (Underlining for emphasis). The background to this subsection is explained in Calanchini J's judgment in Kreimanis."

[32] In **Ismail v State** [2023] FJSC 40; CAV0002.2022, per Honourable Chief Justice Temo states:

*"[8] ... in Kreimanis v State, the Supreme Court stated that this approach was incorrect, given the language of section 27(2) of the Corrections Act. That subsection provides that for the purpose of initial classification "the date of release for the release of prisoner shall be determined on the basis of a remission of one third of the sentence **not taking into account the non-parole period**". (Emphasis added)*

[33] In Navuda v State [2023] FJSC 45, the Supreme Court, commenting on Calanchini P's above observations in Tora's case, at paragraph [47] of its judgment stated:

“Neither the legislature nor the courts have said otherwise since then despite the scrutiny to which the non-parole period has been subjected. The principle that the gap between the non-parole period and the head sentence must be a meaningful one is obviously right. Otherwise, there will be little incentive for prisoners to behave themselves in prison, and the advantage of incentivizing good behavior in prison by the granting of remission will be lost...”

[34] The Supreme Court also discussed similar sentencing grounds and issues in Tuilaselase v State, CAV 0025 of 2018 (30 August 2023), when refusing special leave for enlargement of time. This ground is arguable.

Additional Grounds Against Conviction

[35] Ground 1: Given the facts and circumstances, the appellant has not demonstrated that he was arguably embarrassed due to the defect in the judgment or that there is a miscarriage of justice.

[36] Ground 2: PW2, Diana Ali Nand (Complainant) had testified on what she knew after watching the footage(s), she was surprised to see who had entered her house. She recognized Roneel Kumar (Roneel) in the footage – paragraph 19. She knew Roneel before the break-in. Roneel had had visited her place several times, and she used to visit his place for nails - paragraph 20. Roneel was slightly limping in the footage. Astika (DW2 - Roneel's de-facto partner of 6 years) had informed her that Roneel had injured his feet- paragraph 21. As soon as she recognized him from the video, she told the police officers that she recognized Roneel Kumar. She described how she knew Roneel - paragraph 22. Sometimes she had seen Roneel and 2nd accused together when Roneel used to come to her place in a cab to drop his partner off - paragraph 23.

[37] The footage(s) was admitted after the *voir dire* hearing in which the appellant had cross-examined the witnesses. The reasons why the *voir dire* hearing was held, and the decision to admitted the CCTV footage(s) at the trial were fully stated in the judgment. The ground is not arguable.

[38] Ground 3: In paragraph 64 of the judgment, the trial judge had set out his findings of facts based on the evidence before the Court. These facts support the finding that the appellant was guilty as charged. The claim that the trial Judge was inclined to bias and was prejudiced, cannot be supported. Query: Why does one need an expert IT Technician to explain and interpret what they had seen with their own eyes and was able to identify/recognize when shown the CCTV footage(s) of the crime scene? This ground has no merit.

[39] Ground 4: It is appropriate to consider this ground in the context of the totality of the relevant evidence under scrutiny. The non-disclosure of the report of the K9 units report and related matters was adequately explained in paragraph 104 of the judgment, as follows:

“The Accused contended that no positive results were forthcoming from the fingerprint analysis or operations of the K9 team, nothing stolen was recovered from their possession, and no identification parades implicating them were held and, therefore, the Prosecution’s case created a reasonable doubt pointing to their innocence. I do not think any of them is important in a case in which plausible evidence is available by way of CCTV footage indicating that the Accused were present at the crime scene at the time of the offence.....The fact that searches and arrests were ordered soon after the identification suggests that the police were confident of the involvement of the Accused in the offence. There were no eyewitnesses at the crime scene, and therefore, holding an ID parade is out of the question. According to the 1st Accused’s own evidence, when he received a call from the complainant implicating him in the break-in, he invited the police to come and see him at home. No sensible thief will retain stolen property at home when he is aware the police are coming sooner rather than later.”
(Underlining for emphasis).

[40] The appellant’s contention cannot be sustained and is not arguable. It has no merit.

[41] Ground 5: On carefully reading paragraphs 105 and 106 of the judgment, it is evident that the trial Judge had taken time to analyse the evidence of the appellant and also of his partner (DW2) who gave evidence to support/substantiate his alibi defence, bearing in mind the identification/recognition evidence established by the prosecution. It is also clear that the trial Judge did not believe the evidence of the appellant nor DW2. The trial Judge stated at end of paragraph 106, as follows:

“However, there is nothing in Defence’s evidence that leaves me in doubt to discredit the version of events of the Prosecution’s case. I reject the evidence of the 1st Accused and that of his partner.”

This ground is not arguable. It has no merit.

[42] Ground 6: With respect to the issue of the conviction being “*unsafe*” and being unacceptable due to flaws in the manner in which the case is being prosecuted or tried and due to the evidence which undermines the prosecution’s case, rendering the procedural flaws to be sufficiently serious to cast a doubt on the safety of the conviction; In my considered view, this is not one such a case. The trial Judge had clearly explained the purpose and reasons why the *voir dire* hearing was convened, its outcome, and had explained clearly in the judgment the reasons why the CCTV footage(s) was admissible as evidence at trial. The trial Judge had evidently analyse the defences and these were not sufficiently substantiated to have the impact of casting a doubt on the identification/recognition evidence obtained via the CCTV footage(s), which was not dispelled.

[43] This ground is not arguable. It has no merit.

Order of Court

1. *The application for leave to appeal against conviction is refused.*
2. *On the application for leave to appeal against sentence: Ground 1 is refused; Ground 2 is allowed.*




Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors

Appellant In-Person
Office of the Director of Public Prosecutions for the Respondent