

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

CRIMINAL APPEAL NO. AAU 070 OF 2018
[Suva High Court: HAC 420 of 2016]

BETWEEN : **MARIANNE PREMILA DEVI** *Appellant*

AND : **THE STATE** *Respondent*

Coram : Qetaki, RJA

Counsel : Ms. S. Prakash for the Appellant
Ms. S. Shameem for the Respondent

Date of Hearing : 1 December, 2025

Date of Ruling : 16 December, 2025

RULING IN CHAMBERS

(Motion Under Section 108 of Mental Health Act & Section 33 of Rights of Persons With Disabilities Act 2018)

(A). Introduction

[1] The appellant, who is appealing her conviction and sentence, has on 20 November 2025 filed a Notice of Motion for Appointment of a Manager under section 108 of the Mental Health Act 2010 and section 33 of the Rights of Persons With Disabilities Act 2018 seeking Orders as follows:

- 1. Astriyet Alzina Nisha to be appointed as a Manager on behalf of the appellant;*

2. *The said Manager to be granted leave to appear in appeal proceedings on behalf of the appellant;*
3. *The said Manager to provide instructions on behalf of the appellant to the appellant counsel to progress the appeal matter efficiently;*
4. *Any other orders the Honorable Court deems just in the circumstances of this application.*

[2] The application is supported by an Affidavit sworn by Astriyet Alzina Nisha on 18th September 2025.

(B). Background

[3] The appellant was found guilty of murder on 19th June 2018 by a unanimous decision of the assessors and was convicted on 20th June 2018. She was sentenced to mandatory life imprisonment, with a minimum term of 17 years imprisonment.

[4] The facts of the case as adopted from the Sentence delivered on 21 June 2018 are as follows:

“2. On 17 November 2016, you were 41 years old, and the deceased, your defector husband was 34 years old. You had two children from a previous relationship, and a young daughter with the deceased. You worked at Lyndhurst Limited as a machinist while the deceased worked as a taxi driver. You two had been living in defector relationship since 2009, and at times, the relationship between you two had been volatile. You had each taken out a Domestic Violence Restraining Order (DVRO) against each other previously. At times you are on friendly terms with each other, and on other times, you fought each other.

3. On 17 November 2016, after 6pm, at you two’s home at Sakoca Settlement, you two argued and pushed each other in your bedroom. The argument became heated and you poured kerosene on the deceased. You later set him alight. He was taken to Colonial War Memorial Hospital for medical treatment. On 24th November 2016, your defector husband died as a result of his burn injuries. He had suffered second and third degree burns to 80% of his body. The matter was reported to police. An investigation was carried out. You were later charged for his murder. You had been tried and convicted of his murder in the High Court.’’

[5] The appellant appealed her conviction and sentence by Notice of Appeal on 04 July 2018. The Legal Aid Commission thereafter filed amended grounds of appeal on 21 September 2020, urging the following grounds:

Against Conviction

Ground 1: *The learned trial Judge erred in law and in fact in not adequately addressing the issue of provocation.*

Ground 2: *The learned trial Judge erred in law and in fact in his assessment of the res gestae principle.*

Against Sentence

Ground 3: *The learned trial Judge erred in law and fact in imposing a sentence with a high minimum term of 17 years.*

- [6] On 12th January 2021, Leave to appeal against conviction was refused, and leave to appeal against sentence was allowed. On 23 November 2021, the appellant filed a Notice of Leave to appeal Against Conviction, with an Application for extension of time. Thereafter, on 1st March 2024 a Renewal Notice was filed by the Legal Aid Commission, restating the two earlier grounds of conviction.

(C). Vacation of Hearing- Mental Illness

- [7] On 1st March 2024, the matter was listed for Call Over. A hearing date before the Full bench was fixed for 1st May 2024.
- [8] From March, 2024 the appellant displayed strong sentiments that the deceased (her husband who she had been guilty of killing), was alive, claiming to have seen him several times physically as well in her visions. This impeded her ability to give coherent instructions to proceed with the hearing as scheduled. On 26 March 2024, the appellant's presence in Court was excused as the Legal Aid Commission had requested a psychiatric examination of the appellant. An Order was issued for the examination at St. Giles Hospital and a report is to be provided to the Court.
- [9] The hearing scheduled for 01 May 2024, was vacated on 05 April 2024.
- [10] The 1st Medical report was on 01 July 2024, filed in Court on 11 July 2024. The Report noted the appellant having active symptoms of mental illness-Schizophrenia by virtue of having thought disorders, bizarre delusions and hallucinations. She was

deemed incapable of providing instructions to the Commission and meaningfully participating in court proceedings. She was given medications.

[11] Three other Medical Reports were provided on various dates on the request of the Court on 20 January 2025 (Second report); 29 May 2025 (Third Report), and 21 August 2025 (Fourth Report), The Fourth report filed in Court from the St. Giles Hospital, noted no improvements in the appellant's condition. She was still Schizophrenic and incapable of participating in Court and providing instructions. Since the appellant had been refusing medications, it was recommended that the Court issues compulsory treatment order so that the nursing team at prison is able to reinforce and ensure compliance to medications from prison facilities.

[12] According to the Fourth Report, the appellant is able to engage in conversations and is aware of her surroundings. She is able to exercise good judgment for emergency situations and her short-term and long-term memories are intact. However, with respect to appeal matters the appellant continued to have systemized delusions that the Deceased is alive. She is convinced that this is true and is acting on it by giving imaginary evidence. Because of this, the Appellant is unable to provide relevant and coherent instructions regarding the grounds of appeal.

[13] On 29 August 2025, the Court was informed about the difficulties in issuing compulsory treatment order as this could be done by medical officers themselves upon fulfillment of certain conditions outlined in the Mental Health Act 2010. On 03 September 2025, the matter was called in Court again to check on the issue of the compulsory treatment order. The Commission reiterated the difficulties - for the issuance of an involuntary treatment order, upon recommendations of an authorized health care professional, the appellant would need to be detained at St. Giles Hospital or prison hospital/clinic and administered treatment as per the provisions of the Mental Health Act 2010.

[14] In the Medical Report dated 21 August 2025 (Fourth Report) it was recommended that the Court issue orders for the appellant to be kept at the prison facility and receive treatment. In that regard it is noted that the Suva Women's Corrections Centre currently does not have a full-time nurse stationed at the facility. Bearing in mind that

this is an appeal from 2018, the Court directed for both parties to make submissions on how to proceed with this matter going forward.

(D). Non - Attendance of Appellant - What Options Are There?

[15] On 3 September 2025 (Mention Day), the Court urged the parties to address the issue of whether the appeal could be dismissed as, according to the Medical reports, the appellant is contributing to prolonging the proceedings by refusing medications. The issue was addressed by the Legal Aid Commission in a thorough written submission filed on 29 September 2025. The submissions considered three Options, and addressed the options in the context of the relevant legislations examining the power of the single Judge and the Full Court that are available for use in order to ensure the appeal is prosecuted fairly despite the appellant's condition and there is no miscarriage of justice or prejudice suffered. The Options are discussed below.

(i) Dismissal of Appeal

[16] Under section 23(1) (a) of the Court of Appeal Act 1949, the Full Court is empowered, on an appeal against conviction to:

(i) Allow appeal if, the verdict is unreasonable or cannot be supported or, the judgment of the convicting court ought to be set aside on the ground of a wrong decision involving question of law or ground of miscarriage of justice.

(ii) In any other case, dismiss the appeal.

Provided that the Court of Appeal may dismiss the appeal if there has been no miscarriage of justice, although there is a point in favour of the appellant.

[17] It is clear that the determination to allow or dismiss appeal is made by the Full Court, and only after hearing submissions from the parties on the grounds of appeal urged by the appellant.

[18] The powers of a Single Judge are set out in section 35(1) of the Court of Appeal Act. A Single Judge may exercise the following powers:

(a) to give leave to appeal to the court;

(b) to extend the time within which notice of appeal or of an application for leave to appeal may be given;

- (c) *to allow the appellant to be present at the proceedings in cases where he or she is not entitled to be present without leave;*
- (d) *to admit an appellant to bail;*
- (e) *to cancel an appellant's bail on good cause being shown;*
- (f) *to recommend that legal aid be granted to an appellant.*

[19] The only power given to a Single Judge to dismiss an appeal is at the leave stage as provided under section 35(2) of the Act, as follows:

“(2) If on the filing of a notice of appeal or of an application for leave to appeal, a judge of the court determines that the appeal is vexatious or frivolous or is bound to fail because there is no right of appeal or no right to seek leave to appeal, the judge may dismiss the appeal.”

(ii) Sine Die Adjournment

[20] The prospect of adjourning the matter indefinitely is another prospect before this Court. The Fourth Medical Report notes that there is no prediction on when the appellant would be deemed fit to attend Court since she has been non-compliant on medications. Indications are, it is unlikely that she would commence it in the near future. Having regard to all the Medical Reports collectively considered with respect to non-compliance with medications, it seems that a *sine die* adjournment may not be a viable option to efficiently deal with the matter at this stage.

(iii) Proceeding With The Matter

[21] The Mental Health Act 2010 needs to be considered on this aspect, in particular, sections 24 and 86 of the Act. Section 24 provides for the detention of a person in a mental health facility on the recommendation of a medical practitioner, but, only when the following conditions are satisfied:

- (a) *The practitioner has personally examined the person or observed the person's condition immediately before or shortly before completing the certificate;*
- (b) *The practitioner is of the opinion that the person has a mental disorder;*
- (c) *The practitioner is satisfied-*

- (i) that there is a serious likelihood of immediate or imminent harm to that person or to other persons if the person is not detained in a mental health facility; or
- (ii) *that in case of a person whose mental disorder is severe and whose judgment is impaired, failure to retain the person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility;*
- (d) *The practitioner is not the primary carer or a near relative of the person; and*
- (e) *The practitioner has no other interest in relation to the person or the facility that might affect the practitioner's judgment.*

[22] Section 88(6) of the Mental Health act 2010 provides as follows:

“(6) If a prisoner or person in custody is found, on an inquiry under subsection (1), to have a mental disorder, the person in charge of the prison must arrange for a medical practitioner to examine the person in accordance with section 24 and if the medical practitioner certifies as stated in that section, the person is deemed to be the subject of an involuntary inpatient treatment order and section 62, 65 to 67 and 71 apply accordingly, with appropriate modifications.” (Underlining for emphasis)

[23] In order for a prisoner to be subjected to an involuntary inpatient treatment order, the doctor is required to make a finding that the prisoner poses harm to himself/herself or to others if not detained at a mental health facility. The appellant was not found to pose a danger to herself and others, and treatment that she received was not administered against her will, she was followed up as an outpatient. Hence, the fact that she is not detained in a mental health facility, and she cannot be subject to an involuntary inpatient treatment order.

[24] There are legal and practical challenges in acting on the recommendations in the Fourth Medical Report, that a compulsory treatment order be issued by the court so that the nursing team from prison is able to reinforce and ensure compliance to medications from the prison facilities with the forensic team visiting her for follow up and treatment. Firstly, the only form of involuntary orders relevant to prisoners under the relevant Act are for inpatient treatments, for which the appellant is not qualified given also the lack of nurses in the women's corrections centre to administer such. Secondly, compulsory or involuntary inpatient treatment orders are issued by an

authorized health care professional – on a general reading of the Mental Health Act and Forms Order 2012. Further, even if treatment is commenced upon the appellant (whether voluntarily or involuntarily), the appellant’s reception to medication is uncertain at this stage as she has been non-compliant for some time, and the precise time of when the appellant could be deemed fit to participate in court proceedings cannot be determined..

(E). The Right of An Appellant to Be Present

[25] Section 31 of the Court of Appeal Act provides for the right of an appellant to be present in the following terms:

“31 (1) An appellant, notwithstanding that he or she is in custody, shall be entitled to be present, if he or she desires it and is not prevented by sickness or other cause, on the hearing of his or her appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall have the right to be present or where the Court of Appeal gives him or her leave to be present.

(2) The power of the Court of Appeal to pass any sentence under this may be exercised notwithstanding that the appellant is for any reason not present.” (Underlining is for emphasis)

[26] In this matter the appellant, although physically fit is prevented from appearing in Court as she is deemed mentally incapable of participating in court proceedings. Her physical presence may disrupt court proceedings as she is prone to aggression and disrespectful behavior, demonstrated particularly in the Fourth Medical Report and her last court appearance on 26 March 2024, which may be aggravated by her non-compliance to medications.

[27] In dealing with an application from the defence counsel seeking to terminate appellate proceedings in relation to a convicted prisoner on the basis of his incapacity, the Appeals Chamber held that *“an appellant’s ability to participate in the appellate proceedings is contingent upon whether he possess the mental capacity to understand their essentials, and on the mental and/or physical capacity to communicate, and thus, consult, with his counsel.”*- See **Prosecutor v Vujadin Popovic, Ljubisa Beara, Drago Nikolic, Radivoje Miletic, Vinko Pandurevic**, Appeals Chamber, of the International Tribunal for Prosecution of Persons Responsible for Serious Violations

of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991- Judgment-en IT-05-88-A [2015] ICTY 1 (30 January 2015). Given the circumstances of the case, the Appeals Chamber held and clarified that:

- (1) *The standard of fitness applicable to trial proceedings also applied to the appellant's fitness to exercise his right to consult with counsel concerning the preparation of his appellate submissions.*
- (2) *The appellant's condition did not affect his ability to understand the essentials of appellate proceedings, its consequences, the prosecution's grounds of appeal against him and to instruct his counsel about filing an appeal on his behalf.*
- (3) *That even with the appellant's stroke conditions, he was able to communicate and cooperate with others effectively, make his wishes known and that there was no significant disturbance of comprehension.*

The Appeals Chamber was satisfied that the appellant met the standard of fitness and refused the application by his counsel to terminate appeal proceedings against him, and further uplifted the initial suspension of appeal proceedings against him.

[28] In this matter, all the Four Medical Reports note that the appellant wishes to reduce her sentence on the ground that she did not intend to kill the deceased. However, she insists so because of her systemized delusions that the Deceased is alive. It is submitted that the appellant is not able to understand the essentials of her appeal, particularly her grounds of appeal against conviction, as well as provide coherent instructions with respect to the same. There is a significant disturbance in her thought process with regards to this appeal matter and there is no indication of when she would be fit to participate in court proceedings in the future. Whether the appeal can proceed without the appellant's physical presence and mental capacity is the next important issue to address.

(F). Notice of Motion - Section 108 of the Mental Health Act

[29] Section 108 empowers the Court to appoint a person to act as a manager to manage the whole or part of the affairs of a person with mental incapacity. It states:

“Management orders

108 (1) *The criteria for a management order in respect of a person are that-*

- (a) *the person has a mental incapacity;*
- (b) *as a result of the mental incapacity the person is unable to make reasonable judgments in respect to all or any part of the person’s estate or affairs by reason of the incapacity; and*
- (c) *the person is in need of a manager to administer the whole or part of the person’s estate or affairs.*

(2) *If on application to the court by an authorized health care professional, or any other person who appears to the court to have a proper interest in the matter, the court considers that the person who is the subject of the application meets the criteria in subsection (1), the court may make a management order in respect of the person in accordance with this Part.*

(3) *Before making a management order, the court must inquire, or direct enquiries to be made, into-*

- (a) *the mental capacity of the person who is the subject of the application;*
- (b) *the nature of the estate of the person; and*
- (c) *any other relevant matter the court thinks fit.*

(4) *Reasonable notice of the time and place appointed for an inquiry must be given to the person who is the subject of the application and to any other person the court considers should be notified.*

(5) *A management order-*

- (a) *is an order made by the court appointing a person or persons to manage either the whole or a part of the estate or affairs of a person with a mental incapacity;*
- (b) *may be made for a period not exceeding 12 months unless the court is of the opinion that a longer period should be specified in the order;*
- (c) *may be made subject to terms and conditions as the court thinks fit;*
- (d) *must include reporting and accountability requirements for the appointed manager as the court imposes in the order;*
- (e) *may be the subject of an appeal to the Court of Appeal in accordance with the rules of court.*

(Underlining is for emphasis)

[30] The Rights of Persons With Disabilities Act 2018 is also relevant. This is an Act to make provisions for the protection of the rights of persons with disabilities in accordance with the UN Convention on Rights of Persons with Disabilities and related matters, including access to justice, as follows:

“Access to justice

33 (1) *All persons with disabilities have the right to access to justice and the provision of procedural and age- appropriate accommodations to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, investigations and other preliminary stages of legal proceedings.*

(2) Special measures in court proceedings for vulnerable witnesses must be available for persons with disabilities.”

[31] On 07 October 2025, when this matter was called in Court, the Court had sought further clarifications on three issues, namely: (1) Whether the appellants right to access courts is being restricted;(2) Whether section 108 of the Mental Health Act 2010 applies to criminal proceedings; and (3) Whether the proposed manager is suitable for the appellant. These issues were duly addressed in a further written submission by the Legal Aid Commission as set out below.

Whether the right to access Court has been restricted

[32] Section 31 of the Court of Appeal act 1949 addresses the right of an appellant to be present in appeal proceedings;

“31 (1) An appellant, notwithstanding that he or she is in custody, shall be entitled to be present, if he or she desires it and is not prevents by sickness or other cause, on the hearing of his or her appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal shall have the right to be present or where rules of court provide that he or she shall have the right to be present or where the Court of appeal gives him or her leave to be present.”

(2) The power of the Court of Appeal to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

- [33] The above holds that an appellant is entitled to be present for hearing if he/she wants and is not prevented by sickness or other reasons. The right to appearance may be dispensed with during leave stages and if the appeal is on law alone.
- [34] In this matter, although the appellant is physically fit, is prevented from appearing in Court as she is deemed mentally incapable of participating in court proceedings as she is prone to aggression and disrespectful behavior, demonstrated in her last court appearance on 26 March 2024 and the Fourth Medical Report.
- [35] On the last Court date, the Court expressed the sentiments that the Appellant's right to access courts is not being prevented in this appeal. This view is based on the fact that the appellant, through her own actions, is impeding her well being by refusing treatment and therefore, prolonging the matter. The court has provided opportunities for the appellant to address her appeal as such, her right to access courts is not being restricted.
- [36] Section 15 of the Constitution deals with *Access to courts or tribunals*, and clearly specify availability of access to courts of persons charged with an offence, parties to civil proceedings and potential witnesses. The provisions do not make any reference to convicted persons. Reading section 15 of the Constitution with section 31 of the Court of Appeal Act, it is agreed, that for convicted persons, there is no absolute right of appearance in the Court of Appeal in criminal appeal matters. There has been instances where the Full bench has determined appeals without the presence of the appellant or respondent - see **Lealeavono v State** [2023] FJCA 250, **State v Chand** [2023] FJCA 252.
- [37] For the appellant, her mental impairment is preventing her from appearing and participating in Court. As officers of the Court, we agree with the Honorable courts notion that the appellant is being provided access to courts, even though she is unable to physically participate in the proceedings due to non-compliance with treatment. This is because the appellant remains legally represented by the Legal Aid Commission.
- [38] It is the appellants submission that the Full Bench of the Court of Appeal can proceed to determine the appeal without necessarily requiring the appellant's physical presence.

Whether section 108 of the Mental Health Act 2010 applies to criminal proceedings

- [39] As already stated in this ruling, this Act empowers the Court to appoint a person to act as manager to manage the whole part of the affairs of a person with mental incapacity. It was the Court’s contention that the provision may be used in civil cases that particularly require management of properties and estates of an incapacitated person, and not necessarily applicable to criminal matters. There are not many cases that have dealt with management order applications in Fiji. However, on the same note, the Commission has not come across any criminal appeal cases where a manager has been appointed on behalf of the appellant.
- [40] In United Kingdom, a “litigation friend” can be appointed to make decisions about a case for either an adult who lacks mental capacity to litigate, or a child, regardless of whether the person is legally represented or not. However, a litigation friend can be appointed in any civil case, family case or a Court of Protection case.
- [41] The Court of Protection is a division of His Majesty’s Courts and Tribunals Service. It is a specialist court which makes specific decisions or appoints deputies to make decisions regarding financial and welfare matters on behalf of people who do not have the capacity to do so themselves (known as “protected persons” or “P”). It was established under the Mental Capacity Act 2005 (UK). Section 16 of the Act gives powers for appointments of deputies for matters concerning P’s “personal welfare” or “property and affairs”. The powers of deputies under “property and affairs” elaborated under section 18 (a) to (k) of the said Act are quite wide, and the powers relate mostly to management of estates, monies, properties and financial matters of P. There is no clear indication as to whether a deputy from Court of Protection or a litigation friend could be appointed for P for criminal proceedings.
- [42] In New South Wales, Australia, there are provisions which permit appointment of a substitute decision-maker who can stand in the incapacitated person’s place and ensure their best interests are protected. A guardian and/ or financial manager can be appointed to make substitute decisions for people with a decision – making disability. There are current participating courts where such appointments can be made, and similar to United Kingdom, in New South Wales, the range of matters for which

guardianship or management orders can be made for relate mostly to civil and family matters. There is no material to suggest that such orders could also be made for criminal proceedings.

[43] The Mental Health Act 2010 does not specify the nature of matters or “affairs” where a person can be appointed to act as manager for an incapacitated person. The words used under section 108 are broad to include a person’s estate or affairs. “Affairs” may be extended to appeal proceedings, based on conformity with principles of access to justice under section 33(1) of the Persons With Disabilities Act 2018.

[44] The Commission submits, based on the above discussion, that the appellant is a disabled person due to her existing mental impairment, and as such, section 33 applies to her, despite her status as a convicted prisoner. It is further submitted that the appointment of a manager would serve as a reasonable and procedural accommodation towards the appellant to facilitate and effective participation on her behalf in these appeal proceedings, in spite of her physical absence from Court.

[45] Section 108 also empowers the Court to impose restrictions on the manager in exercise of his/her duties and functions. A management order can be made for either whole or part of an incapacitated person’s estate or affairs. It can also be made for a period not exceeding 12 months and subject to any further terms or conditions.

[46] The Commission submits that this Court may appoint a manager for these appeal proceedings with the following restrictions:

- (a) Manager to be appointed strictly for the purposes of criminal appeal proceedings arising from HAC 420 of 2016 only;
- (b) Managers appointment to be effective until the conclusion of appeal proceedings or until such specific time that the Court so orders;
- (c) Manager’s power to be limited to court appearances, instructing counsel, communication with the appellant or any other duties specifically assigned by the Court.

[47] The above limitations will protect the appellant’s litigation interests as well as ensure that there are no instances of abuse, especially in relation to the appellant’s financial or property matters.

Whether the proposed Manager is suitable for the appellant

[48] The Legal Aid Commission submits that, should the Court be inclined to appoint a manager, the appellants daughter Astride Alzina Niasha is most suitable for the role appointment. This is based on her Affidavit, her being:

- (a) The appellant's biological daughter and the closest family member;
- (b) She is aware of the appellant's mental condition;
- (c) She has maintained regular contact with the appellant after incarceration;
- (d) She has a good relationship with the appellant based on trust;
- (e) She does not have any adverse interests to the appellant in these proceedings;
- (f) She understands the nature of the appeal proceedings and will be able to communicate with the appellant, as well as instruct counsel taking into account the appellant's best interests; and
- (g) The appellant's remaining children are unsuitable-Mohammed Azal, who is in Sigatoka and is sometimes unreachable, and Faith Lydia Naidu, who is a minor.

[49] It submits that Ms. Nisha is competent and capable and will be able to fairly act on behalf of the appellant, independent of her counsel.

[50] In conclusion, for the foregoing reasons it is submitted on behalf of the appellant that the most appropriate manner to progress this matter is to proceed with the appeal through the appointment of a manager. However, in the event that a Manager is not appointed, then the Legal Aid Commission shall pursue the appeal based on the grounds raised during the leave stage and allowed by a Single Judge.

[51] The State did not make any written or oral submissions on this matter. However, the Court notes that during the last two mention date and again at the hearing, counsel for the ODPP had indicated support for the above submissions.

(G). Analysis

[52] Central to the Motion is the urge for the Court to order for the appellant's daughter be appointed as a Manager on behalf of the appellant, and to be granted leave to appear in appeal proceedings on behalf of the appellant, providing instructions to counsel for the appellant to progress the appeal matters efficiently. The application is made under section 108 of the Mental Health Act 2010 and section 33 of the Rights of Persons With Disabilities Act 2018, and in response to the Court seeking clarifications on three issues on 07 October 2025. The issues are:

- (1) *Whether the appellants right to access to courts is being restricted.*
- (2) *Whether section 108 of the Mental Health Act 2010 applies to criminal proceedings.*
- (3) *Whether the proposed Manger is suitable for the appellant.*

Whether the right to access to Court has been restricted

[53] The Court had earlier in the proceedings expressed the sentiment that the appellant's right to access courts is unimpeded in this appeal. The matter has progressed beyond the leave stage and indeed a date of hearing was set, which is now vacated due to the appellant's mental health condition. From the reports, received from experts at the St. Giles Hospital, the appellants condition will improve if she were to comply with medications requirements. Unfortunately, she is prolonging her condition by not taking medications as instructed by doctors and experts.

[54] Put in another way, the issue is, *whether the appellant has an unconditional right to be present physically in Court*, when her appeal is heard.

[55] Section 31(1) of the Court of Appeal Act provides for the right of an appellant to be present, but upon conditions. The appellant "...shall be entitled to be present, if he or she desires it and is not prevented by sickness or other cause," In light of this part of section 31(1), the appellant ,even if she desires to attend, is prevented by her mental illness, and her aggression and disrespectful behaviors on her last court appearance on 26 March 2024. The remaining part of section 31(1) does not apply as the leave stage and all other proceedings preliminary on an appeal have been addressed.

- [56] If the appellant does not attend Court, her appeal is not automatically terminated as a consequence. She has been legally represented in this appeal by counsel from the Legal Aid Commission who has demonstrated to the Court her passion and interest to defend and protect the interests of the appellant in this appeal. The hearing of the appeal was vacated out of concern for the appellants rights to be present in Court. It is now clear that the appellant has been prevented from attending Court due to her mental condition, as such the appeal can proceed, and perhaps also affect her ability and capacity to understand the nature of her appeal and to give further instruction on it.
- [57] At this juncture, it may be appropriate to comment on the case **Prosecutor v Vujadin Popovic & Others** (supra) a decision of the Appeals Chambers, and its application to this case. In my view the case can be distinguished from this case. The primary difference is that in this case, the appellant is prosecuting the appeal through counsel based on the grounds of appeal filed by her and allowed by a single Judge. She is seeking to challenge both her conviction and sentence. In that case, the defence counsel is seeking to terminate appellate proceedings in relation to a convicted prisoner on the basis of his incapacity. The Appeals Chamber, having clarified the standard of fitness applicable to trial and appeal proceedings, and the appellant's conditions, that is, whether it affects the appellant's ability to understand the essentials of appellate proceedings, its consequences, the prosecution's grounds of appeal against him and to instruct his counsel about filing an appeal on his behalf, was satisfied that the appellant met the standard of fitness and refused the application of his counsel to terminate appeal proceedings against him.
- [58] There has been instances where the Full Court has heard appeals without the presence of the appellant or respondent and made its determination.: See **Lealeavono v State** [2023] FJCA 250, **State v Chand** [2023] FJCA 252. There is no reason not to continue with the appellants appeal without her physical presence due to her mental disability or impairment and there is no likelihood of her interests being undermined or prejudiced. The appellant continues to have access to the Courts through her counsel from the Legal Aid Commission.

Whether section 108 of the Mental Health Act 2010 applies to criminal proceedings.

- [59] The Motion before the Court is under section 108 of the Mental Health Act 2010, and section 33 of the Rights of Persons With Disabilities Act 2018. I have already dealt with the latter provision. A careful reading of the Mental Health Act and section 108 thereof, and having considered the comprehensive submission made on behalf of the appellant, I have come to the conclusion that the Act and section 108 do not extend to cover criminal proceedings. Section 108 of the Act applies strictly to “*a person’s estate or affairs*”. I view any attempt to expand the meaning of “*affairs*” by interpreting it to include the appointment of a Manager to manage the appellant’s appeal in this Court is unacceptable. The “*affairs*” of a person under section 108 must mean “*affairs directly connected to the person’s estate*”. If Parliament had intended that section 108 is to include the appointment of a Manager for the purpose of managing a criminal appeal, it would have said so clearly in section 108. In my view the very nature of a criminal proceeding, which is by nature personal to the person being indicted and, in this case, convicted and sentenced, and appealed to this Court, would not permit such an interpretation.
- [60] I am fortified that, in the United Kingdom’s Court of Protection, which appoints “litigation friend” and the New South Wales’ practice of appointing a guardian and/or financial manager to make substitute decisions for people with decision-making disability, the range of matters for which guardianship or management orders can be made for relate mostly to civil and family matters.
- [61] I do not see a need to discuss the third issue which is whether the proposed Manager is suitable for the appellant. However, I will make a point on the issue of jurisdiction before concluding. Section 108 (5) (e) of the Mental Health Act 2010, states that, a management order “...may be the subject of an appeal to the Court of Appeal in accordance with the rules of court.” This would suggest that an application for a Management Order under the relevant Act, is to be sought or made in either the Magistrate’s Court or High Court as the case may be.
- [62] The Court wishes to acknowledge Counsel representing the Legal Aid Commission, for and on behalf of the appellant, for the comprehensive legal submissions filed on

29 September 2025 and 20 November 2025, which has assisted the Court immensely in arriving at its decision.

Order of Court

1. *The Motion/Application is dismissed.*
2. *The Legal Aid Commission by its counsel, to proceed with appeal in the absence of the appellant.*
3. *The Court Registry to ensure an early call-over date to fix a date for the hearing of the appeal.*



A handwritten signature in blue ink, appearing to read "Alipate Qetaki", is written over a horizontal line.

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