

**IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL JURISDICTION**

**CRIMINAL APPEAL NO: HAM 180 OF 2013**

**BETWEEN: ATALO LABA**

**AND: STATE**

**COUNSEL: Applicant in Person  
Mr. Timoci Qalinauci for the Respondent**

**Date of Hearing: 14/08/2013**

**Date of Ruling: 19/08/2013**

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**RULING**

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[1] The Applicant, Atalo Laba appearing in person, is seeking leave to Appeal out of Time against his sentence in Criminal case No:CF/476/2012. The sentence was imposed on 11<sup>th</sup> November, 2012 by learned Magistrate Lautoka.

[2] The Appellant was charged for one count of Burglary and one count of Theft. He had pleaded guilty to the charges and admitted the summary of facts.

Now he has filed this Application on the ground that the sentence imposed is harsh in comparison to similar cases decided by the court.

[3] The law with regard to Leave to Appeal out of time is stipulated in section 248 of the Criminal Procedure Decree, 2009. According to the section:

248(1) Every appeal shall be in the form of a petition in writing signed by the appellant or the appellant's lawyer, and within 28 days of the decision appealed against-

(a) It shall be presented to the Magistrates Court from the decision of which the appeal is lodged;

(b) A copy of the petition shall be filed at the registry of the High Court; and

(c) A copy shall be served on the Director of Public Prosecution or on the Commissioner of the Fiji Independent Commission against Corruption.

(2) The Magistrate Court or High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.

(3) For the purposes of this section and without prejudice to its generality, "good cause" shall be deemed to include-

(a) a case where the appellant's lawyer was not present at the hearing before the Magistrates court, and for that reason requires further time for the preparation of the petition;

(b) any case in which a question of law of unusual difficulty is involved;

(c) a case in which the sanction of the Director of Public Prosecutions or of the Commissioner of the Fiji Independent Commission Against Corruption is required by any law;

(d) the inability of the appellant or appellant's lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within reasonable time of applying to the court for these documents.

[4] The appellant had submitted his application dated 15/11/2012 addressed to The Registrar, Lautoka High Court on 30/11/2012 to the Lautoka Prison. The Prison Services had received the same on 15/04/2013. This Court had received and opened this file on 17/04/2013. All mentioned dates are clearly stamped on the application.

[5] It is very clear that the appellant had filed his application just 04 days after his sentence. But the Prison Services had received the same on 15/04/2013. Hence the delay in submitting this application to the court on time is caused by the Prison Authorities. The State counsel has conceded this position at the hearing.

[6] Therefore, considering all I allow the application of the appellant and enlarge the period of limitation prescribed in the section 248 of Criminal Procedure Decree 2009.

[7] Leave to Appeal Out of Time is allowed.

P Kumararatnam

**JUDGE**

At Lautoka

19/08/2013