



5. The applicant was convicted and sentenced for 9 months with a non-parole period of 8 months on 14.7.2014.

6. This application was filed on 14.10.2014, 2 months out of time.

7. The reasons given for the delay are that :

- (i) The applicant is illiterate as such he did not understand the nature of the sentence.
- (ii) The applicant was unrepresented thus the nature of the sentence was not explained to him.
- (iii) On 14.7.2014 when the applicant was admitted to Lautoka Corrections Centre, his sentence documents were taken by the prison authorities and kept in his file at the administration office.
- (iv) The applicant made numerous attempts to see the admin officer at Lautoka Corrections Centre to discuss his sentence but all his requests were denied.
- (v) The applicant also made attempts to see a solicitor from the Legal Aid Commission for consultation but the Prison Authorities were of no help.
- (vi) The applicant only came to understand the nature of his sentence when his wife obtained a copy of sentence from Lautoka Magistrates Court and handed the said copy on Monday 13.10.2014 during a special visit.

8. The Section 248 of the Criminal Procedure Decree provides:

- (1) Every appeal shall in the form of a petition in writing signed by the appellant or the appellant's lawyer, and within 28 days of the date 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 Prosecutions or on the Commissioner of the Fiji Independent Commission Against Corruption.
- (2) The Magistrates Court or the 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 or the Fiji Independent Commission Against Corruption is required by any law;
  - (d) the inability of the appellant or the appellant's lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within a reasonable time of applying to the court for these documents.
9. The principles for an extension of time to appeal are settled. The Supreme Court in ***Kumar v State; Sinu v State*** [2012] FJSC 17; 2 CAV0001.2009 (21 August 2012) summarized the principles at paragraph [4]:

*"Appellate courts examine five factors by way of a principled approach to such applications. These factors are:*

- (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 courts 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?"*

10. More recently, in ***Rasaku v State*** [2013] FJSC 4; CAV0009, 0013.2009 (24 April 2013), the Supreme Court confirmed the above principles and said at paragraph [21]:

*"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 endeavoring to avoid or redress any grave injustice that might result from the strict application of the rules of court."*

11. The applicant was not represented at the trial or at the time he filed this application. Further state had conceded that there is a ground which has merit to be considered by this Court. Therefore leave to appeal out of time is granted and this application is considered as an appeal against the sentence.

12. The grounds of appeal against the sentence are:

- (i) That the learned Magistrate erred in law by imposing an 8 months non-parole period for a total sentence of 9 months

- (ii) That the sentence imposed by the sentencing Magistrate is harsh and excessive

### 1<sup>st</sup> Ground

13. The section 18 of the Sentencing and Penalties Decree is as follows:

- (1) Subject to sub-section (2), when a court sentences an offender to be imprisoned for life or for a term of 2 years or more the court must fix a period during which the offender is not eligible to be released on parole.
- (2) If the court considers that the nature of the offence, or the past history of the offender, make the fixing a non-parole period inappropriate, the court may decline to fix a non-parole period under sub-section (1).
- (3) If a court sentences an offender to be imprisoned for term of less than 2 years but not less than 1 year, court may fix a period during which the offender is not eligible to release on parole.
- (4) **Any non-parole period fixed under this section must be at least 6 months less than the term of the sentence.**

14. The learned Magistrate fell into error when he ordered 8 months of the sentence to be served before the applicant is eligible for parole.

15. There is merit in this ground and it succeeds.

### 2<sup>nd</sup> Ground

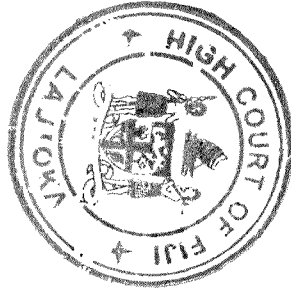
16. The learned Magistrate had taken a starting point of 12 months after considering the correct tariff of 9 months to 12 months to 3years in **State v Blake** [2014] FJHC 375; Criminal Review Case, 005.2013 (29 May 2014)


*“For a crime as serious and as damaging as Bribery of a Public Official sentences in the range of 9 months to 3 years must be regarded as the accepted range and it would be in the most exceptional circumstances that suspended sentences would be countenanced. Suspended sentences in a bribery context merely send a message that it is acceptable to offer bribes in some circumstances and the message must be given that it is **never** acceptable.”*

17. The learned Magistrate had added 6 months for the aggravating factor and deducted 3 months for the mitigating factors and further 6 months for the guilty plea.

18. The final sentence was 9 months. It is the lowest in the tariff. Therefore there is no merit in this ground that the sentence is harsh and excessive.

19. This background warrants this court to exercise its powers in terms of section 256 (2) (a) of the Criminal Procedure Decree to vary the operation of the sentence passed by the Magistrate.
20. Accordingly the non-parole period of 8 months is set aside.
21. Application is allowed, treated as an appeal against the sentence. Operation of the sentence is varied.



  
Sudharshana De Silva  
**JUDGE**

At Lautoka  
21<sup>st</sup> November 2014

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