

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

**HAA NO. 40 OF 2016**

**BETWEEN : JAMES SATISH BACHU**

**Appellant**

**AND : THE STATE**

**Respondent**

**Counsel : Mr. M. Fesaitu for Appellant**  
**Mr. A. Singh for Respondent**

**Date of Ruling : 3rd of November 2016**

**RULING**

1. The Appellant files this Notice of Motion seeking following orders, *inter alia*;
  - i) *Leave be granted for enlargement of time to appeal,*
  - ii) *Leave be granted to the Appellant to file his grounds of appeal against his conviction,*
  - iii) *Any other orders the Honourable Court deems just in the circumstances of this application,*
2. The notice of motion is being supported by an affidavit of the Appellant stating the grounds of this application.

3. Pursuant to the service of this notice of motion, the Appellant and the Respondent appeared in court on the 21st of September 2016. The Respondent was given time to file an affidavit in opposition, but the State opted not to file any affidavit. Subsequently, the learned counsel for the Appellant and the Respondent consented to conduct the hearing by way written submissions. I accordingly directed them to file their respective written submissions, which they filed as per the directions. Having carefully considered the affidavit of the Appellant and the respective submissions of the parties, I now proceed to pronounce my ruling as follows.
4. The Appellant had been charged in the Magistrate court of Sigatoka for one count of Obtaining Financial Advantage by Deception contrary to Section 318 (1) of the Crimes Decree. Subsequent to the hearing of the charges, the learned Magistrate found the accused is guilty for the offence in his judgment dated 17th of October 2015. Accordingly the Appellant was sentenced for a period of one year by the learned Magistrate on the 15th of February 2016. Aggrieved with the said conviction, the Appellant wishes to appeal against the said conviction of the learned Magistrate. Therefore, the Appellant files this application seeking the orders as stated above.
5. According to Section 248 (1) (a) of the Criminal Procedure Decree as amended by the Criminal Procedure (Amendment) Decree 2014, any petition of appeal against any Judgment, sentence or order of the Magistrates' court must be filed at the Registry of the High Court within 28 days of such decision. Section 248 (2) of the Criminal Procedure Decree has conferred the High Court with discretionary power to enlarge the limitation of the time of appeal on the ground of any good cause. Section 248 (3) has provided some of the factors that the court could

consider in order to determine the good cause as stated under Section 248 (2). Section 248 (2) and (3) of the Criminal Procedure Decree states that,

- i. *The High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.*
- ii. *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 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.*

6. The Supreme Court of Fiji in **Kumar v State; Sinu v State [2012] FJSC 17; CAV0001.2009 (21 August 2012)** has discussed the factors that the court should consider in an application of this nature, where it was held that;

- 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?*

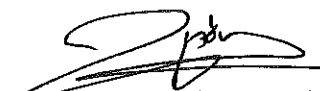
7. Having reaffirmed the above grounds as stipulated in **Kumar v State, Sinu v State (Supra)**, the Supreme Court of Fiji in **Rasaku v State [2013] FJSC 4; CAV0009, 0013.2009 (24 April 2013)** held that;

*"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"*

8. In view of the observation made by the Supreme Court of Fiji in **Rasaku ( supra)**, the court must always exercise the discretionary power given under Section 248 (2) of the Criminal Procedure Decree in order to ensure the fairness and justice to the proceedings and to the parties involved.
9. The Appellant states that he wrote a letter dated 22nd of February 2016, giving instruction to Mr. Peter Knight, a senior lawyer. Unfortunately, the letter had not been sent to Mr. Knight and was in abeyance at the Prison Centre. The Prison Authority has given a letter stating that the prison has oversight the letter and

failed to send it to Mr. Knight in the wake of Cyclone Winston. The Respondent did not dispute the letter issued by the Prison Authority.

10. The Appellant had been in prison and his ability to actively prepare for his appeal in instructing his lawyers are limited. Hence, I accept the reason given by the Appellant for the delay. The length of the delay is four months.
11. Having considered the reasons discussed above, I grant the leave to the Appellant to file his petition of appeal within fourteen days of this ruling.

  
**R. D. R. Thushara Rajasinghe**  
**Judge**

**At Lautoka**  
**3rd of November 2016**



**Solicitors : Office of Legal Aid Commission**  
**Office of Director of Public Prosecution**