

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

APPELATE JURISDICTION

CRIMINAL APPEAL CASE NO.: HAA 013 OF 2017

BETWEEN: VARANISESE DALI

Appellant

AND: STATE

Respondent

Counsel: Mr. T. Rigsby for Appellant

Mr. J. Niudamu for Respondent

Date of Hearing: 24<sup>th</sup> May, 2017

Date of Judgment: 29<sup>th</sup> May, 2017

## JUDGMENT

1. This is a timely appeal filed by the Appellant against conviction and sentence.
2. The Appellant was charged with the following count in the Magistrates Court at Lautoka.

### *Statement of Offence*

**BREACH OF BAIL CONDITIONS** contrary to Section 26[1][2] of the Bail [Amendment] Decree No. 28 of 2012.

#### Particulars of offence

**VARANISESE DALI** on the 22<sup>nd</sup> day of November, 2016 at Lautoka in the Western Division failed to attend to her case vide Lautoka CF 225/15 without reasonable cause.

3. The Appellant pleaded guilty to the charge and admitted the facts. She was thereafter convicted by the learned Magistrate. On the 24<sup>th</sup> January, 2017, the Appellant was sentenced to 3 months' imprisonment to be served concurrent with the sentence imposed in CF 225/15.
4. The Appellant filed following grounds of appeal:

#### Appeal Against Conviction

- a. The Learned Magistrate erred in law when he convicted your appellant under Section 26 (1) (2) of the Bail Amendment Decree No. 28 of 2012 the offence of breach of bail is not known to law.

#### Appeal Against Sentence

- b. The learned Magistrate erred in law and in principle when he failed to give proper credit for the Appellants unblemished record, early guilty plea at the first given opportunity and her expression of remorse.
- c. The learned Magistrate erred in law when he failed to consider the one month period spent in remand.
- d. The learned Magistrate erred in law and in principle when he failed to take into account your appellants compelling mitigation when considering whether to impose a wholly suspended sentence.

e. The sentence of 3 months' imprisonment is harsh and excessive.

5. The grounds of appeal against sentence were later withdrawn by the Appellant. She now relies on the ground against conviction only.

6. In summary, the Appellant's ground of appeal against conviction is that there is no offence under the Bail Act for breach of Bail and therefore the conviction recorded cannot stand simply because the offence disclosed in the charge is not known to law.

7. To support this argument, the Appellant relies on the following observation made by Gounder J in Eremasi Railege V State HAA 013 of 2011 (29 June 2011) where his Lordship stated:

*"..The offence alleged was breach of bail. There is no offence of breach of bail. The only offence under the bail Act is absconding bail. Furthermore, the particulars failed to state the bail condition that the appellant had allegedly breached. The charge clearly did not disclose any offence. The entire proceedings were a nullity."*

8. In Eremasi (supra) the accused had been charged under Section 25 (2) of the bail Act 2002. Section 25 (2) (b) of the Bail Act provides:

*(2) A person who has been released on bail may be arrested without warrant-*

*(b) if a police officer reasonably believes that the person is likely to break any of the conditions of the bail, or has' broken any of those conditions.*

9. It is obvious that Section 25 (2) (b) does not create an offence. The Section gives a police officer the power to arrest without warrant an accused upon reasonable belief for breach of bail conditions.

10. The offence of absconding whilst on bail is created by Section 26 of the Bail Act 2002. Section provides:

*(1) A person who has been released on bail and who fails without reasonable cause to surrender to custody commits an offence and is liable on conviction to a fine of \$2000 and 12 months imprisonment.*

*(2) The burden is on the defendant to prove that he or she had reasonable cause for failing to surrender to custody.*

11. It was correctly decided in *Eremasi* (supra) that the charge based on Section 25 (2) (b) of the Bail Act did not disclose any offence. The only offence under the bail Act is absconding bail.

12. Section 26 of the Bail Act was amended in 2012 and the Appellant in this case was charged under Section 26[1][2] of the Bail [Amendment] Decree No. 28 of 2012 which had come into operation when the alleged offence was committed.

13. Section 26[1][2] of the Bail [Amendment] Decree No. 28 states as follows:

*"Penalty for absconding or breaching conditions of bail*

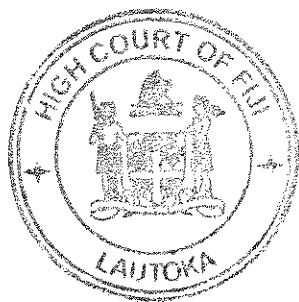
*(1) A person who has been released on bail and who fails without reasonable cause to surrender to custody, or otherwise without reasonable cause, breaches any condition of bail imposed by Court, commits an offence and is liable on conviction to a fine of \$2,000 or 12 months imprisonment, or both."*

*(2) The burden is on the defendant to prove that he or she had reasonable excuse for failing to surrender to custody or for a breach of his or her bail conditions."*


14. It is clear that the Appellant was correctly charged under Section 26[1][2] of the Bail [Amendment] Decree No. 28 for the offence of absconding bail in Lautoka case CF 225/15 without reasonable cause.
15. Hence the charge upon which the conviction was recorded had disclosed an offence known to law.
16. There is no merit in this Appeal against conviction.
17. Although withdrawn by the Appellant, it is pertinent to deal with Appellant's appeal against sentence briefly.
18. The tariff for the charge of Absconding Bail under the Bail Act is to range from a non-custodial to 6 months imprisonment. *Raj v State* [2008] FJHC 74; HAA032.2008 (18 April 2008)
19. The sentence of 3 months' imprisonment imposed by the learned Magistrate is well within tariff. The sentence is neither excessive nor harsh.

Order

20. Appeal against conviction and sentence is dismissed. The conviction recorded and the sentence imposed by the learned Magistrate affirmed.



At Lautoka  
29<sup>th</sup> May 2017

  
Aruna Aluthge  
Judge

Solicitors: Rigsby Law for the Appellant  
Office of the Director of Public Prosecution for Respondent