

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
APPELLATE JURISDICTION

Criminal Appeal No. HAA 89 of 2018

MECIUSELA RATU

V

STATE

Appellant in person  
Ms. S. Naibe for the State.

**Date of Hearing** : 15<sup>th</sup> February 2019  
**Date of Judgment** : 21<sup>st</sup> February 2019.

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**JUDGMENT**

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- 1.] The Appellant entered a plea of guilty to one charge of Breach of Bail Conditions in the Lautoka Magistrates' Court on the 20<sup>th</sup> November 2018.
- 2.] On the 4<sup>th</sup> day of December 2018 he was sentenced to 6 months imprisonment.
- 3.] He now appeals that sentence on the grounds that it is harsh and excessive; that the learned Magistrate had relied on an incorrect section in convicting him and that he was not given credit for the 42 days he spent in custody for this offence before sentence.

- 4.] The maximum penalty for this offence is a fine of \$2,000 or a term of imprisonment of 12 months, or both.
- 5.] This Court held in the case of Saula Lalagavesi HAA 83/2018LT that the tariff for the offence is from a suspended sentence to 9 months' imprisonment.
- 6.] The facts of the case are that on the 17<sup>th</sup> September the appellant failed to appear in the Lautoka Magistrates court without reasonable excuse. He was charged on the 23<sup>rd</sup> October with the offence contrary to sections 25(1)(c) and 26 (1) of the Bail Amendment Act 2012 and it was this charge that was put to him and explained on that day. He entered a plea of guilty to that charge.
- 7.] Unfortunately the learned Magistrate misquoted the section number in the opening to his sentencing remarks by referring only to section 26 and not section 25.
- 8.] The appellant relies on this small error to claim that the sentence is improper and he should succeed on this ground alone.
- 9.] However, the appellant was properly charged under section 25(1) (c) ("absents himself from Court without leave of the Court") and it was this charge to which he entered his plea. Whatever the Magistrate claims the charge to be in his sentencing remarks does not invalidate the conviction, nor does the error vitiate the sentence properly arrived at.
- 10.] Given that the final sentence is midway on the tariff band and in the light of the appellant's two previous convictions for absconding bail in the last two years, the sentence is lenient, rather than harsh and excessive.
- 11.] In Lalagavesi (*supra*) this Court discussed the principle of not allowing discount for time spent in custody prior to conviction for the offence of breach of bail conditions. If a person admitted to bail is suspected of

breaching the terms of that bail then he can be arrested without warrant and returned to custody. So any period he is in custody before conviction for breach of bail is not related to the offence itself, but to his failure to meet the conditions of his bail.

- 12.] None of the appellant's grounds has any merit and the appeal is dismissed.
- 13.] He is unlikely to be admitted to bail again.



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**Paul K. Madigan**  
**Judge.**

It would be improper and unduly advantageous to deduct that period from the sentence passed for his breach.

21<sup>st</sup> February 2019  
At High Court Lautoka