

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL CASE NO. HAA 28 OF 2020**

**(Magistrates' Court Case No. 167 of 2019)**

**BETWEEN:**            **PENIASI RABUKA**

**APPELLANT**

**AND:**                 **THE STATE**

**RESPONDENT**

**Counsel:**            **Appellant in person**  
                             **Ms. J. Fatiaki for the Respondent**

**Date of Hearing:**     **30 October 2020**

**Date of Judgment:**   **30 October 2020**

**JUDGMENT**

[1]     Following a trial in absentia, the appellant was convicted of burglary and sentenced to 15 months 25 days' imprisonment in the Magistrates' Court at Taveuni. Subsequently, the appellant was apprehended and committed to prison. On 18 August 2020, he gave his notice of appeal against conviction only.

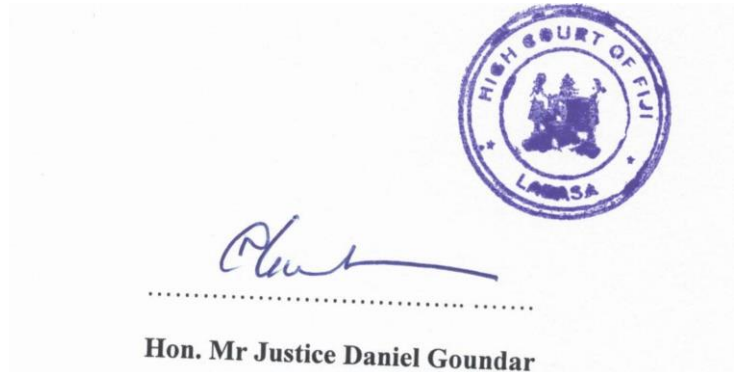
[2]     The grounds of appeal, which the appellant has drafted himself without legal assistance, are vague and lack particulars of specific errors. His first contention is that he was not given adequate time to prepare for his case before trial. The appellant was charged on 25 July 2019, and released on bail on 13 August 2019. On 18 September 2019, the appellant's not guilty plea was taken and the case was adjourned to 7 November 2019 to fix a trial date. On 7 November 2019,

the case was listed for trial on 21 July 2020. On 21 July 2020, the appellant appeared in court and informed the court that he was not ready as his witnesses were not present. The learned magistrate stood down the case to the afternoon for the appellant. When the hearing resumed in the afternoon, the appellant did not turn up for his trial. The trial proceeded in absentia upon an application by the prosecution.

- [3] The appellant had ample notice of the trial. He was on bail when the trial date was fixed. It was his responsibility to prepare for his trial. The fact that he appeared for his trial without his witnesses was his own making. The learned magistrate was generous to give him further time to get ready for his trial by having the case stood down to the afternoon. When the hearing resumed in the afternoon, the appellant absconded bail and did not appear for his trial. The learned magistrate quite properly proceeded to try the appellant in absentia. The appellant's contention that he was not given adequate time to prepare for his case before trial is incorrect.
- [4] The appellant's second contention is that his trial was unfair because the prosecution had not proved the charge beyond reasonable doubt. The learned magistrate accurately directed himself that the burden of proof was on the prosecution and the standard was beyond reasonable doubt. The learned magistrate did not draw any adverse inference against the appellant for not participating in his trial. The prosecution evidence was strong. The complainant was the owner of a barber shop. He saw the appellant fleeing the premises when confronted. The owner's evidence was that he recognized the appellant because he was one of his customers. The conviction is based on evidence following a fair trial. This ground has no substance.
- [5] The appellant's third contention is that his trial miscarried because the learned magistrate failed to evaluate the complainant's evidence in respect to the participation of the appellant's co-accused. The complainant's evidence was that he could not recognize the co-accused from the security camera footage because he did not know the co-accused. The co-accused was never charged, and therefore, the learned magistrate was not required to evaluate the evidence of his participation in the alleged burglary.
- [6] The last contention is that the learned magistrate took the appellant's bad character into account to convict him. This contention lacks merits. There is nothing in the judgment to suggest that the appellant was convicted because of his bad character. He was convicted because the prosecution proved his guilt beyond reasonable doubt.

[7] The grounds of appeal have not been made out.

[8] The appeal is dismissed.



**Solicitors:**

Appellant in person  
Office of the Director of Public Prosecutions for the Respondent