

**LAISENIA QARASE v FIJI INDEPENDENT COMMISSION AGAINST  
CORRUPTION (AAU0066 of 2012)**

5 COURT OF APPEAL — APPELLATE JURISDICTION

CHANDRA JA

31 October, 12 November 2012

10 **Criminal Law — appeals — leave to appeal against conviction — abuse of office —  
discharge of duty — questions of mixed fact and law — adequacy of summing up —  
arguable grounds — Court of Appeal Act s 21(1) — Penal Code ss 109, 111.**

15 The appellant was convicted of six counts of abuse of office and three counts of  
discharge of duty with respect to property in which he has a private interest. He was  
sentenced to a total sentence of 12 months' imprisonment. The appellant sought leave to  
appeal against conviction and sentence.

**Held –**

20 (1) The objection of the respondent that there is no prayer in the notice of appeal is  
not valid. The fact that a copy of the summing up has not been attached to the notice of  
appeal is not fatal to the maintainability of the application for leave.

(2) The first ground of appeal is a question of mixed law and fact, as it dealt with the  
status of the appellant in relation to certain institutions, and whether such status  
constituted being in public service, which was the basis of the charges. This ground is  
arguable.

25 (3) The question of whether the summing up was adequate when considering the  
nature of the charges, the evidence, the agreed facts, and the law is a matter which has to  
be gone into in detail and would be better looked at by a Full Court of the Court of Appeal.  
The matters raised are arguable grounds of appeal against conviction, having considered  
the summing up of the trial Judge and the reasons in his judgment. The grounds bring forth  
30 questions of mixed fact and law and therefore are grounds on which leave can be granted.  
The proposed grounds are properly arguable and therefore meet the threshold for leave.  
Leave to appeal against conviction is granted.

**Case referred to**

*Brian Singh v The State* (2010) FJCA 53, cited.

35 *T. Draunidalo* with S. Waqabitu for the Appellant.

*V. Perera* with R. Aslam for the Respondent.

40 [1] **Chandra JA.** This is an application for leave to appeal against conviction  
and sentence.

[2] The Appellant was charged on Six counts of Abuse of Office contrary to  
s 111 of the Penal Code, Cap 17 and three counts of Discharge of Duty with  
Respect to Property in which he has a private interest contrary to s 109 of the  
Penal Code, Cap 17 and stood trial in the High Court of Suva.

45 [3] The Appellant was found guilty by the Assessors on all the counts of  
offences and on 31st July 2012, Justice Priyantha Fernando agreeing with the  
opinion of the Assessors convicted the Appellant on all counts and on 3rd August  
2012 the Appellant was sentenced to 12 months imprisonment on each count  
from counts 1 to 6 and was sentenced to 6 months imprisonment on each of the  
50 counts 7 to 9 making up a total sentence of 12 months imprisonment to be served  
concurrently.

[4] In the notice of appeal filed on behalf of the Appellant seeking leave 20 grounds of appeal were set out of which ground 1 was stated to be a question of law and the grounds 2 to 20 were stated to be questions of fact and law.

5 [5] Counsel for both parties filed their written submissions and made oral submissions before me. Counsel for the Respondents objected to all the grounds of appeal on the basis that they do not meet the test for leave to be granted.

[6] Section 21(1) of the Court of Appeal Act Cap 12 provides for an appeal by a person convicted on a trial held before the High Court and provides as follows:

10 *“21(1) A person convicted on a trial held before the High Court may appeal under this Part to the Court of Appeal; -*

*(a) Against his conviction on any ground of appeal which involves a question of law alone;*

15 *(b) With the leave of the Court of Appeal upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and*

*(c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.”*

20 [7] As stated above the Appellant has set out one ground as a question of law and 19 grounds as questions of fact and law in his application for leave.

[8] The Respondents have in their written submissions taken up objections to the effect that the proposed grounds of appeal are not arguable, that there is no prayer in the notice of appeal and that a copy of the summing up has not been 25 attached with the Notice of Appeal. A perusal of the notice of appeal shows that there is at the end of the notice a prayer seeking leave and therefore that objection would not be valid. Further, the fact that a copy of the summing up has not been attached to the notice of appeal is not fatal to the maintainability of the application for leave.

30 [9] As regards ground 1 of the notice of appeal, stated by the Appellant as a question of law, the objection of the Respondent is that it is not so and that it is not arguable even if it is considered as a question of fact or a question of mixed law and fact.

35 [10] As regards the said ground 1 which is on the basis that the trial Judge had erred in his summing up to the assessors by failing to direct the assessors that it was necessary that the prosecution prove that the Appellant held all three positions of Director of Fijian Holdings Ltd, Adviser to the Fijian Affairs Board and Adviser to the Great Council of Chiefs, it is my view that it amounts to a 40 question of mixed law and fact as they relate to the status of the Appellant in relation to the said Institutions, and whether such status constituted being in public service, which was the basis of the charges. I would consider that this ground is one that is arguable.

45 [11] As regards the other 19 grounds, which are referred to by the Appellant as involving questions of law and fact, it is the submission of the Respondents that they are not arguable and without merit.

50 [12] A perusal of the written submissions filed by the Respondent indicates that in paragraph 10 of the said submissions, the Respondent has taken up the position that “certain grounds in the Notice of leave to appeal are devoid of merit and none of the grounds are arguable and therefore none of the grounds meets the threshold for leave”. This by itself would amount to conceding the fact that some

of the grounds have merit and therefore would amount to grounds which are arguable before a Full Court of the Court of Appeal.

[13] The threshold that has to be met by the Appellant in the present instance is to satisfy the requirements of s 21(1)(b).

5 [14] The written submissions filed on behalf of the Appellant have been made on the basis almost entirely on the fact that the learned trial Judge had not adequately summed up for the Assessors matters relating to law and facts and as to how the Assessors should consider the matters before them and has suggested the manner in which the learned trial Judge should have summed up for the  
10 Assessors. It amounts to an academic exercise in relation to the manner in which a summing up should be made to Assessors by a trial Judge. This methodology adopted by the Appellant's Counsel has not brought to light the real deficiencies in the summing up and it has made the task of the Court greater in analyzing the said proposals to identify the questions of law and fact that are arguable before  
15 a Full Court.

[15] The manner in which summing up should be done by a trial Judge has been the subject of much discussion in several decisions of the Supreme Court of Fiji and other jurisdictions and it would be relevant to state that as to whether the  
20 summing up in the instant case was adequate when considering the nature of the charges, the evidence both oral and documentary, the Agreed Facts, and the law is a matter that has to be gone into in detail which would be better looked at by a Full Court of the Court of Appeal.

[16] Considering the several grounds of appeal that have been formulated on behalf of the Appellant, I am of the view that the matters raised are arguable  
25 grounds of appeal against conviction, having considered the summing up of the trial Judge and the reasons in his judgment. The grounds bring forth questions of mixed fact and law and therefore are grounds on which leave can be granted. At this stage I shall not endeavour to select the grounds on which leave should be  
30 granted, as I find that the proposed grounds are properly arguable and that the application of the Appellant meets the threshold for leave. As observed by Justice Marshall in *Brian Singh v The State* (2010) FJCA 53 "The Court of Appeal is in my opinion well able to sort out "the wheat from the chaff" when it comes to focusing on what are more or less and non arguable grounds of appeal".

35 [17] The order of the Court is:  
Leave to appeal against conviction is granted.

*Leave to appeal granted.*

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