IN THE SUPREME COURT OF FIJI

[CRIMINAL APPELLATE JURISDICTION]

CRIMINAL PETITION No: CAV 0012 of 2019

[On Appeal from Court of Appeal Nos: AAU 0054/16

AAU 0059/16

AAU 0062 /16]

BETWEEN	:	**1. JOSEPH ABOURIZK**
		2. JOSESE MURIWAQA
		Petitioners
AND	:	**THE STATE**
		Respondent
Coram	:	**Hon. Mr. Justice Anthony Gates, Judge of the Supreme Court**
		Hon. Mr. Justice Priyasath Dep, Judge of the Supreme Court
		Hon. Mr. Justice Madan B. Lokur, Judge of the Supreme Court
Counsel	:	**Mr. M. Thangaraj for the 1st Petitioner**
		Mr. A. K. Singh for the 2nd Petitioner
		Mr. L. J. Burney with Mr. T. Naimila for the Respondent
Date of Hearing	:	**08 August 2022**
Date of Judgment	:	**25 August 2022**

JUDGMENT

Gates, J

1. I have had the advantage of reading in draft the judgment of Lokur J. I concur with it, with its reasons, and with the orders proposed.

2. The panel had found itself in some difficulty, not having been the original panel who had had the petition argued before it, and who had decided to quash the conviction. As Lokur J has said, the orders were not complete in exercising powers in accordance with section 23(2) (a) of the Court of Appeal Act.

3. During the deliberations after the hearing the panel decided to pose certain written questions to learned counsel. They responded within the limited time constraint with further written submissions. We have been greatly assisted by counsel's endeavors which competently addressed our concerns, and for which the court expresses its appreciation.

4. There were errors in the trial here but the trial was not nullity. The errors occurred in the summing up by way of misdirection or misapprehension of evidence. Accordingly our orders are for a limited re-trial before a different judge. It should occur expeditiously on the existing record of evidence, and without calling fresh evidence. With the change in the law and the abolition of assessors, the new trial will now take place before a judge alone who will decide the matter on the existing evidence and after hearing counsel's addresses.

Dep. J

5. I had the benefit of reading the Judgment in draft of Lokur J, and I agree with him that the DPP's application for a retrial should be allowed, and a retrial be ordered. The retrial to be held by a High Court Judge other than the learned Judge who heard and decided the case in the first instance. I find that the hearing of cases in the High Court by a judge sitting with the assessors was dispensed with under a recent amendment to the Criminal Procedure Code. Therefore, the High Court Judge sitting alone without the assistance of assessors has decide the case.

6. The Supreme Court has power under section 14 of the Supreme Court Act, 1998 read with section 23(2)(a) of the Court of Appeal Act No.19 to order a new trial if the interest of justice so requires.

7. The question is whether or not the Supreme Court has the power to give directions as to the conduct of the new trial. In my view in the interest of justice the Supreme Court has the power to do so.

8. As I understand, a new trial means a fresh trial or a rehearing of a case. A new trial and retrial have the same meaning. Though, I agree with Justice Lokur that a retrial be ordered, I respectfully disagree with the Justice Lokur's proposed orders to a limited retrial which requires the trial judge to take into consideration the trial record and decide and pass judgment.

9. I propose at the trial the judge should adopt the evidence already led for the purpose of expeditious disposal of the case, reserving the rights of parties to apply to court to recall witnesses for further examination or cross examination or to call new witnesses. The trial judge could *ex mere motu* call witnesses.

Lokur, J

10. This petition is listed before this Court as a follow up to the orders given on 28 April 2022[1]. The orders passed by the Panel were:

> *"(1) The petitioners' application for leave to appeal to the Supreme Court is granted.*
>
> *(2) The petitioners' appeal against their convictions is allowed, and their convictions are hereby quashed.*
>
> *(3) The Director of Public Prosecutions must notify the Court by 12 May 2022 whether he proposes to apply for an order for a new trial.*
>
> *(4) Such an application must be lodged by 19 May 2022.*

[1] [2022] FJSC 9

(5) In the meantime, the petitioners are remanded in custody."

11. Order (3) was made in the exercise of power conferred on the Supreme Court by section 14 of the Supreme Court Act, 1998 read with section 23(2) (a) of the Court of Appeal Act, 1949. These provisions read:

Section 14 of the Supreme Court Act, 1998

"14. For the purposes of the Constitution of the Republic of Fiji and this Act, the Supreme Court has, in relation to matters that come before it, all the power and authority of the Court of Appeal and that power and authority may be exercised, with such modifications as are necessary, according to the circumstances of the case."

Section 23(2) (a) of the Court of Appeal Act, 1949

"23. – (1) xxx xxx xxx

(2) Subject to the provisions of this Act, the Court of Appeal shall –

(a) if they allow an appeal against conviction, either quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial; and

(b) xxx xxx xxx"

12. As would be immediately apparent from a reading of Section 23(2) (a) of the Court of Appeal Act, the order passed is 'incomplete'. The section gives two options to the Panel while allowing the appeal: (i) quash the conviction **and** direct a judgment and verdict of acquittal to be entered, or (ii) if the interests of justice so require, order a new trial. It is doubtful, whether the word "or" before the words "if the interests of justice so require..." can be read as enabling the Court of Appeal to quash the conviction *and* if the interests of justice so require, order a new trial. However, it is really not necessary to delve into this controversy in the present case although it may arise in some other proceeding. In any event, the Panel left it to the DPP to take a call on whether or not to proceed with a new trial.

13. Subsequent to the order passed by the earlier Panel, the respondent has filed a document titled "RESPONDENT'S SUBMISSIONS - RETRIAL" of 6 May 2022. Through this, the State Counsel has informed this Court, *inter alia*, as under:

> *"2. Having carefully considered the Judgment and the public interest in a retrial, the DPP has decided that it is overwhelmingly in the public interest that there is a retrial of the charge of unlawful possession of a very large quantity of drugs."*

This decision of the DPP has fallen for consideration before this Panel which is placed in an unenviable position of having to take a call on whether or not to order a new trial. It must be stated at the outset that this Panel is not sitting in judgment over the decision of the DPP. The task before this Panel is limited to deciding whether a new trial or a retrial should be ordered or not. This decision is required to be taken uninfluenced by the view expressed by the DPP. Strictly speaking, therefore, this Panel is required to step into the shoes of the earlier Panel in taking a decision, which is the reason for this task being unenviable.

Guiding principles for a decision

14. Mr. Burney learned State Counsel has given justification, in the document, why the DPP has decided that there should be a retrial. The justification is based on an application of the principles formulated by the Hong Kong Court of Final Appeal in ***HKSAR v. Zhou Limei (No.2)***[2] after considering the decisions rendered in ***HKSAR v. Tam Ho Nam (No.2)***[3], ***Au Pui Kuen v. Attorney General of Hong Kong***[4], ***Ting James Henry v. HKSAR***[5] and ***Kissel v. HKSAR***[6]. The principles articulated in the cited judgment provide guidance to this Court and are worth repeating. They are:

---

[2] (2020) 23 HKCFAR 169
[3] (2017) 20 HKCFAR 414
[4] [1980] AC 351
[5] (2007) 10 HKCFAR 632
[6] (2010) 13 HKCFAR 27

"(1) Whether or not a re-trial should be ordered is a matter of discretion. This discretion is usually exercised, as it should be, by the Court of Appeal, relying on their "collective sense of justice and common sense."[7] And, as was put by Lord Bingham of Cornhill, there must be "an informed and dispassionate assessment of how the interests of justice in the widest sense are best served"; it is important to maintain "confidence in the efficacy of the criminal justice system."[8]

(2) The discretion whether or not to order a retrial depends entirely on what justice requires (this being the "critical question"[9]).

(3) The interests of justice of course include a consideration of an accused's interest and circumstances. The criminal justice system is there to bring matters to a conclusion without undue delay and without oppression; these are "accepted norms"[10]. It should be acknowledged that any criminal trial is to some degree an ordeal for the accused[11]. The interests of justice also include the interest of the public in seeing those who are guilty of serious crimes brought to justice and not escape merely because of a technical error in the conduct of a trial or in the summing up to a jury[12]. In Au Pui Kuen,[13] Lord Diplock referred to the following passage from the judgment of Gould Ag CJ in Ng Yuk-kin v The Crown:[14] that there may be cases where it "is in the interests of the public, complainant, and the appellant himself that the question of guilt or otherwise be determined finally by the verdict of a jury, and not left as something which must remain undecided by reason of a defect in legal machinery". In assessing the public interest, a court must take into account the views of the public,[15] although it must ultimately be for the court to determine what is in the public interest. The strength of the prosecution case is also a relevant consideration.

---

[7] Au Pui Kuen at 357D-E.
[8] Forrester Bowe (Junior) v The Queen [2001] UKPC 19, at para.39;
[9] Tam Ho Nam (No.2) at para 21.
[10] Mok Kin Kau v HKSAR (2008) 11 HKSAR (2008) 11 HKCFAR 1, at para.10.
[11] Au Pui Kuen at 356H.
[12] Au Pui Kuen at 357C-D.
[13] At 359D-E: See also Dennis Reid v The Queen [1980]AC 343; at 350 G-H
[14] [1955] 39 HKLR 49, at 60
[15] Ting James Henry at para 51

(4) The interests of justice require all relevant factors, both for and against a retrial, to be taken into account. Such factors will not only vary from case to case, but their relative importance and weight will also be different in any given case[16].

(5) The above said, one factor that must be given significant weight is the fact that the accused has already undergone a trial, in particular where the trial is long and complex[17]. *This is all the more so when there is involved a second retrial, which means of course the possibility of a third trial for the same offence. In Mok Kin Kau,*[18] *the ordering of a second retrial after 2 concluded trials and appeals, and the serving of the whole sentence, was said to be an "unusual course" and in such a situation, in the absence of a special or compelling reason, this was a "departure from accepted norms" sufficient to constitute a substantial and grave injustice. Although it is not unprecedented for a second trial to be ordered, the cases accept that this is an "unusual" course to take,*[19] *even where the accused has not served the whole of his or her sentence as was the case in Mok Kin Kau. Given that the ordering of a second retrial is an unusual course, a court would have to be persuaded by cogent and compelling reasons to make such an order. This is consistent with the interests of justice, but of course all relevant factors must be carefully weighed in this exercise of discretion.*

(6) Another factor that should also be taken into account is the time that an accused has spent in custody and in relation to this facet, the time that an accused has been in custody will have to be seen against the likely sentence that he or she might receive on a retrial[20]."

15. In addition to the above principles, this Court is also guided by the instructive judgment delivered by Lord Diplock in ***Au Pui Kuen*** in that it focusses on three contingencies that may arise in deciding whether to order a new trial or not. These three contingencies are where the strength of the evidence is so "tenuous that a verdict of guilty on that evidence

---

[16] Au Pui Kuen at 357D-E
[17] Ting James Henry at para 50
[18] At paras 12 and 14
[19] See Tam Ho Nam (No.2) at para 24 referring to R v. Chau Mei Ling [1981] HKC 542, at 545B-C; Mok Kin Kau at para 7; HKSAR v. Li Yanhong (No.2) [2016] 1 HKLRD 946, at para 14
[20] See, for example, Ting James Henry at para 52

would be set aside as unsafe or unsatisfactory", the evidence is "so strong that any reasonable jury if properly directed would have convicted the accused and no miscarriage of justice had actually occurred" and the third contingency is between these two extremes, which is that the apparent credibility and cogency of the evidence adduced at the trial is rendered abortive by some technical blunder of the judge. Lord Diplock said:

> *"The strength of the evidence adduced against the accused in the previous trial is clearly one of the factors to be taken into consideration in determining whether or not to order a new trial. At the one extreme it may be so tenuous that a verdict of guilty upon that evidence would be set aside as unsafe or unsatisfactory under s 83(1) (a) of the Criminal Procedure Ordinance. In such a case the Court of Appeal would be exercising its discretion unjudicially if it ordered a new trial; for under the adversary system of criminal procedure which is followed in common law jurisdictions it would be contrary to the interests of justice to allow a new trial so as to give the prosecution a second chance to get its tackle in order by adducing additional evidence. In the United States of America where new trials in criminal cases are a commonplace a similar principle has recently been held by the Supreme Court of the United States to be applicable in both federal and state courts; see Burks v United States*[21] *and Greene v Massey*[22]*. At the other extreme the evidence at the previous trial may have been so strong that any reasonable jury if properly directed would have convicted the accused and that no miscarriage of justice had actually occurred. In such a case instead of quashing the conviction and ordering a new trial the appropriate course would be to dismiss the appeal under the proviso to section 83(1). Between these two extremes, however, there lies a whole gradation in the apparent credibility and cogency of the evidence that has been adduced at the trial rendered abortive by some technical blunder of the judge. The strength or weakness of the evidence is a factor to be taken into account but it is only one among what may be many other factors; and if the Court of Appeal are of opinion that on a proper consideration*

[21] (1978) 98 S Ct 2141
[22] (1978) 98 S Ct 2151

of the evidence by the jury a conviction might result it is not a necessary condition precedent to the exercise of their discretion in favour of ordering a new trial that they should have gone further and reached the conclusion that a conviction on the re-trial was probable."

Submissions of learned counsel

16. Mr. Burney, learned counsel for the State submitted that the drug haul in this case was almost 50 kg of cocaine and for the island nation of Fiji, this was a huge haul, if not the biggest. It would not be in public interest if the accused are allowed to get away scot free because of some technical errors committed by the Trial Judge as well as flawed reasoning and incorrect appreciation of the evidence of the prime witness for the prosecution ASP Neiko.

17. He insisted that the prosecution has a formidable case. It is not necessary for this Panel to analyze the evidence and indeed Mr. Burney did not invite this Panel to do so. Broadly, he submitted that the accused were found with about 50 Kg of cocaine in the car in which they were travelling and it is for them to explain how it got there, as required by section 32 of the Illicit Drugs Control Act 2004.

18. He further submitted that if a retrial is held, it will not be particularly protracted since the issues for consideration by the Trial Judge would be limited. The accused too would not be disadvantaged by any alleged delay since the transcript of the proceedings are available and recalling the events will not be problematic.

19. Finally, on the question of passage of time, he submitted that though seven years have elapsed since the incident, it "pales in comparison" to a period of 25 years sentence and a non-parole period of 20 years. In effect, therefore, any alleged delay in conclusion of the proceedings does not prejudice the accused making the delay fatal to the retrial.

20. *Per contra*, learned counsel for the accused submitted (though separately, but the submissions are clubbed here for convenience) that on the existing evidence, the case of the prosecution is not as formidably strong as is made out to be. There are plenty of gaps in the prosecution evidence leading the five assessors to reach a verdict of not guilty, which even the learned Trial Judge said was not perverse.

21. It was also submitted that the analysis of the evidence by the learned Trial Judge was flawed and prejudicial to the accused. There was no justification for disagreeing with the five assessors who reached a unanimous verdict of not guilty.

22. Learned counsel submitted that a retrial would be prolonged since new evidence would have to be led. In a brief response, Mr. Burney for the State stated at the Bar that the prosecution would not call any new witness. Learned counsel for the accused stated that they may, nevertheless, consider calling some witnesses in support of the defence.

23 It was pointed out that the ground situation has changed over the last seven years and one of the areas of concern was the absence of a sketch map, which cannot now be prepared due to physical developments in the area.

24. Finally, it was submitted that the accused have already spent seven years in custody and might have to spend several more till their acquittal. On the issue of delay and prejudice thereby caused to the accused in ordering a retrial, reference was made to ***Ali v. State***,[23] ***Kumar v. State***,[24] ***Malatolu v. State***[25] and ***State v. Drauna***[26]. The submission advanced was that the alleged offence is of 2015 and seven years have gone by since then. This delay is fatal to the cause of expeditious justice, as far as the accused are concerned.

---

[23] [2003] FJCA 8
[24] [2010] FJCA 14
[25] [2017] FJHC 274
[26] [2018] FJCA 13

25. This Panel has considered the submissions of learned counsel, oral and written. The issue at hand is rather limited, namely, whether a retrial should be ordered or not. The application of the principles abovementioned mandates, broadly:

(a) The judicious exercise of discretion. The step of ordering a new trial or a retrial should not be taken in a routine manner but only in exceptional circumstances and for good reason.

(b) The interests of justice. This actually postulates the existence of a failure of justice.

(c) A calibrated balancing. Public interest must be weighed alongside the interests of the accused.

(d) Consideration of several factors. The factors are merely illustrative and not exhaustive, such as delay that may be caused in the process such that the process should not become the punishment; the period spent in detention by the accused; the nature of the evidence – is it tenuous, or strong or suffers from a technical error; the nature of the alleged offence – petty, serious or heinous and so on.

Is there a distinction between a new trial and a retrial?

26. This question arises in the context of the expression "new trial" employed in section 23(2) (a) of the Court of Appeal Act and the decision of the DPP that there is public interest in a "retrial". In England, the case law on jury trials seems to suggest no distinction between a new trial (a writ of *venire de novo*) and a retrial. They are synonymous, but an order for a new trial or a retrial is given in very limited circumstances.

27. In ***Archbold: Criminal Pleading, Evidence and Practice (2021)*** it is stated at 7-430 that "A writ of venire de novo will be awarded where a purported trial "is actually no trial at all." Reference is made to ***Crane v. DPP***[27] and ***Reg. v. Rose***[28].

In ***Rose***, the question before the House of Lords was:

[27] [1921] 2 A.C. 299 per Lord Atkinson at page 330
[28] [1982] A.C. 822 HL, per Lord Diplock at page 831

"Whether the Court of Appeal (Criminal Division) may in their discretion order a venire de novo when they are satisfied that a verdict must be set aside by reason of a material irregularity consisting of improper pressure imposed upon the jury at any time before verdict"

28. While answering the question in the negative, the House of Lords considered several decisions including ***Crane***. In ***Crane***, it was found that "the only indictment upon which Crane could be lawfully tried there had not been any trial at all." Lord Atkinson held that what occurred was "a mistrial and a nullity". By "mistrial" he meant a purported trial "which is actually no trial at all." Lord Sumner described the occurrence as "a mistrial, and in truth no trial at all." Lord Parmoor was of the view that the indictment was "non-existent" and that "the trial was void ab initio". Explaining this, Lord Diplock observed:

"In Crane's case the reason why there had been no trial at all was because he had never been arraigned upon the only indictment on which he could lawfully be tried. Another reason for a purported trial being no trial at all is when it is brought before a tribunal which lacks the qualification necessary in law to give it jurisdiction to try the offence with which the accused is charged."

29. The House of Lords also considered ***Rex v. Neal***[29] in which the irregularity occurred after the jury had retired to consider their verdict. The Court of Appeal quashed the conviction but refused to order a *venire de novo*:

"In our opinion, if it transpires that there has been a mistrial, then .... the court can order the case to be retried, but, in order that it may be said that it is a mistrial, the circumstances must be such as render the trial a nullity from the outset."

Later, it was held:

"This trial cannot in any sense be said to have been a nullity because of an irregularity on the part of either judge or jury down to the time when all the evidence had been heard and the summing up had taken place. Down to that point everything was regular and in order."

[29] [1949] 2 K.B. 590

30. Summing up the law, in a sense, Lord Diplock observed:

> *"Such then was the state of judicial authority as to the extent of the jurisdiction of the Court if Criminal Appeal to issue writs of venire de novo at the date of its abolition in 1966. That court could do so if there had been an irregularity of procedure which had resulted in there having been no trial that had been validly commenced. It could do so if the trial had come to an end without a properly constituted jury ever having returned a valid verdict. It could* ***not*** *do so because of an irregularity in the course of the trial occurring between the time when it had been validly commenced and the discharge of the jury after returning a verdict."* [Emphasis supplied by me].

31. In conclusion, it was held, and this is important:

> *"My Lords, the certified question postulates a material irregularity occurring in the course of a trial that has been validly commenced between the time it was so commenced and its conclusion with a judgment of conviction following an unequivocal verdict of guilty by the jury, as happened in the instant case. In my opinion, for the reasons I have given, the answer to this question must be "No." I would therefore dismiss these appeals."*

32. Therefore, it is quite clear that any irregularity in a trial from its commencement to the verdict of the jury does not give grounds for a *de novo* trial or a new trial or a retrial. It is for the appellate court to decide whether to uphold the conviction or quash it.

The dilemma before this Panel and its resolution

33. Today, the position before this Panel is that no submission has been made by any learned counsel that there was "no trial at all" or that it had not been validly commenced or that the trial was fundamentally and incurably flawed or a nullity. There is no doubt that the accused were properly arraigned before the Trial Judge who had jurisdiction to conduct the trial, the witnesses were duly examined and cross examined and there is no error in

this process. Interestingly, the defect pointed out by learned counsel for the State as well as for the accused was in the summing up and the misdirection given by the learned Trial Judge to the assessors. As held by Lord Diplock, these defects do not vitiate the actual trial but vitiate the conviction. Consequently, these defects could be, should be and were, considered, analyzed and commented upon by the Court of Appeal and the earlier Panel which quashed the conviction.

34. What then is the role of this Panel and what is the appropriate order to pass in this petition? As mentioned above, the role of this Panel is limited to deciding whether a retrial should be ordered or not. The summing up by the learned Trial Judge was incomplete since a few crucial gaps were left and the learned Trial Judge also misdirected the assessors leading to what is said to be an erroneous conclusion by them. But, as per the guiding principles elucidated above, this is not good enough reason to order a retrial. The erroneous summing up and the misdirection do not make the trial a "no trial at all" or a not validly commenced trial or a fundamentally and incurably flawed trial or a nullity. Therefore, following the dictum laid down by the House of Lords, there is no reason for this Panel to order a complete retrial in this case.

35. Equally importantly, there is now a vital change in the legal system in Fiji, which is that the system of assessors has been abolished. Therefore, even assuming grounds are made out for a retrial, it cannot be before a panel of assessors, but will necessarily have to be conducted before a learned High Court Judge. The erroneous summing up and misdirection to the assessors therefore pales into insignificance and becomes irrelevant in a sense. All these factors weigh against and indeed suggest the futility of a complete retrial.

36. On the other hand, a new trial or retrial is unnecessary particularly when neither party has objected to the conduct of the trial *per se*. In this situation, a new trial might end up being a replay of the original trial, though at considerable expense to all parties and further delay in concluding the case. Therefore, on a consideration of the guiding principles laid down in ***Zhou Limei (No.2)*** and considering the relevant factors for and against a retrial,

the real question is what purpose will a retrial serve in the present circumstances and does justice require a fruitless exercise to be conducted?

37. Looked at from another perspective, learned counsel for the State and the accused deny that the existing evidence is "tenuous". Indeed, they all say that they have a formidable case and effectively the other side has no case to answer because the available evidence is "strong" in their favour. Maybe so. This is for the Trial Judge to decide.

38. On this forensic diagnosis of the circumstances, including a change in law, it need only be said that this Panel has come face to face with an extraordinary and challenging situation – one that requires finding a therapeutic solution that balances the public interest and the rights of the accused. This is possible by adopting a middle path: neither ordering a conventional or complete retrial due to impermissibility of the legal position, nor denying both sides another round in the form of an unconventional or partial retrial. The therapeutic solution that commends itself to this Panel is that the parties argue the matter afresh on the existing record before the learned Trial Judge. This will avoid a result in which both parties have, as it were, a second bite at the cherry. To avoid any allegation of bias or a pre-determined mind, it would be appropriate if the matter is re-argued before a learned High Court Judge, other than the learned Trial Judge who dealt with the matter in the first instance and without the learned Judge being shackled or influenced by the views expressed by the courts and the judgments delivered in the matter.

39. Is this innovative solution permissible in law? This Panel believes that given the extraordinary situation presented before it, a forensic innovation is necessary – provided it is within the bounds of law and the Constitution. Section 14 of the Supreme Court Act empowers and authorizes the Supreme Court to exercise all the authority and power of the Court of Appeal and "that power and authority may be exercised, with such modifications as are necessary, according to the circumstances of the case." This Panel, in passing the order that it proposes, exercises that power and authority with appropriate modifications that are necessary given the circumstances of this case. This Court undoubtedly has the power to pass an order for a 'full' retrial. Therefore, it surely has the

power to pass an order to a 'lesser' extent or magnitude eschewing a *de novo* trial and instead ordering a limited or an abbreviated or a modified retrial. Consequently, justice in this case can be achieved by directing an expeditious re-hearing by the High Court on its existing record so that the public interest is fully served, the truth of the matter is known and the rights of the accused preserved and protected so that neither party gains an unfair advantage over the other.

Orders of the Court:

1. *A limited retrial is ordered in exercise of power conferred by section 14 of the Supreme Court Act read with section 23(2) (a) of the Court of Appeal Act.*

2. *The limited retrial will be held by a High Court Judge other than the learned Judge who heard and decided the case in the first instance.*

3. *The High Court Judge will take into consideration only the trial record without hearing fresh evidence. The new High Court Judge will not refer to the summing up by his predecessor, the view of the assessors and the judgment of his predecessor. The High Court Judge will take a decision and pass judgment uninfluenced by the views expressed by the Court of Appeal and the Supreme Court and as if he were hearing the matter de novo.*

4. *The High Court Judge will hear and decide the case before him expeditiously, and meanwhile the Petitioners are remanded in custody till the 1st mention of their case at the Lautoka High Court on 16th September 2022.*

5. *There is no order as to costs.*

.....

Hon. Mr. Justice Anthony Gates
Judge of the Supreme Court

.....

Hon. Mr. Justice Priyasath Dep
Judge of the Supreme Court

.....

Hon. Mr. Justice Madan B. Lokur
Judge of the Supreme Court

SUPREME COURT FIJI