IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0014 OF 1998S
(High Court Criminal Case No.HAC003 of 1998s)

BETWEEN:

NASONI TAMANI

Appellant

AND:

THE STATE

Respondent

Coram: Hon. Jai Ram Reddy, President
Hon. Sir Rodney Gallen, Justice of Appeal
Hon. Robert Smellie, Justice of Appeal

Hearing: Wednesday, 21st August 2002, Suva

Counsel: Appellant in Person
MR. P. Ridgway for the Respondent

Date of Judgment: Friday, 30th August, 2002

JUDGMENT OF THE COURT

The applicant was tried in the High Court in April May of 1998 on one count of unlawful use of a motor vehicle and one count of armed robbery. He was one of 3 co-accused and at the conclusion of the prosecution case one of the co-accused was discharged for lack of evidence. The other was acquitted on the majority opinion of the assessors. The Judge agreed with the majority opinion. The applicant was found guilty on the unanimous opinion of the assessors with which the Judge agreed and on 21 of May 1998 was sentenced to 8 years imprisonment for the robbery and 4 months imprisonment concurrent for the unlawful use of a motor vehicle. At the trial, none of the accused was

represented by counsel.

The appellant appealed to the Court of Appeal of Fiji against conviction and sentence. This appeal was heard by a Court of 2 Judges on the 2nd of November 1999. In support of his appeal the applicant relied upon a number of grounds of which the first was that he was not invited by the Judge to make a closing submission at the conclusion of the evidence. There is no doubt that he was not so invited and therefore did not have the opportunity which ought to have been given to him to make a general address to the assessors in support of his defence. The Court of Appeal accepted that the failure of the Judge to give the applicant an opportunity to make a final address to the assessors amounted to a miscarriage of justice, but relying upon the decision of the Full Court of the Supreme Court of Victoria in R. v. Nilson [1971] V. R. 853 came to the conclusion that the strength of the case against the applicant was such that the lack of an address by the applicant would have had a neglible chance of affecting the result.

The Court of Appeal analysed the evidence which had been given at the trial and came to the conclusion that it was appropriate to apply the proviso in section 22(6) of the Court of Appeal Act Cap. 12. Accordingly it rejected the ground of appeal.

The Court of Appeal having discussed the other grounds of appeal upon which the applicant relied came to the conclusion that there was nothing to justify allowing the appeal and rejected it in total.

The applicant now seeks leave to appeal to the Supreme Court of Fiji out of time. He appeared in person in support of his application and made available written grounds on which he relied.

The first of these grounds was that already dealt with by the Court of Appeal that is, that he had been deprived of the right to address the assessors at the conclusion of the trial and before the verdict had been announced.

Like the Court of Appeal we accept that this amounted to a miscarriage of justice but we agree with the conclusion of that Court that the circumstances were such that it was appropriate to apply the proviso contained in s.22(6) Court of Appeal Act Cap. 12.

In his second ground the applicant contended that during the course of the trial evidence had been given by the various witnesses which tended to suggest that he was a person of bad character because he was known to police witnesses and in particular had been known to them because of his obligation to report while on bail on other matters. The basis of the contention is that the assessors would have assumed from the references made that the accused was a person of bad character and that this may have had some effect in leading to the conclusion to which they came. It is undesirable that references which may suggest a criminal history should be placed before assessors. But this question was raised before and dealt with by the Court of Appeal. That Court came

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to the conclusion that the references were not sufficiently prejudicial to justify interferring with the conclusion of the assessors.

The third ground upon which the applicant relies is a contention that the Judge was influenced by his knowledge that the applicant had been involved in another case where allegations of armed robbery were before the Court. There is nothing in the record to suggest that if the Judge had such knowledge it was communicated to the assessors either during the course of the trial or in the summing up. This ground cannot justify the granting of leave.

The applicant relied upon other contentions which may be summarized in an assertion that the evidence of police witnesses was conflicting and inconsistant and that in the circumstances of the case this ought to have raised a doubt as to reliability of the conviction. Again this is a matter which ought to have been raised before the Court of Appeal in the earlier appeal, (if it had any validity) and is not in the circumstances as alleged by the applicant sufficient to give rise to a question of significant public importance.

There has been a considerable delay in seeking leave in this case. But we accept the submission of the applicant that this was related to his attempts to gain legal aid and we do not take any question of delay into account.

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Having looked at all the matters which the applicant placed before us we come to the conclusion that neither singly nor taken together do they give rise to a question which we could certify to be of significant public importance to justify the granting of leave to appeal and leave must therefore be declined.

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Hon. Jai Ram Reddy, President

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Hon.Sir Rodney Gallen, Justice of Appeal

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Hon. Robert Smellie, Justice of Appeal

FIJI COURT OF APPEAL

Solicitors:

Appellant in Person
Office of the Director of Public Prosecutions, Suva for the Respondent

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