

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0031 OF 2003S
(High Court Criminal Action No. HAM028 of 2003S)

BETWEEN:

TIMOCI CAMA

Applicant

AND:

THE STATE

Respondent

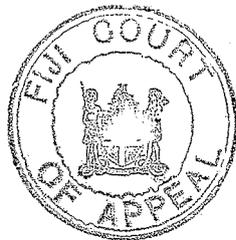
APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE

1. Timoci Cama was convicted of the rape of his mother and sister in the Magistrates' Court at Navua on 27 March 2001, after a defended hearing. He was sentenced to 5 years' imprisonment.
2. He sent a letter of intention to appeal to the Suva Magistrates' Court which arrived 2 days after the end of the 28 day appeal period. The learned Magistrate refused to extend time on the basis that no good grounds were shown. He was not heard at the time by the Magistrate.
3. More than a year later, on 1 July 2003, he applied to the High Court for extension of time. Because he was a serving prisoner, unrepresented by counsel, Shameem, J in the High Court treated his application as an appeal against the Magistrate's refusal to extend the time for appeal. The learned Judge heard the appellant in open Court. He was unable to articulate any credible ground for appeal.
4. Shameem J. reviewed the evidence given at the trial and was unable to find any cause for complaint. The appellant had chosen not to cross-examine the complainants despite being advised by the Magistrate of the importance of cross-

examination. The only apparent defence that the Judge could see was that the appellant was too drunk to recall what had happened. There was no evidence to suggest a possible defence of reasonable belief in consent.

5. The Judge noted that the appellant had been fortunate in receiving a sentence of only 5 years' imprisonment for what was an opponent offence the rape of his mother.
6. The applicant now seeks leave of this Court to appeal against the sentence, even though the decision of the High Court from which he seeks to appeal was one refusing to extend time for appeal from the Magistrates' Court.
7. Such an appeal to this Court is not possible. Section 3(4) of the Court of Appeal Act (Cap.12) permits appeals to this Court from final judgments of the High Court in its appellate jurisdiction on a question of law. Even if this were an appeal to this Court against a sentence imposed in the Magistrate's Court which had been appealed to the High Court, s.22(1A) of the Court of Appeal Act has a similar restriction on appeals.
8. No question of law arises in the applicant's submission. He has no right to seek leave to appeal. The application is therefore dismissed under s.35(2) of the Court of Appeal Act.

Dated at Suva the 20th day of November 2003.



A handwritten signature in cursive script, appearing to read "Ian Barker".

Hon. Sir Ian Barker
Justice of Appeal