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

CRIMINAL APPEAL NO.AAU004 OF 2005

BETWEEN:

PRIVATE PAULIASI VAKACEREITINI AND OTHERS

APPELLANTS

AND:

COMMANDER ROYAL FIJI MILITARY FORCES

RESPONDENT

S. Valenitabua for applicants
P. Ridgway for respondent

Hearing: 26 January 2005

Ruling : 28 January 2005

RULING

The applicants were all convicted before a General Court Martial following pleas of guilty to charges of mutiny. The charges arose from events which took place in the Parliamentary complex in Suva on 19 May 2000 and the weeks which followed. The applicants were all sentenced to terms of immediate imprisonment ranging from three to five and a half years and now seek leave to appeal against those sentences.

The question of whether there is a right of appeal to this Court from a sentence passed by a Court Martial has been considered in *Rogoyawa v State*, AAU10 of 1997S. The Court concluded that, whilst there is a right of appeal against conviction, the terms of the Royal Fiji Military Forces Act do not give this Court jurisdiction to hear an appeal against sentence except for the limited powers to alter sentence under section 33; none of which apply to the present case.

This was confirmed recently by Scott JA in *Vakadrakala v State*, AAU0020 of 2004S. Referring to *Rogoyawa's case*, he stated:

> "... the Court of Appeal accepted that the RFMF Act does not confer a right of appeal against a sentence as opposed to conviction. The question of whether such a right is conferred through any other provision was not however considered. There is no mention of appeals from Courts Martial in the Court of Appeal Act.
>
> It seems wrong that a person upon whom a very substantial sentence of imprisonment has been imposed should have no right to have the propriety of that sentence reviewed...
>
> It seems that there is a most unfortunate lacuna in the law."

Mr Valenitabua, for the applicants, acknowledges the force of those cases but, drawing strength, perhaps, from the remark of Scott JA in the first paragraph quoted above, asks the Court to consider whether the provisions of the Constitution fill the lacuna to which he referred.

He relies on the terms of section 28 (1) (l) of the Constitution which provide;

> "(1) Every person charged with an offence has the right:
> ...
> (l) if found guilty, to appeal to a higher court."

He suggests that a finding of guilt results in a conviction and so that word can be implied into the section. From there he suggests that, as a conviction makes the convicted person liable to be sentenced, that can also be inferred. Ingenious though the argument is, I cannot accept it is correct. Where there is no ambiguity in the wording of a statute, the court must give the words their natural meaning. Parliament must be taken to have intended that meaning and the court has no right to change it. To do so would be to assume a legislative rather than an interpretive role.

Mr Valenitabua next suggests that the Court can use its inherent jurisdiction to extend the terms of section 21 (1) (c) of the Court of Appeal Act to include Courts Martial. Section 21 (1) (c) provides:

> "(1) A person convicted on a trial before the High Court may appeal ... to the Court of Appeal -
>
> ...
>
> (c) with the leave of the Court of Appeal against the sentence passed on his conviction....."

The Court of Appeal is created by statute and its powers cannot be extended beyond the terms of the statutes which grant them. Section 121(1) of the Constitution provides:

> " (1) The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgments of the High Court and has such other jurisdiction as is conferred by law."

That jurisdiction is prescribed by Parliament principally in the Court of Appeal Act but it may also be provided under other acts such as, in this case, the RFMF Act.

It is undeniable that the Court has, beyond those statutory limits, inherent jurisdiction to control its own proceedings and prevent abuse of process; *Aviagents Ltd v Balstravest Investments Ltd* [1966] 1WLR 150. Such inherent jurisdiction is necessary to ensure the Court can do justice to the parties appearing before it. It does not extend to a power to increase its statutory jurisdiction.

The application for leave must be refused. Section 35 (2) of the Court of Appeal Act gives the Court the power to dismiss the appeal at this stage if it is bound to fail because there is no right of appeal. That is the case here and I dismiss the appeal.

Scott JA concluded his Decision in *Vakadrakala's case* with a request that copies be sent to the Solicitor General and the Human Rights Commission so that consideration could be given to amending the law. Counsel were unable to tell me if any steps have been taken in consequence. Events in recent years have demonstrated that laws can be amended by Parliament very quickly when necessary and I would suggest that this matter deserves the same consideration.

It would appear that the authorities which are given the power to review sentences by section 113 of the United Kingdom Army Act no longer apply here. It is true, as Mr Ridgway points out, that the sentences may in fact be reviewed when they are confirmed by the Commander-in-Chief. Similarly, section 41 of the RFMF Act specifically provides that nothing in the Act shall affect the exercise of the prerogative of mercy which will, if considered, also result in a review. However, neither of these gives the applicant the right to make submissions as he would in an appeal.

This case and associated cases have involved a considerable number of members of the military. Substantial terms of imprisonment have been ordered. As the law stands at present there is a right to appeal against their conviction but the right to appeal against sentence, although available to civilians charged with offences arising out of the same chain of events, is denied them.

Clearly the establishment of special military laws and courts is a necessary consequence of the special nature of military service and the need for strict and constant discipline means that many offences regarded as minor in civilian society must be treated more seriously in the armed forces. Consequently, the Court of Appeal may not be considered the most suitable body to review the severity, as opposed to the propriety, of sentences passed by Courts Martial but, whichever is the appropriate body, it would be in accordance with the spirit of the Constitution to provide a right of appeal to an independent tribunal against sentence in cases tried under the RFMF Act.

I again ask that a copy of this ruling be passed to the Solicitor General with a request that due consideration be given to possible amendment of this provision.

[JUSTICE GORDON WARD]
President
FIJI COURT OF APPEAL

28TH JANUARY, 2005

FIJI COURT OF APPEAL

Solicitors:

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Office of the Director of Public Prosecutions, Suva for the Respondent