

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

CRIMINAL APPEAL NO. AAU0070 OF 2005  
[High Court Criminal Appeal NO. HBM 030 of 2005]

BETWEEN:

VIJAY KUMARAN f/n Govind Sami

Appellant

AND:

THE STATE

Respondent

Counsel: A. Seruvatu (for Iqbal Khan) for the Appellant  
K. Tunidau for the Respondent

RULING

This appellant has been charged with a large number of offences of embezzlement and falsification of accounts. His case was fixed for trial in the Lautoka Magistrates' Court in September 2005. However, following the filing and serving of amended charges, the case was listed on 22 August 2005.

At that hearing, the appellant applied to withdraw his election for trial in the magistrates' court and elect High Court trial. The application was refused by the learned magistrate and that decision was appealed to the High Court. On 9 September 2005, an order was made by a High Court judge that the hearing of the charges be stayed pending the appeal.

The appeal was heard on 21 September 2005. It was dismissed and the learned judge further ordered that the stay granted on 9 September 2005 be discharged.

The appellant has now appealed to this Court against the High Court decision and applies for a stay of the magistrates' court trial pending that appeal. Such an application may only be determined by the Court and so the case has been listed for hearing by the full Court on 16 March 2006.

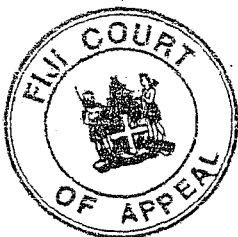
The court has now received letters from counsel for the appellant and for the State in which they agree to a stay pending appeal. The letter from counsel for the respondent states:

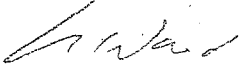
"This matter was listed by Ward P ...for hearing on the motion of stay by the appellant.

We wish to advise that the State will concede to the application. ..."

In those circumstances, I direct that the application for a stay need not be heard on the clear undertaking by the State that the trial will not proceed pending the substantive appeal.

It is also suggested that the substantive appeal could be heard in this sitting of the Court. That is not possible because the preparation of the necessary records has not yet taken place. I order therefore that the papers be prepared for hearing in the July session of this Court.



  
[GORDON WARD]  
President  
FIJI COURT OF APPEAL

15<sup>th</sup> MARCH, 2006