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IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL APPEAL NO. AAU0076 OF 2007

BETWEEN : JULIEN MILLER *Appellant*
AND : THE STATE *Respondent*

BEFORE THE HON. JUDGE OF APPEAL MR JUSTICE
JOHN E. BYRNE

Counsel : Appellant - In Person
Respondent - P. Bulamainaivalu

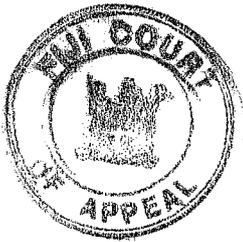
Date of Hearing & Ruling : 23rd October 2007

R U L I N G

[1] The Appellant seeks Leave to Appeal Out of Time from a Judgment of the High Court dated the 9th of June 2006 in which the Court heard appeals by the Appellant and two co-accused against sentences totaling 11 years imprisonment each imposed by the Suva Magistrates' Court on the 15th of August 2005 for a series of offences involving robbery with violence, abduction and unlawful use of a motor vehicle.

- [2] The time limit for lodging a Notice of Appeal is 30 days as prescribed by Section 26(1) of the Court of Appeal Act Cap.12. Thus the Appellant should have lodged his Notice of Appeal no later than the 9th of July 2006 but he delayed doing so until the 31st of July 2007, that is over 12½ months late. He stated that his reason for delaying his appeal was to await the result of appeals to this Court by his co-accused. These were heard and rejected by the Court in May this year. In my Judgment this delay is unreasonable and for that reason his application for Leave to Appeal Out of Time is refused.
- [3] I pointed out to the Appellant that there is no reason why he could not have lodged his appeal within the 30 days prescribed and then asked for it to be adjourned until after the Court of Appeal had given its decision. The Courts have said time and again that the rules and time limits must be obeyed, otherwise the lists of the Courts would be in a state of chaos. The law expects litigants and would-be appellants to exercise their rights promptly and certainly, as far as notices of appeal are concerned, within the time prescribed by the relevant legislation.
- [3] In any event, were this application for leave to have been made much earlier and within what I would have thought was a reasonable time of 3 months at the latest beyond

the 30 days prescribed by the Act, I would nevertheless not have held that the Judge in the High Court committed any error in law. The judgment of the High Court is very comprehensive and in my view took into account all relevant factors relating to each accused. In the case of the Appellant his sentence was reduced to 4½ years imprisonment on the ground that he was a first offender. The order of the Court therefore is that the application for Leave to Appeal Out of Time is refused.



John E. Byrne
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[John E. Byrne]
JUDGE OF APPEAL

At Suva

23rd October 2007