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

CRIMINAL APPEAL NO. AAU0018 OF 2006
& AAU0003 OF 2007

BETWEEN: 1. **SAKIASI RAIKELEKELE**
2. **WAISAKE ROKOCANINI**

Appellants

AND : **THE STATE**

Respondent

Coram: **Ward, President**
Penlington, JA
McPherson, JA

Hearing: **Tuesday 12th June 2007**

Counsel: **Appellants in person**
N Nand for respondent

Date of Judgment: **Monday 25th June 2007**

JUDGMENT OF THE COURT

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[1] Both appellants appeal against sentences passed by Govind J in Lautoka on 25 May 2005. The first appellant, Sakiasi Raikelekele, was tried on a charge of murder. He was convicted of manslaughter and sentenced to nine and half year's imprisonment. He was also sentenced on review to seven and a half years concurrent for a related charge of robbery with violence. The second appellant, Waisake Rokocanini, pleaded guilty to murder and robbery with violence and was

sentenced to life imprisonment for the murder with a recommended minimum term of eleven years three months and a concurrent term of seven and a half years on the robbery charge.

[2] Waisake had initially sought to appeal against sentence on the ground that his plea of guilty was equivocal. However, that was abandoned and the case proceeded only as an appeal against sentence.

[3] The facts showed, as the learned judge stated, a wanton and brutal killing. The appellants and two companions were drinking in Navoci Village and planned to rob the deceased. The first appellant armed himself with a sword. The second appellant had a kitchen knife with a six inch long blade. They all went and lay in wait for the victim by his house.

[4] The deceased owned a shop in Nadi. He was returning from work in his car accompanied by his wife and fourteen year old daughter. When the car stopped at their house, the four ran to it. Waisake opened the front passenger door, sat in the car and held the knife to the deceased's neck. When the deceased tried to escape, the appellant stabbed him in the cheek to the full extent of the blade so that the exit wound was on the right side of the neck. Whilst this was happening, Sakiasi was threatening the deceased's wife in order to be able to rip off her gold necklaces. The daughter, showing considerable courage, held the blade of the sword and averted what may have been further serious injury or death. Having seized the gold chains, the attackers all fled. The deceased was taken to hospital but was dead on arrival as a result of asphyxiation due to aspiration of blood.

[5] The first appellant appeals on three grounds:

1. that the sentence is manifestly harsh and excessive in that a sentence for 9 ½ years for manslaughter is harsh
2. that the trial judge failed to allocate proper factors such as unforeseen circumstances

3. that the sentence did not reflect the issue of the appellant's role as second principal and should have considered the appellant's contention that his refusal to use the weapons at his disposal should attract appropriate discount.

[6] The first appellant submits that the sentence of 9½ years for manslaughter is excessive. He cites various other cases where lesser sentences were passed. This Court has frequently pointed out that such comparisons are of limited assistance. All cases depend on their own facts and may differ in so many aspects that a precise comparison is impossible. This applies with particular emphasis in cases of manslaughter. However the judge must know the range of sentences which other courts are passing.

[7] In the case of *Kim Nam Bae v The State* [1999] AAU 15/98, 26 February 1999, the Court pointed out that manslaughter cases are particularly difficult because the circumstances and offender's culpability can vary greatly from case to case. It noted that the cases showed penalties for manslaughter ranged from a suspended sentence where there may have been grave provocation to twelve years imprisonment where the degree of violence is high and the provocation minimal. However, each case will fall within the range appropriate to its own facts.

[8] In this case the learned judge assessed the circumstances of the case:

> "I find this was a wanton and brutal killing of an unsuspecting person who ought to have felt secure within the confines of his own house. The initial robbery was carefully planned and timed. In my view there is no such thing as a 'robbery gone wrong' especially when the accused are in company and are pre-armed. They must always know that robbery with the help of lethal weapons is likely to kill someone and not merely frighten. The terror visited on the second victim and her daughter must have been horrendous. Society has a right to be

protected from violent thugs and it is the duty of the court to protect and secure that right."

[9] That was an accurate summary of this offence. Whilst it started no doubt as a robbery, the arming of the robbers with such lethal weapons made serious injury or death an extremely likely consequence. As a result an innocent man lost his life. That is why the judge suggests there is no such thing as a robbery gone wrong. This death was a separate but direct result of the concerted attack by these men.

[10] The judge clearly applied the right measure to the sentence he passed and we see no reason to interfere.

[11] The second and third grounds appear to be related to the issue of the relative culpability of this appellant compared with that of the second appellant who applied the blow that actually killed the deceased.

[12] We do not consider there is any merit in these grounds. This unfortunate man died as a result of a planned and concerted attack by a group of four men all of whom would have known two of their numbers were armed with potentially lethal weapons. We accept the plan was not to kill but the circumstances were such that all must have been aware of the risk someone might be seriously injured or killed. The verdict of manslaughter instead of murder clearly shows that the court acknowledged that the fatal blow was not inflicted by the first appellant.

[13] The appeal by Sakiasi Raikelekele against sentence is dismissed.

[14] In the case of Waisake, once he had been convicted of murder, he was subject to a mandatory sentence of life imprisonment. He appeals on the ground that the judge did not take sufficient notice of the fact it was only a single act and there was no evidence that it was committed in a frenzy but occurred because the victim was sandwiched between two weapons. We do not consider that assists the

appellant. On the contrary, it emphasises the cold blooded manner in which the fatal blow was struck

[15] The only basis for the appeal is against the minimum recommended term of 11 ¼ years. The assessment of the need to recommend a minimum term and its length is a matter for the judge on the facts of the case. We have already set out the judge's description of the offence. This appellant was in possession of a kitchen knife. He held it to the victim's cheek and then stabbed him with it. There was no reason why this should have happened. There had been no attempt at resistance; simply an attempt to escape. It was a deliberate and unnecessary act.

[16] We see no reason to interfere with the recommended minimum term and the appeal is dismissed.

[17] **Result**: Both appeals against sentence are dismissed.

FIJI COURT OF APPEAL

Ward, President

Penlington, JA

McPherson, JA

Solicitors:

Appellants in person
Office of the Director of the Public Prosecutions, Suva for the Respondent