

IN THE COURT OF APPEAL, FIJI ISLANDS

**Criminal Appeal AAU0014 of 07**  
(High Court Criminal Action HAC015 of  
2006)

**BETWEEN:**                      **ORISI TAMANI**                      Appellant/Applicant

**AND**                      :                      **THE STATE**                      Respondent

**Counsel:**            **S Valenitabua for appellant/ applicant**  
                              **A Prasad for respondent**

**Hearing:**            **15 and 30 May 2007**

**Ruling:**             **1 June 2007**

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**R U L I N G**

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[1] The applicant and another, Rodney Silikula, were convicted after trial in the High Court on two counts of robbery with violence. On 28 November 2006, they were each sentenced to five years imprisonment on each count to be served concurrently. They have both appealed with leave against conviction and sentence. This applicant now applies for bail pending appeal.

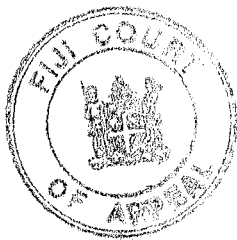
[2] By section 3 of the Bail Act 2002 there is a rebuttable presumption in favour of the granting of bail but subsection (4) provides that the presumption is displaced where the person seeking bail has been convicted and has appealed against the conviction. Section 17 now provides that when the court considers an application by a person who is appealing either conviction or sentence, it must consider the likelihood of success in the appeal, the likely time before the appeal hearing and

the portion of the original sentence which will have been served by the time the appeal is heard.

- [3] As has been pointed out previously, that is not an exclusive list of factors the court will consider but the section imposes a duty on the court to include those three factors in all cases; see for example Ratu Jope Seniloli and others v The State; AAU 41/04, 23 August 2004.
- [4] In considering the likelihood of success this Court has, since Sharda Nand v DPP Bail Application 3/79, applied the standard that bail pending appeal will only be granted if the appeal has every chance of success. It is clear that the appeal here raises arguable grounds. However, their success will depend to a great extent on a challenge to the judge's findings of fact. I do not consider they show more than a reasonable chance of success.
- [5] The time that is likely to elapse before the appeal is heard and the proportion of the sentence that will have been served by then is uncertain. The next sitting of the Court of Appeal is now set for June and this case cannot be accommodated in that sitting. Following the loss of half the justices of appeal and the uncertainty of the position in the future, the next sitting of the Court is also uncertain. In such a case, the applicant is, with good reason, apprehensive that his appeal may not be heard until much of his sentence is served.
- [6] I must assume that there will be another sitting of the court in the reasonably near future and so I cannot grant bail on that ground. I would mention however, that, if it appears that there will not be such a sitting, the applicant is at liberty to renew his application on that basis.
- [7] In his affidavit in support, the applicant advises the Court that he has a family business with substantial assets for which he is responsible. Whilst he is in custody, he is unable to exercise any practical control. I understand his anxiety but I do not consider that is a ground for the grant of bail. Many persons

sentenced by the courts to immediate imprisonment suffer serious consequences in addition to the actual fact of imprisonment. Every sentencing judge, once apprised of such a situation, will take care to bear it in mind whilst deciding the appropriate term of imprisonment. In the present case I note that Govind J showed, by his sentencing comments, that he was aware of this aspect of the case.

[8] I am satisfied that this is not a case where the Court can grant bail pending appeal and the application is refused.



*Gordon Ward*

**Gordon Ward**  
**PRESIDENT**