

[2] The Appellant appealed (by way of handwritten letter dated 6 March 2008 and a Petition of Appeal dated 26 March 2008 together with a typed letter received on 31 March 2008) against his conviction arguing eight grounds of appeal. The Application is, therefore, within the 30 day time-limit and does not require leave to extend the time within which the notice of appeal can be filed.

[3] He also seeks bail pending appeal.

THE HEARING OF THE GROUNDS FOR LEAVE

[4] Mr Rawaqa appeared before me on 15 May 2008 at 9.30am. Mr A. Elliott appeared on behalf of the Office for the Director of Public Prosecutions.

[5] Even though Mr Rawaqa indicated to the Court that he had a good command of English, it was found necessary to have the Court Officer who was in attendance to occasionally clarify Mr Rawaqa's responses and confirm them for the Court.

[6] The hearing proceeded by way of the Court reading out to Mr Rawaqa each ground of appeal and asking Mr Rawaqa whether he wished to say anything in support of that particular ground and then asking the DPP to respond.

The 14 Grounds in support of an appeal against Conviction

[7] Mr Rawaqa's submissions are summarized below.

[8] **The First Ground against Conviction reads:**
"That the Learned Trial judge erred in Law and fact, in failing to direct himself as to the standard of proof in order to safely secure the conviction of the defendant."

[9] Mr Rawaqa did not want to add anything further to this ground.

[10] **The Second Ground against Conviction reads:**

*"That the learned trial court **erred in law and fact**, in failing to properly assess the evidence of assault by Police – Having regard that my medical report which specified that I sustained injuries while in police custody, was tendered in court to prove the evidence of brutality (Section 25-(1) Bill of Rights 1997 Constitution and Section 27-(1)(f)."*

[11] Mr Rawaqa did not want to add anything further to this ground.

[12] **The Third Ground against Conviction reads:**

*"That the learned trial judge **erred in procedure** in not allowing for my x-ray films to further confirm the seriousness of the injuries sustained."*

[13] Mr Rawaqa alleged that the treating doctor who examined him also took x-rays of his injuries but the doctor was later lying when he came to Court to say that he took no x-rays. Mr Rawaqa further alleged that the x-rays would reveal the extent of his injuries. When, however, it was asked of Mr Rawaqa as to why he did not collect the x-rays once he was on bail, particularly as he was facing a charge that carried a sentence of potential life imprisonment, he replied that he was with his family and they were his priority.

[14] **The Fourth Ground against Conviction reads:**

"That the learned Medical practitioner lied in court that I was not x-rayed on the 16th of Nov 2004, also that he did not fill a blue form."

[15] Mr Rawaqa did not want to add anything further to this ground.

[16] **The Fifth Ground against Conviction reads:**

"That police witness DC Atunaisa fraudulently removed (seized) the blue form from my possession, in the police station."

[17] Mr Rawaqa did not want to add anything further to this ground.

[18] **The Sixth Ground against Conviction reads:**

"That the learned trial judge fail to assist me that I have the right to arrest his judgment. (Trial within a Trial)."

- [19] The basis of this ground was that Mr Rawaqa alleged he was forced to make a confession.
- [20] **The Seventh Ground against Conviction reads:**
"That the learned trial judge fail to consider the statement of my witness (Eyewitnesses) and furthermore erred in not serving a summon to my witness (Ovini Tuitoga) who witnessed Police brutality in the police station."
- [21] It was explained to Mr Rawaqa that it was up to him to have prepared his case, not the Trial Judge. It was also noted that when he was on bail he should have used that time to prepare his case and applied for legal aid.
- [22] **The Eighth Ground against Conviction reads:**
*"(a) That the learned trial judge was partial in his deliberation on "Voir Dire Ruling".
(b) That there was a miscarriage of justice*
- [23] The complaint here was that other witnesses were preferred over the evidence of his wife.
- [24] **The Ninth Ground against Conviction reads:**
*"That I remained silent during the trial proper due to the fact that;
(a) I found the trial judge partial
(b) That the learned trial judge is still fresh from the D.P.P's office and there in the back of his mind is to 'convict people'.
(c) That there is a possibility of 'mutual friendship' between the Trial Judge (Daniel Goundar) and the Prosecutor (David Toganivalu)
(d) That the trial wasn't fair(Voir Dire, Trial Proper)
(e) That the trial proper started on a Saturday which was my day of worship."*
- [25] After this complaint was discussed, the Appellant partially withdrew this ground but still maintained that the "trial proper" commenced on a Saturday which he said offended his day of worship. It was pointed out to him, however, that it was clear from the Court record that the *voir dire* ruling as delivered on the Saturday, however, the trial proper did not commence until the following Monday.

- [26] **The Tenth Ground against Conviction reads:**
"That the learned trial judge fail [sic] to assist me in every step that I should take for the case to be transferred to another judge even though I asked him for assistance. (met with a sharp rebuff)."
- [27] The complaint here was that the trial should have been referred to another judge.
- [28] **The Eleventh Ground against Conviction reads:**
"That the prosecution fails to produce Amelia Marama to the witness box to determine how the items was found in her possession. (Trial Proper) even though she was present."
- [29] The complaint here was that his wife was not called by the Prosecution in the trial proper.
- [30] **The Twelfth Ground against Conviction reads:**
"That the learned trial judge lied in his ruling Page 2 paragraph 7; that the stolen items was found in possession."
- [31] This was noted as a ground in relation to sentencing rather than conviction.
- [32] **The Thirteenth Ground against Conviction reads:**
"That the case was not determined within a reasonable time (12 months)"
- [33] This ground shifted the blame to the prosecution for the delay and not his or his co-accused's behavior in absconding whilst on bail.
- [34] **The Fourteenth Ground against Conviction reads:**
"That this clearly indicates what we call 'judge shopping'."
- [35] The allegation was that the prosecution also delay proceeding with the case until Justice Goundar was appointed because he would favour the DPP.

THE SUBMISSIONS BY THE DPP IN REPLY

- [36] Mr Elliott's submissions were succinct and summarised below.
- [37] **Ground 1** – He submitted that if you read the transcript, there is no merit to this ground.

- [38] **Ground 2** - Mr Elliott submitted that the Trial Judge's reasons are comprehensive.
- [39] **Grounds 3-5** – Mr Elliott submitted that if there was a hint of substance, the alleged x-rays could have been summoned from the hospital. Nothing was done.
- [40] **Ground 6** – Mr Elliott submitted that the allegations of a forced confession is without merit.
- [41] **Ground 7** – Mr Elliott submitted that this was not the trial judge's responsibility to prepare the case for the accused.
- [42] **Ground 8** – Mr Elliott submitted that the evidence of others was preferred in the voir dire and in the trial proper.
- [43] **Ground 9** – Mr Elliott noted the parts (b) and (c) had been withdrawn from this Ground, however, he did not follow the merits of this ground as quite clearly the "trial proper" had started on the Monday.
- [44] **Ground 10** – Mr Elliott said he had no intention of addressing this ground (as to alleged bias of the Trial Judge) as there was no substance to it nor any evidence given in support of it.
- [45] **Ground 11** – Mr Elliott submitted it was up to the Prosecution to conduct the trial as they saw fit. It was then up to the Appellant.
- [46] **Ground 12** – Mr Elliott noted that this was a sentencing ground.
- [47] **Ground 13** – Mr Elliott noted that he would prepare a record from the DPP's file and submit on the next occasion.

[48] **Ground 14** – Mr Elliott submitted that he had no intention to respond.

The Five Grounds in support of an appeal against Sentence

[49] **The First Ground against Sentence reads:**

"That the sentence is wrong in principle."

[50] **The Second Ground against Sentence reads:**

"That the sentence is wrong"

[51] **The Third Ground against Sentence reads:**

"That the sentence is unlawful [sic] on the circumstances that my confession was forcefully, treacherously and unlawfully obtained"

[52] **The Fourth Ground against Sentence reads:**

"That in the police station today remains a degree of natural abhorrence for crimes like 'Rape' that involve a 'forced submission' the 'violation of another's will'. There are still voices that cry out for the need to protect all 'suspects' from any act of force that would defile the conscience and trample upon free choice."

[53] **The Fifth Ground against Sentence reads:**

"... 'May justice prevail in our courts which judges the country and may the Good Lord bless us all"

[54] Nothing was really added to these grounds by Mr Rawaqa in Court.

[55] In summary, Mr Elliott for the DPP submitted that the sentencing judgment is clear.

ON BAIL PENDING THE APPEAL

[56] Mr Rawaqa indicated that he was also seeking bail pending the hearing of his appeal to the Court of Appeal. He submitted **eleven reasons for seeking bail:**

1. *"Your Applicant was prejudicial and would like to submit a bail pending appeal submission in adherence to section 29-(3) of the constitution and [sic] section 14 (2) of the bail act 2002*
2. *I believe Your Applicant is under obligation to make this application rooted upon the following:*
 - a. *That every person are [sic] equal to the Law. Section 38, Constitution 1997;*
 - b. *That every person must not be unfairly discriminated against;*

- c. That the bill of rights must be activated and be done according to the very reason it was created for (Chapter 4 Bill of Rights 1997 Constitution of the Republic of Fiji Islands).
3. Sec 19 (2)(B) of the bail Act 2002. That I need to be in liberty for other lawful [sic] purposes to support my family consisting of my wife and four daughters and my parents who are growing old and need support
 - a. That my family are suffering spiritually, mentally, emotionally and physically and are missing the parenting and fatherly love due to them. The whole gamut of human need.
 - b. That the court must have due regards to the ever increasing crimes such as "rape" I beseech the court to please consider the children's [sic] lives [sic] are exposed to and are without security.
4. That even though I have breached bail conditions but I was not given a chance to explain in court as to why the conditions were breached, whether [sic] I did it willingly or was I 'forced' to breach bail conditions.
5. That your Applicant will surely attend court due to the fact of a favourable [sic] outcome if the 'retrial' is heard before an 'Independent and impartial Judge'
6. That I plead the court to have regard to all relevant circumstances and also to the interest of the accused person (Part 4, section 19 (B)(1)
7. The length of time your applicant is likely to be in custody before the case is heard
8. To be in liberty in order to recuperate
 - a. Mentally
 - b. Physically
 - c. Emotionally
 - d. Spiritually
9. To be given facility to prepare a defence. [sic] (28-(1)(c) Chap 4 Bill of Rights)
 - a. To have access to books such as
 - i. Archbold
 - ii. Penal Code
 - iii. Criminal and Procedure
10. Part IV of the bail Act, section 17(3) clearly outlined, when the court is considering the granting of bail to a person who has appealed against his conviction or sentence must take into account;
 - a. The likelihood [sic] of success in the Appeal
 - b. The length of time before the Appeal hearing

- c. *The proportion of the original Sentence which will be served by the applicant before the appeal is heard due to unfair Trial here numerous of my constitutional rights were denied and breached by the Trial Judge (Daniel.Coundar)*

11. Reference – Archbold 41st Edition chapter 3 Sec 1 para 3 pg 142

12. *provides; refusal or delay by any Judge or Magistrate to bail any personailable [sic] is at common Law an offence against the liberty of the subject 4B1 Com 297 its also a violation of the He bias corpus 16 7a and of the bill of rights 1688”*

[57] Nothing was really added to these grounds by Mr Rawaqa in Court.

[58] In summary, Mr Elliott for the DPP submitted that nothing which had been submitted would justify a grant of bail when looking at the criteria in the *Bail Act*.

[59] The parties were then advised that the Court would reserve its decision and judgment would be delivered on notice.

REFUSAL OF LEAVE ON CONVICTION

[60] **Leave is refused on all Grounds** (which all appear to be mixed grounds of fact and law) **for the following reasons:**

- (a) **Ground 1** - There is absolutely no merit to this ground.
- (b) **Ground 2** – As Mr Elliott for the DPP quite rightly submitted, the Trial Judge’s reasons are comprehensive.
- (c) **Grounds 3-5** – There is no basis to these grounds and, if there was, it was up to Mr Rawaqa to collect the x-rays once he was on bail, particularly where he was facing a charge that carried a sentence of potential life imprisonment.
- (d) **Ground 6** – The Trial Judge conducted a comprehensive *voir dire* and I am satisfied that the allegations of a forced confession are without merit.
- (e) **Ground 7** – As the DPP quite rightly submitted, it was not the trial judge’s responsibility to prepare the case for the accused. It was explained to Mr Rawaqa that it was up to him to have prepared his case and that when he was on bail he should have used that time to prepare his case and applied for legal aid.

- (f) **Ground 8** – As the DPP also submitted, the evidence of others was preferred in the *voir dire* and in the trial proper. Again, I note that the Trial Judge conducted a comprehensive *voir dire* and I am satisfied that the allegations of a forced confession are without merit.
- (g) **Ground 9** – The Appellant partially withdrew parts (b) and (c) of this ground but still maintained that the trial proper commenced on a Saturday, which it is clear was not the case. There is no merit to this ground.
- (h) **Ground 10** – Again, there was no basis for any allegation of bias by the Trial Judge. Indeed, the trial notes reveal that His Lordship conducted the trial fairly and impeccably.
- (i) **Ground 11** – The Court agrees with the submission by Mr Elliott for the DPP that it was up to the Prosecution to conduct the trial as they saw fit. It was up to the Appellant to conduct his own case.
- (j) **Ground 12** – This was considered as a sentencing ground.
- (k) **Ground 13** – The Court has considered the question of delay and whilst there is some concern, it would appear to have been caused mostly from the conduct of Mr Rawaqa and his co-accused in not attending Court when required and absent for a lengthy period.
- (l) **Ground 14** – Again, there was no basis for any allegation of bias by the Trial Judge.

[61] If, however, it was considered that any of the above grounds involved purely a question of law, the Court is of the view that the grounds are also vexatious or frivolous and thus dismissed pursuant to **Section 35(2) Court of Appeal Act, Cap.12, 1978, as amended by the Court of Appeal (Amendment) Act 1998.**

REFUSAL TO APPEAL ON SENTENCE

[62] **Leave is refused on all Grounds for the following reasons:**

- (a) Mr Rawaqa must be able to demonstrate that on the filing of his notice of appeal that the appeal against sentence is a question of law or otherwise the Court may determine that his appeal is vexatious or frivolous or is bound to

fail because there is no right of appeal, and thus the Court may dismiss the appeal: **Section 35(2) Court of Appeal Act.**

- (b) Mr Rawaqa has failed to provide any clear reasons as to what question of law is to be decided on appeal. Indeed, as Mr Elliott for the DPP submitted, the sentencing judgment is clear.

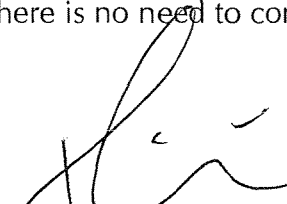
APPLICATION FOR BAIL

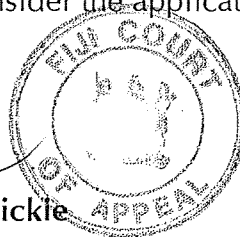
[63] In view of the above decisions rejecting the appeal, it is not appropriate to proceed with an application for bail. The Court has noted, however, Mr Rawaqa's genuine statement as to the need to be with his four children and elderly parents as soon as possible. It is hoped that contact can be maintained during a lengthy term of imprisonment and, with remissions for good behavior, Mr Rawaqa will eventually return to reside with his family and recommence a productive life.

ORDERS

[64] This Court makes the following Orders:

1. Leave to appeal is refused against Conviction on all Grounds.
2. In the alternative, if any Ground against Conviction was considered to involve purely a question of law, the Court is of the view that the grounds are also vexatious or frivolous and thus dismissed.
3. The notice of appeal in relation to sentencing is dismissed as being frivolous.
4. In view of the above, there is no need to consider the application for Bail.


The Hon. Thomas V. Hickie
Judge of Appeal



Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for Respondent