

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

Criminal Appeal No. AAU 0071/08

BETWEEN:

INDAR MALI

Appellant

AND

THE STATE

Respondent

Counsel:

Appellant in person

Ms. A. Driu for the Respondent

Date of Hearing &

Ruling:

1 August 2008.

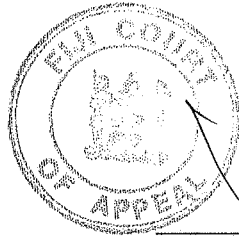
R U L I N G

1. This is an application to appeal against conviction and sentence, out of time.
2. I am hearing this application to determine whether leave to appeal out of time be granted to the appellant, pursuant to section 35(2) of the Court of Appeal Act Cap 13.

3. The appellant was convicted of one count of Murder: contrary to sections 199 and 200 of the Penal Code Cap 17 on 25 May 2002 in the Lautoka High Court. He was sentenced to life imprisonment.
4. This appellant had a right of appeal on a question of law without requirement for leave of the court of Appeal, had he filed his appeal notice within the prescribed period of 30 days: section 21 Court of Appeal Act Cap 13. But he did not file and Notice of Appeal.
5. The leave application is untimely by 6 years 3 months. This length of delay will not be sanctioned, unless the appellant was convicted for an offence which was not known to law at the time of his conviction. The latter is not the case here.
6. It should be said clearly that a delay of that magnitude will simply not be sanctioned by this court. This is so because to allow such an inordinate delay in bringing an appeal against the State would open floodgates of appeal which are similarly late. That precedent would cause chaos in the court administration as regards retrieving records that are already filed away and the prospect of preparing accurate records is severely affected by the delay.
7. The NZ Court of Appeal in **R v Knight [1995] 15 CRNZ 332 at 338** in considering whether leave out of time should be granted or not said:

'.. the strength of the proposed appeal and the practical utility of the remedy sought, the length of the delay and the reasons for the delay, the extent of the impact on others similarly affected and on the administration of justice, that is floodgates consideration, and the absence of prejudice to the Crown.'
8. The above statement of the law has been adopted in Fiji: see **State v Patel [2002] FJCA 13**. I agree with it.
9. Having perused the grounds submitted and lack of adequate reasons provided for the inordinate delay, I find that there is no good cause for granting the application for leave by the applicant.

10. The application is refused.

A large, stylized handwritten signature in black ink, which appears to be "Isikeli Maitoga".

Isikeli Maitoga

JUSTICE OF APPEAL

AT Suva

1 August 2008.