

IN THE COURT OF APPEAL OF FIJI

CRIMINAL APPEAL

AT SUVA

CRIMINAL APPEAL CASE NO: AAU 114 OF 2008

BETWEEN

APAITIA TABUTOCI

AND

THE STATE

Appellant in Person

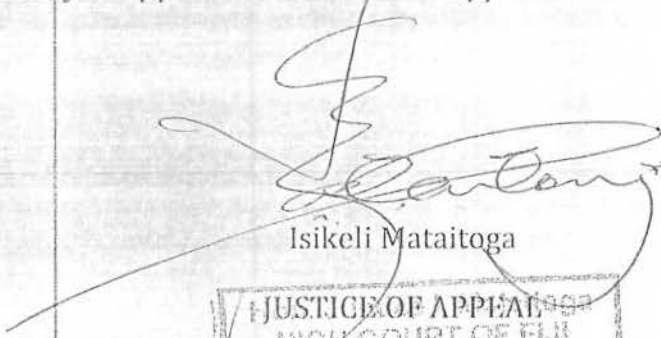
Mr. N. Nand for the State

Date of Hearing: 27 February 2009.

JUDGMENT

1. The applicant was charged with one count of robbery with violence, contrary to section 293(1)(b) of the Penal Code in the Suva Magistrate Court. He pleaded guilty to the charge and after admitting the facts outline in court he was convicted. He was sentenced to 3½ year imprisonment on 21 July 2008.
2. On 6 August 2008, the applicant filed an appeal against sentence in the High Court. This appeal was heard on 9 October 2008 and judgment of the High Court confirming the sentence of the trial magistrate was delivered on 24 October 2008.
3. The applicant is now filed an application for Leave to Appeal against sentence passed against him by the trial Magistrate in this matter. This is a second appeal. Under section 22[1] of the Court of Appeal Cap 12, this Leave application may only be considered if it raises an issue of law.

4. Your application alleges that the sentence passed by the trial magistrate and confirmed on first appeal to the High Court was manifestly harsh and excessive and therefore contrary to law and principle. This ground stated generally, do raise an issue of law, which you have not been able to demonstrate by your submission in this court, to be correct. You stated during the hearing that you consider the sentence harsh and excessive. That may be so, but in law it is not.
5. One of the factors that this court considered when deciding your application whether leave to appeal should be granted or not, is the prospect of success of the issue of law raised on appeal. On the basis of your claim during the hearing, there is no prospect of your appeal against sentence succeeding.
6. Having considered both the trial Magistrate ruling and the High Court judgment on appeal, I am unable to agree with the claim raised by this applicant. Indeed the High Court carefully reviewed several cases in its ruling to demonstrate that the sentence passed by the trial magistrate was neither wrong in principle nor manifestly excessive. During this hearing you have not advanced any argument that show, that the High Court was wrong in that conclusion. I agree with the judgment of the High Court.
7. In conclusion, your application for leave to appeal has no merit and is dismissed


Isikeli Mataitoga



At Suva

27 February 2009.

8.