

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

CRIMINAL APPEAL NO. AAU0063 OF 2007S  
(General Court Martial No. 1 of 2003)

BETWEEN:

1. NEMANI VALENIYASANA
2. LAISIASA DAKAI

*Appellants*

AND:

THE STATE

*Respondent*

Coram:

Byrne, JA  
Powell, JA

Hearing:

Thursday, 26<sup>th</sup> March 2009, Suva

Counsel:

F. Vosarogo for the Appellants  
K. Tuinaosara & J. Faktaufon for the Respondent

Date of Judgment: Wednesday, 1<sup>st</sup> April 2009, Suva

---

JUDGMENT OF THE COURT

---

- [1] On 29 January 2003 Sgt. Laisiasa Dakai & Lt. Nemani Valeniyasana (the appellants) were sentenced by a General Court Martial to 10 years and 12 years imprisonment respectively for the military offence of Mutiny.
- [2] On 22 June 2007 the appellants by letter to the Court of Appeal sought leave to appeal out of time. These letters were followed up by handwritten letters of 13 July

2007 which letters included seven grounds against conviction and five against sentence.

[3] The Appeal Books comprise a record of the whole of the six day hearing before the Military Court in January 2003 (more than 200 pages) and the above letters. The Court has written submissions from the respondent dated 28 February 2009 but nothing from the appellants. The appellants are representing themselves.

[4] The appellants' grounds against conviction are as follows:

**Ground 1** – the guilty pleas were “equivocal” as they believed the court “was properly constituted according to law”

**Ground 2** – the Court was not properly constituted according to law and therefore had no jurisdiction

**Ground 3** – the manner in which the Court was constituted denied the appellants their right to a fair trial as guaranteed under section 28 of the Constitution

**Ground 4** – outside pressure had been brought to bear on members of the Court despite the presence of the civilian judge advocate

**Ground 5** – the judge advocate failed to give the court proper legal advice and guidance as required by law and allowed seriously flawed assumptions of facts to dominate the trial

**Ground 6** – the summary of facts presented at the trial after the plea was taken differed from the agreed facts discussed with counsel before the pre-trial conference

**Ground 7** – in summarising the facts the judge advocate made faulty assertions and assumptions of ideas unrelated to the charges and not stated in the summary of facts or admitted in the caution interviews with police

- [5] In the absence of written submissions it is difficult for the Court to understand the grounds of appeal. The Court has however read the 280 page transcript of the Court Martial.
- [6] The appellants and fifty four others were tried by a Court Martial comprising a President (Colonel Ilaisa Kacisolomone), a Judge Advocate (Hon. Mr Justice Sarvada Nana Sadal), six military members and two military members in waiting.
- [7] The appellants and their co-accused were represented by three defence counsel.
- [8] Objection was taken to two of the officers constituting the Court and they were replaced by the two waiting members.
- [9] The appellants and their co-accused were charged with Mutiny contrary to the provisions of the Army Act 1955 in that between 2 July and 3 August 2000 at Labasa they took part in a mutiny to resist the lawful authority of their commanding officer. Lt Valeniyasan and another were charged with incitement to mutiny and all 56 accused, including Sgt Dakai, were charged mutiny.
- [10] On the first day of the hearing the appellants and their 52 co-accused all pleaded guilty to the charge. Each made an individual plea of guilty.
- [11] Before accepting their pleas the President explained the nature of the offence and the consequences of their pleas. He said *"If your plea of guilty is accepted, no witness will be called. The Prosecution will be asked to outline the facts of the*

*case to the Court. You, the Defence, may call witnesses to testify to the character of the accused and may make any statement in mitigation of punishment”.*

- [12] The Judge Advocate then explained that upon conviction the maximum sentence was life imprisonment.
- [13] The pleas of guilty were then confirmed, individually, by each accused, and accepted by the Court. The Prosecutor then presented a written text of a Summary of Facts. In short in the period following the May 2000 coups the appellants broke into an Armoury, proceeded to load weapons into a vehicle, were challenged by a Commanding Officer and told to return the weapons. The appellants declined to obey this direction and declared that they were taking command of barracks in support of George Speight and his group. On the first day about twenty soldiers joined the mutiny, and after that it grew steadily until it reached the 54 on trial. It was brought to an end following negotiation on or around 3 August 2000.
- [14] The Summary of Facts said that Lt Valeniysana was one of the mutiny leaders. He was involved in breaking into the armoury and acted as second in command to a Lt Vosayaco and was an instrumental player throughout the mutiny period. Sgt Dakai joined the mutineers during the initial takeover and was involved with a shootout with loyal soldiers on 12 July 2000. On 26 July 2000 he verbally abused and assaulted loyal soldiers.
- [15] The Defence counsel admitted the facts and all 56 accused then individually said that they admitted them. The Judge Advocate then convicted them
- [16] The Summary of Facts was tendered without objection but Defence counsel did object to the Police Statements being tendered.

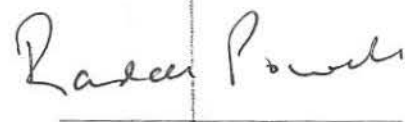
- [17] On the second day the Prosecution gave evidence as to the military records (including medals and disciplinary breaches) and personal circumstances (age, marital status, income) of each of the accused. On the third day the appellants and the other accused individually apologised for their actions and begged forgiveness. On the fourth day the Defence called witnesses in mitigation, including spouses of some of the accused, and on the fifth day the Defence concluded its submissions. On the final day the President read out the Summary of Facts and referred to the evidence in mitigation and sentenced Lt Valeniyasana and his co-conspirator to life (charge 1. On charge 2 Lt Valeniysana was sentenced to 12 years (his co-conspirator was sentenced to 13 years). Sgt Dakai was sentenced to 10 years. The other sentences ranged from 10 years to 3 years. All sentences were to be served concurrently.
- [18] There is nothing from the record of the Court Martial that gives any support to the 7 grounds of appeal on liability. The appellants were represented by counsel and were given every opportunity to defend themselves or consider their positions throughout the trial. They pleaded guilty, made no objection to the Summary of Facts, and Lt Valeniyasana told the Court that *"I wish to make special mention of our acknowledgement for your continued assistance in the intricate matters of law."*
- [19] In Court counsel for the appellants sought an adjournment of the appeal and, when an adjournment was refused, withdrew the appeals against conviction.
- [20] In relation to the appeal against sentence, counsel for the appellants noted that the Court of Appeal in *Qicatabua & Ors v RFMF* ABU 0038/07 held that there is no right of appeal against sentence.

[21] This court is therefore bound to dismiss the appeal against sentence. There are however proceedings in the Supreme Court seeking to overturn Qicatabua and if the Supreme Court does so then the appellants in these proceedings are likely to seek leave to appeal this decision on sentencing to the Supreme Court. Although it would be a matter for the particular court hearing the application, this court expresses the view that the appellants be excused for any lateness in making such a leave application, at least until the decision in Qicatabua is handed down.

[22.] The appeal is dismissed.



  
Byrne, JA

  
Powell, JA

Solicitors:

Office of the Director of Legal Aid Commission, Suva for the Appellants  
Office of the Army Legal Services, Suva for the Respondent