

IN THE COURT OF APPEAL, FIJI ISLANDS  
APPELLATE JURISDICTION

Criminal Appeal No: AAU0054 of 2008  
[HAA044/05L]

BETWEEN:

WAISALE WAQANIVALU

Appellant

AND:

THE STATE

Respondent

Coram: Hon. Justice Byrne AP  
Hon. Justice Goundar JA

Hearing & Judgment: 29<sup>th</sup> March 2010

Counsel: Appellant in person  
Mr. M. Korovou for State

Date of Reasons: 8<sup>th</sup> April 2010

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## JUDGMENT OF THE COURT

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[1] On 29<sup>th</sup> March 2010, we struck out this appeal on the ground of abuse of process.  
We now give reasons for our decision.

- [2] The appellant was convicted in the High Court for multiple murders. He was sentenced to life imprisonment with a recommendation that he served 19 years before eligible for parole. When this sentence was imposed, the appellant was serving a sentence for robbery with violence which was imposed in the Magistrates' Court. The learned Judge made the sentence of life imprisonment consecutive to the appellant's pre-existing sentence.
- [3] The appellant appealed his sentence to this Court. On 24 November 2006, the appellant's sentence was confirmed and his appeal was dismissed (see, *Waisale Waqanivalu v. The State Criminal Appeal No. AAU79/05*).
- [4] The appellant then filed a petition seeking special leave from the Supreme Court to appeal his sentence. On 27 February 2008, the Supreme Court refused his petition.
- [5] After his petition was rejected by the Supreme Court, the appellant filed a fresh appeal against sentence to this Court, seeking to re-litigate the issue already considered in the earlier judgment of this Court and confirmed by the Supreme Court.
- [6] On 26 August 2008, Pathik JA sitting as a single judge, dismissed the appeal because it was bound to fail. The appellant then filed an application for the Full Court to consider his appeal.
- [7] During the hearing we invited the appellant to offer reasons why his appeal should not be struck out for abuse of process. He was unable to offer any reason. The State concedes that the appellant was seeking to re-litigate an appeal that was dismissed by the Supreme Court.

[8] The doctrine of abuse of process applies to both civil and criminal proceedings. In *Mozley and Whitekeys Law Dictionary (11<sup>th</sup> Edition)* the phrase abuse of process is defined as:

“The malicious and improper use of some regular proceeding to obtain some advantage over an opponent.”

[9] In this case, the actions of the appellant clearly constitute an abuse of process. This appeal is a misuse of the appeal procedure. We cannot allow litigants to use the appeal proceedings to obtain an advantage after an appeal had been dismissed by the highest court. That is the situation in this case.

[10] For these reasons, we struck out the appeal as an abuse of process.



A handwritten signature in black ink, appearing to read "John J. Byrne", written over a dotted line.

Hon. Justice J. Byrne  
Acting President

A handwritten signature in black ink, appearing to read "D. Goundar", written over a dotted line.

Hon. Justice D. Goundar  
Judge of Appeal

At Suva  
8<sup>th</sup> April 2010

Solicitors:

Appellant in person  
Office of the Director of Public Prosecutions for State