

113

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

1. MISCELLANEOUS ACTION NO. 08/10
[HAM 10/10L]

BETWEEN: SITIVENI ULUINACUVU

APPELLANT

AND: THE STATE

RESPONDENT

Coram : I. Khan, JA
K. Chitrasiri, JA
S. Temo, JA

Counsels : Appellant in Person
Mr. L. Sovau for the State

Date of Hearing : 17th November 2010

Date of Ruling : 22nd November 2010

2. MISCELLANEOUS ACTION NO. 12/10
[HAC 35/10S AND HAM 38/10S]

BETWEEN: 1. TANIELA MASIREWA
2. SAMUELA MACEDRU

APPELLANTS

AND: THE STATE

RESPONDENT

Coram : I. Khan, JA
K. Chitrasiri, JA
S. Temo, JA

Counsels : Appellant No. 1 in Person
Appellant No. 2 in Person
Ms. R. Drau for the State

Date of Hearing : 17th November 2010

Date of Ruling : 22nd November 2010

3. MISCELLANEOUS ACTION NO. 16/10
[HAM 142/10S]

BETWEEN: LEONE LAUTABUI

APPELLANT

AND: THE STATE

RESPONDENT

Coram : I. Khan, JA
K. Chitrasiri, JA
S. Temo, JA

Counsel : Appellant in Person
Ms. N. Wickramasekera for the State

Date of Hearing : 17th November 2010

Date of Ruling : 22nd November 2010

4. MISCELLANEOUS ACTION NO. 19/10
[HAM 159/10S]

BETWEEN: TEVITA SUGU

APPELLANT

AND: THE STATE

RESPONDENT

Coram : I. Khan, JA
K. Chitrasiri, JA
S. Temo, JA

Counsel : Appellant in Person
Ms. M. Tikoisuva for the State

Date of Hearing : 17th November 2010

Date of Ruling : 22nd November 2010

RULING ON REFUSAL OF BAIL PENDING TRIAL IN THE HIGH COURT

[1] The above four cases were considered together because they involved one significant procedural issue, that is, the right of the appellants to come to the full Court of Appeal, when their bail pending trial applications were denied in the High Court. State Counsels made a preliminary objection to the hearing of their applications in this court, on the ground that all appellants did not follow the proper procedure. All the appellants were unrepresented in this court.

[2] According to the State, the proper procedure for the appellants to follow was and is well set out in the Court of Appeal Act, Chapter 12. They quoted section 21(3) of the Court of Appeal Act, which reads as follows:

"...The Court of Appeal may, if it gives leave, entertain an appeal from the High Court against the grant or refusal of bail, including any conditions or limitations attached to a grant of bail, upon the application either of the person granted or refused bail or of the Director of Public Prosecutions".

[3] The State also referred the court to section 35(1) and (3) of the Court of Appeal Act, which reads as follows:

"...35. (1) A judge of the Court may exercise the following powers of the Court:-

- (a) to give leave to appeal to the Court;*
- (b) to extend the time within which notice of appeal or of an application for leave to appeal may be given;*
- (c) to allow the appellant to be present at any proceedings in cases where he or she is not entitled to be present without leave;*
- (d) to admit an appellant to bail;*
- (e) to cancel an appellant's bail on good cause being shown;*

(f) *to recommend that legal aid be granted to an appellant.*

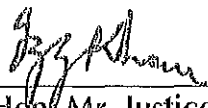
(3) *If the judge refuses an application on the part of the appellant to exercise a power under subsection (1) in the appellant's favour, the appellant may have the application determined by the Court as duly constituted for the hearing and determining of appeals under this Act.*

[4] According to the State, each of the appellants should have sought leave from the Court of Appeal, if they wanted to appeal a High Court decision refusing bail. They said, this is required by section 21(3) of the Court of Appeal Act. The State further contended that, when such leave application is made to the Court of Appeal, a single Judge of the Court of Appeal may decide on the same, and if leave is granted, decide the merits of the application. If the single Judge of the Court of Appeal decided against the appellant, then and only then can the appellant approach the full Court of Appeal. The State said, section 35(1) and (3) of the Court of Appeal Act mandated the above approach, and the observation of the Court of Appeal in *Abhay Kumar Singh v The State*, Miscellaneous Application 1/2004 favoured the above view.

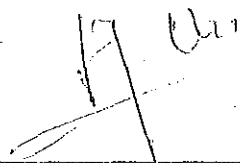
[5] The State said, the Bail Act 2002 is silent on appeals to the Court of Appeal from a bail refusal by the High Court. The only avenue to the Court of Appeal from a High Court decision on bail is the power of the Court of Appeal to review a High Court decision on bail, as stipulated in section 30(4) of the Bail Act 2002. However, in *Abhay Kumar Singh v The State* (Supra), His Lordship Justice M. D. Scott said, "...I have come to the conclusion that review is only available where, for one reason or another, the appeal procedure cannot be restored to ... This conclusion is also consistent with the need for special facts or circumstances that justify a review... the fact that it seems that only the full Court has jurisdiction to hear application for a review suggest that it is a procedure which can be resorted to only where an appeal is, for one reason or another, not possible..."(page 3).

6. The State therefore asked that, all the appellants' application to this Court be dismissed, simply because they have not followed the proper procedure mentioned in paragraphs 2, 3, 4 and 5 hereof. As it stands, as a matter of law, the State's request ought to be upheld and all the appellants' application in this Court be dismissed. However, in the interest of justice, we are adjourning these cases to the next call over for a new hearing date to be set, and strongly recommend to the Director of Legal Aid Commission for a lawyer to be assigned to assist them. We order so accordingly.
7. Before we leave this matter, in Miscellaneous Action No. 12/10, both appellants have verbally sought leave to withdraw their application, on the ground they will be tried in December 2010. We grant them leave to withdraw their application, and we order so accordingly.






Hon. Mr. Justice Izaz Khan
Judge of Appeal



Hon. Mr. Justice Kankani Chitrasiri
Judge of Appeal



Hon. Mr. Justice Salesi Temo
Judge of Appeal

Solicitors:
Appellants in Person
Office of the Director of Public Prosecutions for State