

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL: AAU 20 OF 2008
(High Court HAC 115 of 2006L)

BETWEEN : **NILESH GOUNDAR AND**
UMESH CHAND

Appellants

AND : **THE STATE**

Respondent

Coram : **Calanchini P**

Counsel : **Ms N Nawasaitoga for the Appellants**
Ms P Madanavosa for the Respondent

Date of Hearing : **9 October 2013**

Date of Ruling : **20 December 2013**

RULING

[1] The Appellants, together with a third person, were charged with three counts of robbery with violence arising from the same transaction but involving three different complainants. The Appellants pleaded not guilty and were convicted following a trial in the High Court before a Judge sitting with three assessors. The third accused was convicted on pleas of guilty.

- [2] The Appellants were sentenced to a term of 5½ years imprisonment on each count to be served concurrently. The Second Appellant, Umesh Chand, was ordered to serve his 5½ years imprisonment sentence consecutively to an existing sentence of imprisonment for an unrelated offence.
- [3] The Appellants filed timely appeals against both conviction and sentence pursuant to section 21 of the Court of Appeal Act Cap 12. Under section 21(1) (b) and (c) the Appellants needed the leave of the Court to appeal against conviction and sentence. The applications for leave came before a single judge of the Court pursuant to section 35(1) of the Act. On 30 June 2008 the Judge dismissed the Appellants' applications for leave to appeal against conviction and sentence. At paragraph 14 the Judge said:
- “I have carefully considered the individual grounds of appeal advanced by the appellants, the summing up of the trial judge and the reasons given by the trial judge for the respective sentence of the appellants. I am satisfied none of the grounds have any substance. Their appeal is bound to fail.”*
- [4] It would appear that the Appellants then made it known that they intended to renew their applications for leave to appeal against conviction and sentence to the Court of Appeal pursuant to section 35(3) of the Act. Further and amended grounds of appeal were filed from time to time.
- [5] By letter dated 20 July 2010 the Appellant Goundar wrote to the Chief Registrar to apply to withdraw his appeal. The letter was received by the Registry on 30 July 2010. It would appear however that Mr Goundar was permitted to withdraw the application before any order had been made by the Court under Rule 39 of the Court of Appeal Rules.
- [6] The Appellants' appeals came on for hearing before the Court of Appeal on 17 May 2011. The renewed applications for leave to appeal against conviction and sentence and the appeals were heard at the same time. Each Appellant was represented by different Counsel. Unfortunately before the judgment could be delivered, two of the

three Justices of Appeal who constituted the Bench for the hearing had left the Court. As a result it was necessary for the applications and the appeals to be re-heard.

[7] When the proceedings were subsequently listed for call-over to fix a date for the re-hearing, the Court was informed that both Appellants had been released and could not be located.

[8] Having carefully read the amended and further grounds of appeal and taking into account the opinion expressed by the learned Judge who refused leave to appeal, I have concluded that the appeals against conviction and sentence by both Appellants are frivolous and vexatious and should be dismissed under section 35(2) of the Act.

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HON. MR JUSTICE W.D. CALANCHINI
PRESIDENT