

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT**

**CRIMINAL APPEAL AAU 93 of 2010**  
**(High Court HAC 17 of 2009)**

**BETWEEN** : **ISOA SAQANIVALU** *Appellant*

**AND** : **THE STATE** *Respondent*

**Coram** : **Chandra RJA**

**Counsel** : **Mr J. Savou for the Appellant**  
**Mr M. Korovou for the Respondent**

**Date of Hearing** : **24 July 2013**

**Date of Ruling** : **9 August 2013**

**RULING**

1. The Appellant was charged with the offence of Manslaughter contrary to section 198 of the Penal Code, Cap.17.
2. The Appellant had pleaded guilty when he was unrepresented and had agreed to the facts put to him and consequently was convicted and sentenced on 13<sup>th</sup> October 2010 to 7 years imprisonment with a minimum term of 5 years and 6 months.
3. The Appellant filed a petition himself dated 13<sup>th</sup> November 2010 but filed in the Court of Appeal Registry on 16<sup>th</sup> November 2010 seeking leave to appeal against sentence and filed an amended petition on 19<sup>th</sup> July 2013 to appeal against conviction and sentence.

4. The grounds of appeal relied on by the Appellant are:
  - a. The learned Judge erred in law when he failed to properly direct the Appellant who was unrepresented on his plea of guilty.
  - b. The learned Judge erred in law when he sentenced the Appellant to a term of imprisonment which is harsh and excessive considering the facts of the offending.
  - c. The learned Judge erred in law when he commenced his sentencing starting point with 10 years which was too high considering the facts of the offending.
  - d. The learned Judge erred in law when he did not take the early guilty plea as a separate mitigating factor and accordingly allow an appropriate discount.
  
5. The Appellant while at home with his wife, the deceased, had seen their 10 month old baby fall whilst playing and the Appellant on becoming angry at this incident had kicked his wife on the left side of her head. When the wife lay unconscious as a result she had been taken to hospital and treated. She had died after about five weeks having undergone surgery and the cause of death had been subdural haemorrhage of the brain.
  
6. At the trial the Appellant's attempts at securing legal representation had failed and he had been unrepresented. At the pre-trial conference the Appellant had stated that he wanted to plead guilty and on being asked by the learned Judge whether there was any pressure he had replied in the negative and stated that he committed the offence. Thereupon on being asked whether he understood the effect of pleading guilty, he had answered in the affirmative and the case was fixed for plea and sentence.
  
7. On the subsequent date the Court had informed the Appellant that he had pleaded guilty and that he will hear the facts and wanted to know whether he agreed or disagreed. The

facts had been read out and the Appellant had admitted the facts and the following day he was sentenced.

8. The Appellant's Counsel submitted that the Appellant being unrepresented had not been directed properly by the learned trial Judge on his plea of guilty, that it amounts to a question of law and therefore no leave was required in terms of section 21(1)(a) of the Court of Appeal Act. The Respondent's Counsel too conceded that position and it is seen that the offence and the effect of his plea had not been explained to the Appellant. Therefore leave is not required on this ground of appeal.
9. As regards the grounds of appeal regarding sentence, they are on the basis that the sentence is harsh and excessive and that the learned trial Judge commenced the sentencing on a higher scale considering the facts of the case.
10. The learned trial Judge had cited the decision in **Bae v State** [1999] FJCA 21; AAU015u.98s (26 February 1999) where the Court of Appeal had stated that the sentences for manslaughter should range from a suspended sentence where there may have been grave provocation to 12 years imprisonment where the degree of violence is high and provocation is minimal. The sentence in Bae's case was 7 years and 4 months imprisonment.
11. In the present case the degree of violence was not as in Bae's case and the Appellant's act was that of giving a kick on the head of the deceased and therefore the question of the term of the sentence is arguable in the circumstances of this case.
12. In those circumstances leave to appeal against sentence being arguable leave is granted.

## **Orders of Court**

Leave to appeal against conviction and sentence is granted.

Suresh Chandra  
**Resident Justice of Appeal**