

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 54 OF 2011
(High Court HAA 18 of 2010)
(Magistrates Court Criminal 15/2009)

BETWEEN : SAMISONI TUINUKUNUKU

Appellant

AND : THE STATE

Respondent

Counsel : No appearance for the Appellant
Mr M Korovou for the Respondent

Date of Hearing : 29 September 2014

Date of Ruling : 12 December 2014

RULING

[1] The Appellant has filed a notice of appeal against the decision of the High Court, exercising its appellate jurisdiction, to dismiss his appeal against sentence. It is an appeal under section 22 of the Court of Appeal Act Cap 12.

- [2] The Appellant had pleaded guilty in the Magistrates Court to 34 counts of fraud related charges. On 9 February 2010 he was sentenced to a total term of imprisonment of 5½ years.
- [3] The fraud offences had been committed between 4 and 24 December 2008. Before being sentenced on 9 February 2010 he was given a suspended sentence on 26 October 2009 for an unrelated matter. However when the sentence was imposed in the Magistrates Court on 9 February 2010 the learned Magistrate increased the sentence by three years for the aggravating factor that the Appellant had re-offended while serving a suspended sentence.
- [4] It is apparent and has been conceded by the State that the Appellant had not committed the fraud offences whilst serving a suspended sentence. The learned Justice of Appeal before whom this matter was listed for mention on 27 June 2013 concluded that the issue was whether a sentence can be enhanced on a mistaken fact and was a question of law alone.
- [5] When the appeal was last listed for mention on 29 September 2014, there was no appearance by or on behalf of the Appellant. It would appear that he had been released from prison having served his sentence following partial remission. It would also appear that service of a notice at the last known address was unsuccessful. There is an obligation imposed on an appellant to provide to the authorities (i.e. the Court of Appeal registry and/or the Office of the DPP) an address for service or a contact telephone number once released from prison. Failure to do so will be presumed to be an indication that the Appellant was not serious about prosecuting the appeal. Even in the case of a criminal appeal it is the Appellant who has responsibility for the timely compliance with the Court of Appeal Act and Rules with the assistance of the Registry in the case of an unrepresented appellant. However, in a case such as the present where the Appellant has shown no interest in the proceedings following his release from prison, the appeal should be regarded as vexatious and dismissed under section 35(2) of the Act.

Order :

(1) *Appeal dismissed.*



W. Calanchini

Hon. Mr Justice Calanchini
PRESIDENT, COURT OF APPEAL