

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 64 OF 2012
(High Court HAA 1 of 2012)

BETWEEN : **URAIA TARAI**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini AP**

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

Date of Hearing : **11 April 2014**

Date of Ruling : **9 May 2014**

RULING

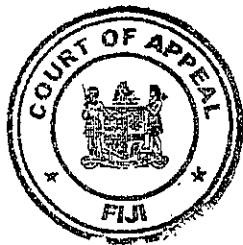
[1] The Appellant was charged on one count of possession of an illicit drug contrary to section 5(a) of the Illicit Drugs Control Act 2004 and one count of resisting arrest contrary to section 247 (b) of the Penal Code Cap 17. He was convicted on both counts in the Magistrates Court at Sigatoka on 15 September 2011 and subsequently

sentenced to 3 years imprisonment on the first count and 9 months imprisonment on the second count to be served concurrently with a non-parole term of 2 years.

- [2] The Appellant filed an appeal against conviction and sentence in the High Court. The appeal proceeded before the High Court on conviction only as the Appellant had earlier withdrawn his appeal against sentence. In a judgment delivered on 10 August 2012 the learned High Court Judge allowed the Appellant's appeal against conviction on the first count and dismissed the appeal against conviction on the second count. Since the Appellant had served his sentence of 9 months in relation to the second count, the learned Judge ordered the immediate release of the Appellant.
- [3] By letter filed on 22 August 2012 the Appellant lodged an appeal against the decision of the High Court affirming his conviction on the second count being that of resisting arrest. The grounds were stated as being that the arrest was unlawful and without jurisdiction. The Appellant also relied on what he termed as "*the one transaction rule*." He claimed that the conviction was, as a result, unsafe and unsatisfactory.
- [4] The appeal lodged by the Appellant falls to be considered as an appeal under section 22 of the Court of Appeal Act Cap 12 as an appeal from the High Court exercising its appellate jurisdiction. As a result the Appellant's right to appeal to this Court is restricted to a ground or grounds of appeal involving a question or questions of law only. However under section 22 of the Act, leave is not required. The right to appeal against conviction is restricted to a ground involving a question of law only.
- [5] When the appeal was listed for mention on 4 April and again on 11 April 2014, there was no appearance by or on behalf of the Appellant. Notices had been sent to his last known postal address and attempts to contact him on his last known telephone number were unsuccessful. The Court was informed that the Appellant could not be located.
- [6] In my judgment the appeal can appropriately be dealt with under section 35(2) of the Court of Appeal Act.
- [7] Having carefully considered the judgment of the Magistrates Court, with which the learned High Court Judge agreed, on count 2, I am satisfied that the grounds raised by

the Appellant do not involve a question of law only. The analysis of the elements of the offence of resisting arrest by the Magistrates Court was without error and the decision to convict was based on the Magistrate accepting the evidence of the prosecution witnesses.

[8] As a result I have concluded that there is no right of appeal under section 22 of the Act and the appeal is dismissed under section 35(2) of the Act.



W. Calanchini

HON. MR JUSTICE W. D. CALANCHINI
PRESIDENT – COURT OF APPEAL