

IN THE COURT OF APPEAL
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 0074 & 84 OF 2014
[High Court Case No. HAC 284 of 2012]

BETWEEN : **ISIKELI NAKATO & ANTONIO MATAIRATU**
Appellants

AND : **THE STATE**
Respondent

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Mr. N. Sharma for the Appellants
Mr. L. J. Burney for the Respondent

Date of Hearing : 28 September 2015

Date of Ruling : 30 September 2015

RULING

- [1] The appellants were charged with one count of arson contrary to section 362(a) of the Crimes Decree 2009. Following a trial in the High Court at Suva, both were convicted and sentenced to 8 years' imprisonment with a non-parole period of 7 years.
- [2] The only incriminating evidence against the appellants was their confession made under caution which was ruled admissible after a voir dire. The appellants relied on alibi as their defence.
- [3] The appellants seek leave to appeal against conviction and sentence. The test for leave is whether any of the grounds is arguable.
- [4] Counsel for the State makes the following written concessions:

Grounds of Appeal Against Conviction

- 3.1 *Ground 1 relates to the directions given in relation to the confession. The respondent concedes that it is at least arguable that the Learned Trial Judge fell into error in failing to direct the assessors and himself to consider the truth of the confession.*
- 3.2 *Ground 2 relates to the failure of the Learned Trial Judge to properly direct the assessors in relation to the alibi defence. The Respondent accepts that the Learned Trial Judge arguably fell into error in failing to give legal directions on how the assessors were to assess the alibi evidence and the implications of rejecting that evidence.*
- 3.3 *In light of the Respondent's position in relation to the above 2 grounds and the consequent likelihood that the appeal will be heard by the Full Court, in order to minimise potentially nugatory work the Respondent will reserve further submissions until after the Appellant decides which grounds he will pursue before the Full Court.*

Appeal Against Sentence


- 4.1 *Notwithstanding that the arson tariff of 2-4 years cannot be regarded as a strait jacket, the Respondent accepts that it is at least arguable that the Learned Trial Judge fell into error in taking a starting point of 6 years in arriving at a sentence of 8 years' imprisonment.*

[5] In my judgment, the State's concessions are fair. The appeal against conviction and sentence is arguable.

Result

[6] Leave granted.





 Hon. Mr. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Nilesh Sharma Lawyers for the Appellants

Office of the Director of Public Prosecutions for the Respondent