

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 100 OF 2011
(High Court HAC 28 of 2008(L))

BETWEEN : TEVITA VATUKARASA
Appellant

AND : THE STATE
Respondent

Coram : Calanchini P

Counsel : No appearance for the Appellant
Mr L Fotofili for the Respondent

Date of Hearing : 20 March 2015

Date of Ruling : 14 May 2015

RULING

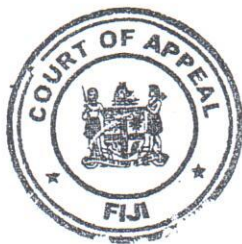
[1] The Appellant was charged with one other for the offence of robbery with violence contrary to section 293(1) (b) of the Penal Code Cap 17 and for the offence of larceny contrary to section 259 and 262 of the Code. The co-accused pleaded not guilty to both charges and was subsequently acquitted following a trial in the High Court. The Appellant pleaded not guilty to the robbery with violence charge and was also acquitted following the same trial in the High Court. The Appellant had pleaded guilty to the larceny charge on 7 April 2010 and was sentenced on 14 April 2010 to a

term of imprisonment of 2 years and 3 months of which 12 months was to be served concurrently with an existing sentence then being served and the remaining 1 year and 3 months to be served consecutively.

- [2] It was against that sentence that the Appellant filed on 5 September 2011 an application for leave to appeal. Due to an oversight on the part of the Registry, the file was not brought to the attention of the Court until January 2015. When the application was called for mention on 20 March 2015, there was no appearance by or on behalf of the Appellant. The material in the file indicates that the Appellant was released in 2013 and there is no residential address on record.
- [3] The initial problem for the appellant is that his appeal is out of time. His handwritten application for leave to appeal is dated 19 August 2011. The application was dated about 15 months out of time since under section 26 of the Court of Appeal Act Cap 12 the application for leave should have been filed no later than 14 May 2010. There is no explanation in the Appellant's letter for the delay.
- [4] As the Appellant has not provided to either the Registry or the Respondent an address for service the Court is left with no choice but to regard the appeal as vexatious. As a result the appeal is dismissed under section 35(2) of the Court of Appeal Act.

Orders:

Appeal dismissed.



W. Calanchini

Hon. Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL