

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL MISC. 6 OF 2013
(High Court HAC 323 of 2012)

BETWEEN : ASERI VAKALOLOMA *Appellant*

AND : THE STATE *Respondent*

Coram : Calanchini P

Counsel : No appearance for the Appellant
Mr V Perera for the Respondent

Date of Hearing : 28 November 2014

Date of Ruling : 14 May 2015

RULING

[1] The Appellant appeared as Counsel for Phanat Laojindamanee in the High Court. Laojindamanee and three other accused were tried and convicted on various offences relating to human trafficking in HAC 323 of 2012.

- [2] During the course of the proceedings in the High Court the Appellant was ordered on 7 December 2012 to pay costs of \$200.00 within 7 days on account of his late attendance at court.
- [3] By notice of motion filed on 28 March 2013 the Appellant applied for an enlargement of time to appeal the costs order. The application was supported by an affidavit sworn on 28 March 2013 by Elena Rabukalou. The Respondent did not file an answering affidavit. Both parties had filed written submissions prior to the mention date on 28 November 2014. When the matter was called for mention on that date there was no appearance by or on behalf of the Appellant. The Court indicated that the application would be considered on the written submissions.
- [4] Before considering the enlargement of time application, there is the more immediate question of jurisdiction which ought to be determined as a preliminary issue. Does the Court of Appeal have jurisdiction to hear the motion. If the answer to that question is “yes” then a second issue arises as to whether the motion may be heard by a justice of appeal. On the other hand, if the answer is “no” then that is necessarily the end of the matter. To determine the issue of jurisdiction it is first of all necessary to determine whether the order made by the High Court was final or interlocutory.
- [5] Whether an order or judgment is final or interlocutory is an issue which more often arises in the context of civil appeals. So far as civil appeals are concerned the issue has been settled since this Court’s decision in **Goundar -v- Ministry of Health** (unreported ABU 75 of 2006; 9 July 2008). In **Balaggan -v- The State** (Misc. No. 11 of 2012; 25 May 2012) the position so far as criminal appeals are concerned was explained at page 8 of the unreported decision:

“Where criminal proceedings are commenced in the High Court exercising its original jurisdiction and the matter proceeds to trial and the judge proceeds to pronounce judgment then that judgment is a final judgment. Every other order made or judgment given by the judge on the hearing of any application should be considered interlocutory.”

- [6] In my judgment there is no doubt that the costs order made against the Appellant by the learned Judge was (1) made in a criminal proceeding and (2) was interlocutory in nature. The question that remains to be determined is whether the Court of Appeal has jurisdiction to determine an appeal against an interlocutory order made during the course of criminal proceedings in the High Court?
- [7] That issue was also considered in the Balaggan decision (supra) and for the reasons stated in that decision I remain of the view that the Court of Appeal has no jurisdiction to hear an appeal from an interlocutory order or ruling by the High Court made or delivered in the course of a criminal trial. There is no basis for suggesting that section 99 of the Constitution when read with sections 3 and 21 of the Court of Appeal Act Cap 12 gives to the Court of Appeal jurisdiction to hear and determine an interlocutory criminal appeal.
- [8] Consequently, since the appeal is bound to fail due to lack of jurisdiction, the application for an enlargement of time is refused and the appeal is dismissed pursuant to section 35(2) of the Court of Appeal Act.

Orders:

- (1) *Application for extension of time is refused.*
- (2) *Appeal is dismissed due to lack of jurisdiction pursuant to section 35(2) of the Court of Appeal Act.*



W. Calanchini

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