

IN THE COURT OF APPEAL, FIJI
[On appeal from the High Court of Fiji]

CRIMINAL APPEAL NO: AAU0051 OF 2012
(High Court Case No. HAC 007 of 2012)

BETWEEN : **ORISI SERUITANOA**
Appellant

AND : **THE STATE**
Respondent

Coram : **Goundar JA**

Counsel : **Mr. A. Vakaloloma for the Appellant**
Mr. S. Vodokisolomone for the Respondent

Date of Hearing : **18 March 2016**

Date of Ruling : **24 March 2016**

R U L I N G

- [1] This is an appeal against a judgment of the High Court in its appellate jurisdiction.
- [2] The appellant was charged with two traffic offences. It was alleged that the appellant drove a motor vehicle carelessly and with access alcohol in his blood. Following a trial in the Magistrates' Court at Savusavu, he was convicted, fined, disqualified from driving and handed a suspended sentence.
- [3] The appellant appealed against both conviction and sentence to the High Court.
- [4] On 31 May 2012, the High Court dismissed the appeal.

[5] The learned High Court Judge succinctly summarised the facts in paragraphs 5 – 6 of his judgment:

“[5]. The appellant was at the time of the offence the Principal Education Officer for Cakaudrove responsible for all 77 schools in the Province. A meeting of teachers on the 11th June 2010 had ended with a grog session for a couple of hours. The appellant says that he then took a group of teachers to the Tavern in Savusavu, bought them a round of drinks and then went home where he had two glasses of wine. Prosecution witnesses attest to him being at the tavern ‘coming in and out’ all evening. At 1.00 am the noise of a traffic incident alerted a Police Officer who came to the scene. He found the accused in the driving seat of a Government vehicle having reversed that vehicle over the edge of a sea wall, immobilising the vehicle. Whether he was surrounded by teachers carrying beer bottles or not is in dispute. The police officer being of the opinion that the appellant, in control of the vehicle, was drunk seized the keys of the vehicle and arrested the appellant. He had him sent to the Savusavu Police Station for testing to determine his level of intoxication. He was tested and found to have a concentration of 121 milligrams of alcohol in 100 millilitres of his blood in excess of the prescribed limit of 80 milligrams.

[6]. The accused further attests that he had returned to the Tavern at 1.00am in response to a telephone call for help from one of the teachers who were ill and needed medical attention.”

[6] The learned judge’s findings on the conviction appeal are in paragraphs 11 – 12 of the judgment:

“[11] The learned Magistrate in a very careful and analytical judgment dealt with all the evidence both for the Prosecution and Defence and came to the conclusion that he believed the Policemen but did not believe the defence witnesses. This is a legitimate factual finding that an appellate court would be reluctant to interfere with; the Magistrate hearing the evidence viva voce and being in the best position to decide whether the truth lies. As counsel for the appellant well knows, cases are not decided on the number of witnesses for each side; they are decided on strength of the evidence and the Magistrate, quite properly in this Court’s view, found that the prosecution evidence was unassailable.

[12] *The appeal against conviction has no merit; it is frivolous and is dismissed.*"

[7] On the appeal against sentence the learned judge concluded in paragraph 16:

"The sentences passed by the Magistrate were well within his authority, well considered and not wrong in law. This Court can see no reason to interfere with them. If anything they would err on the lenient side given the circumstances of the offending. The appeal against sentence is also meritless and frivolous and is dismissed."

[8] On 2 July 2012, the appellant filed his Notice of Appeal against the High Court's judgment.

[9] On 23 October 2013, the appellant filed the following amended grounds of appeal:

1. *That the learned trial judge failed to properly direct himself to the charges and evidence adduced in the Magistrate Court in regards to charges of Driving Motor Vehicle whilst there was present in the blood a concentration of Alcohol in excess of the prescribed limit and Careless Driving although no evidence of blood test adduced in court that resulted in the conviction to be unsafe and unsatisfactory; and*
2. *That the learned trial judge failed to properly direct himself according to law when evidence adduced in court only prove that the Appellant was not driving at the instant of his arrest and someone else was on the wheel while others were pushing the vehicle in the effort to try and start the vehicle which is inconsistent with the charge of careless driving that result in the conviction to be unsafe and unsatisfactory; and*
3. *That the learned trial judge failed to properly direct himself on the absence of scientific and forensic evidence that blood test was conducted to prove that there was in excess of alcohol present in the blood of the Appellant at the instant of the arrest and that such non direction placed the Appellant to disadvantage and that the decision of the trial judge in High Court to uphold the decision of the Magistrate Court is therefore unsafe and wrong; and*
4. *That the learned judge placed undue emphasis and weight in the failure of the Appellant's Legal counsels to provide written submission in time as required on behalf of the Appellant, causing disadvantage to the Appellant where*

the judge failed to draw any evidential reference of how that exercise would have impacted the prosecution's case; and

5. *That the learned trial judge failed to properly direct himself in law on the issue of police admission that the Appellant with others were pushing the vehicle and Appellant was not driving when police arrived to investigate based on the evidence adduced."*

[10] The appeal to this Court is against conviction only. The appeal is governed by section 22 of the Court of Appeal Act, Cap. 12. Section 22 provides:

"22. (1) Any party to an appeal from a magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only;

Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate's court.

[11] It is clear that the appellant's right of appeal is confined to a question of law alone.

[12] After considering the written submissions of the parties and the oral arguments presented in Court, I am satisfied that the appellant has failed to raise a question of law alone for the Full Court to consider. The grounds of appeal raise a question of fact or a question of mixed fact and law.

[13] Given my conclusion that the appeal does not raise any question of law alone, the appellant has no right of appeal under section 22 of the Court of Appeal Act, Cap. 12.

[14] For these reasons, I dismiss the appeal under section 35(2) of the Court of Appeal Act, Cap. 12 on the ground that the appeal is bound to fail because there is no right of appeal.



A handwritten signature in blue ink, appearing to read "D. Goundar", is written over a dotted line.

Hon. Justice D. Goundar
Justice of Appeal