

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO. AAU 67 OF 2013
(High Court HAA 5 of 2013)

BETWEEN : ANISH KUMAR DAYAL

Appellant

AND : LAND TRANSPORT AUTHORITY

Respondent

Coram : Chandra RJA

Counsel : Appellant absent
Ms. M. Ligabalavu for the Respondent

Date of Hearing : 31 January 2017

Date of Ruling : 16 June 2017

RULING

[1] On 9th April 2013, the Appellant was convicted by the Magistrate's Court of Labasa on pleading guilty and imposed a sentence of 8 months for the following charges:

- (1) *Driving a Motor Vehicle without being a holder of a drivers license contrary to regulation 4(1)(a)(b) of the Land Transport (driver) Regulations, 2000 and Section 81 of the Land Transport Act, 1998.*

920 Driving a motor vehicle in contravention of the Third Party Policy Insurance Act, contrary to section 4(1)(2) of the Motor Vehicle Third Party Insurance Act, Cap.177.


- [2] The Appellant appealed against his sentence to the High Court.
- [3] The High Court after hearing the appeal, quashed the sentence passed in terms of section 256 of the Criminal Procedure Act as the learned Magistrate had erred while sentencing the Appellant and imposed a sentence of 6 months imprisonment by judgment dated 30 May 2013.
- [4] The Appellant thereafter appealed against the sentence to the Court of Appeal by notice of appeal dated 26 June 2013.
- [5] Written submission were filed on behalf of both parties.
- [6] When the appeal was taken up on 7 November 2016 the Appellant was absent and a letter had been sent by the Appellant stating that they had not been informed of the date.
- [7] When the matter was taken up on 6 December 2016, the Appellant was absent and Counsel for the Appellant had sent a letter regarding his inability to appear on that day and the case was adjourned for 31 January 2017 and notice was to be sent to the Appellant and his Counsel to that effect.
- [8] When the matter was taken up on 31 January 2017 the Appellant was absent and unrepresented though noticed and Respondent's Counsel moved to have the appeal struck out.
- [9] The Appellant's absence and the manner in which he has responded to the notices of Court would indicate that he is disinterested in pursuing his appeal.

- [10] His appeal is against the sentence imposed by the High Court sitting in appeal in the appeal filed by him against the sentence imposed by the Magistrate's Court.
- [11] In terms of s.22(1A) of the Court of Appeal Act, 2012 no appeal lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the sentence was an unlawful one or was passed in consequence of an error of law.
- [12] The grounds of appeal do not raise any questions of law and the sentence is one which the High Court in exercising its appellate jurisdiction had authority to impose.
- [13] In the above circumstances the appeal of the Appellant is treated as being frivolous and is dismissed in terms of section 35(2) of the Court of Appeal Act 2012.

Order of Court:

Leave to appeal is dismissed in terms of section 35(2) of the Court of Appeal Act, 2012.




Hon. Justice S. Chandra
RESIDENT JUSTICE OF APPEAL