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

CRIMINAL APPEAL NO. AAU160 of 2015
[High Court Case No. HAC 71 of 2015]

BETWEEN	:	**SAILOSI ROKOTUIWAILEVU**
		Appellant
AND	:	**THE STATE**
		Respondent
Before	:	**Hon. Mr Justice Daniel Goundar**
Counsel	:	**Ms S Nasedra for the Appellant** **Mr S Vodokisolomone for the Respondent**
Date of Hearing	:	**6 December 2017**
Date of Ruling	:	**26 January 2018**

RULING

[1] Following a trial in the High Court at Lautoka, the appellant was convicted of attempted murder and sentenced to life imprisonment with a minimum term of 8 years. The appellant seeks leave to appeal against conviction only. The appellant was incarcerated after his conviction. He filed his appeal in person from prison. By the time the court registry received the notice, the appeal was late by three weeks. Counsel for the State has no objection to an enlargement of time. The State, however, objects to leave.

[2] A single justice of appeal has jurisdiction to grant an enlargement of time and leave to appeal pursuant to section 35(1) of the Court of Appeal Act 1949. A single justice of appeal also has power to dismiss a frivolous or vexatious appeal pursuant to section 35(2) of the Court of Appeal Act 1949. A frivolous appeal is one that cannot possibly succeed.

[3] Initially, six grounds of appeal were advanced. At the hearing, counsel for the appellant abandoned five of them. Only the following ground was pursued:

(i) The Learned Trial Judge erred in law and in fact when he misdirected the asessors by stating in paragraph (sic) 38 and 39 that they must acquit the Appellant from the charge when the assessors under the law could only give opinions as judges of facts.

[4] At trial, the prosecution led evidence from the victim. The victim is the appellant's father. His evidence was that on 24 April 2015, he had a quarrel with the appellant over a minor matter, whereby the victim told the appellant that he was the boss and owner of the house. At the time, the appellant had come to visit the victim and was residing with him. After the quarrel, the appellant went into the kitchen and returned with a cane knife. He took the victim by surprise and attacked him with the knife while he was having tea. He struck the victim twice in the head and the back with the knife. The victim collapsed and lost his conscious when he tried to walk to the roadside to get help.

[5] Medical evidence was led to show that the victim sustained wound injuries. One was in the head and the other was on the left side of the back shoulder. The head wound exposed the bone of scalp. According to the doctor's opinion, the head injury could have been fatal.

[6] Under caution, the appellant admitted wounding the victim with a cane knife. The appellant stated that he intended to kill the victim (Q & A 51).

[7] The appellant gave evidence at the trial. He said he had no intention to kill his father.

[8] The issue for the trial judge and the assessors was whether the prosecution had proved the fault element of attempted murder, namely, an intention to kill.

[9] The learned trial Judge clearly identified the issue and gave impeccable direction on the fault element of attempted murder in paragraphs [16] and [17]:

> According to the 3rd element the prosecution is required to prove beyond reasonable doubt that the accused has done something in order to actually execute his intention of killing the victim and not something which amount to mere preparation to execute his intention.
>
> Accordingly, the prosecution is required to prove beyond reasonable doubt that the accused person had an intention to kill the victim and with that intention he assaulted the victim with a cane knife.

[10] The learned trial Judge returned to the issue in paragraph [38] of the summing up:

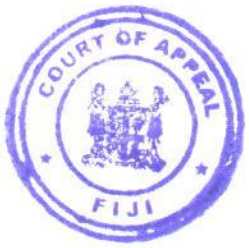
> You have heard the evidence presented by the accused, where he denied this allegation and state that he had no intention to kill his father. If you accepted the version of the accused person that he did not commit this offence, then the case of the prosecution fails. You must then acquit the accused from this charge.

[11] Counsel for the appellant submits that the learned trial judge misconstrued the role of the assessors when he told them "you must then acquit the accused from this charge". Counsel submits that the assessors offer opinions, but the trial judge convicts or acquits. I accept that the assessors give opinions but the verdict is of the trial judge. However, the direction "you must then acquit' did not have the effect of confusing the functions of the

assessors and the trial judge. In paragraph [6] of the summing up the learned trial judge clearly told the assessors that they were required to give opinions and that their opinions were not binding on him. When the summing up read as a whole, there is no error shown as alleged in the ground of appeal.

[12] I have further considered whether this appeal is frivolous. The main issue at the trial was whether there was proof beyond a reasonable doubt that the appellant struck the victim with the cane knife with an intention kill him. Both the assessors and the trial judge found that the appellant had the prerequisite intention for attempted murder. The use of the cane knife, the ferocity of the attack, and the seriousness of the head wound and the appellant's admission of his intention provided proof that the appellant had an intention to kill. The evidence was overwhelming and the summing up is impeccable. I am satisfied that this appeal has no prospect of success. The appeal is frivolous.

[13] The appeal is dismissed under section 35(2) of the Court of Appeal Act 1949.



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Hon. Mr. Justice Daniel Goundar

JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for the Appellant

Office of the Director of Public Prosecutions for the Respondent