

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

CRIMINAL APPEAL NO. AAU 130 of 2018  
(High Court Action No. HAC 88 of 2018)

BETWEEN : ALIPATE VULAGI *Appellant*

AND : THE STATE *Respondent*

Coram : Chandra, RJA

Counsel : Ms S Nasedra-Qalinauci for the Appellant  
Mr M Vosawale for the Respondent

Date of Hearing : 19 November, 2019

Date of Ruling : 22 November, 2019

## RULING

- [1] The Appellant was charged with another for the following offences:
1. 2 Counts of Aggravated Burglary contrary to Section 313(1)(a) of the Crimes Act, 2009.
  2. 2 Counts of Theft contrary to Section 29(1) of the Crimes Act, 2009.
  3. 1 Count of Burglary contrary to Section 312(1)(a) and 1 Count of Theft contrary to Section 291(1) of the Crimes Act, 2009.
- [2] The Appellant pleaded guilty to all the charges on 18<sup>th</sup> October 2018. He was convicted and sentenced on 23<sup>rd</sup> October 2018 to a term of 4 years with a non-parole period of 2 years.
- [3] He filed an application for leave to appeal against sentence and was granted leave to appeal by a Ruling delivered on 8 November 2019.
- [4] The present application is for bail pending appeal pursuant to section 33(2) of the Court of Appeal Act, 1949(the Act). In terms of Section 35(1) of the Act “a single judge of the Court of Appeal has the power to admit an appellant to bail pending appeal. In addition to the matters to which section 17(3) of the Bail Act 2002 refers, the appellant is required to establish exceptional circumstances in order to be admitted to bail pending appeal.” **Zhong v The State** [2014] FJCA 108; AAU 44 of 2013, 15 July 2014 and **Seniloli and Others v The State** AAU 41 of 2004, 23 August 2004.
- [5] The main ground of appeal is regarding the imposition of a four year term of imprisonment when the appellant was only 17 years at the time of offending. The appellant was born on 18<sup>th</sup> June 2000. At the time of offending on 6<sup>th</sup> February 2018, the Appellant was 17 years 4 months old. At the time of sentencing he was 18 years 4 months old. He had been sentenced on the basis that he was at the time of sentencing an adult over the age of 18 years.
- [6] In terms of section 2 of the Juveniles Act, 1973 a juvenile is defined as a person who has not attained the age of 18 years and includes a child and a young person. A young person

is a person who turned 14 but has not yet reached 18 years. As a result the Appellant was a young person at the time of offending. Under section 30(2) of the Juveniles Act a young person shall not be ordered to be imprisoned for more than 2 years for any offence. Therefore the appellant should not have been sentenced to a term of imprisonment of more than 2 years. The sentence of 4 years represents a ground of appeal that is likely to succeed as an arguable error as set out in my Ruling of 8 November 2019.

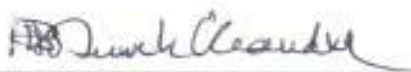
- [7] The application for bail pending appeal is not opposed by the State.
- [8] I consider that exceptional circumstances exist in this case as the appeal against sentence for which leave has been granted has a very high likelihood of succeeding.
- [9] As the Appellant has been incarcerated since 23 October 2018 the other requirements in section 17(3) of the Bail Act do not prevent bail pending appeal being granted to the Appellant.

**Orders:**

*The Appellant is admitted to bail on the following conditions:*

- a. *The appellant is to reside with his father at their residence at Calia Settlement, Navua.*
- b. *The appellant is to notify the Court of Appeal Registry of any change of address:*
- c. *The appellant is to report to the Navua Police Station every Saturday between 6.00 am and 6.00pm.*
- d. *The appellant is required to attend Court whenever called upon by notice to do so.*
- e. *The appellant is to provide a surety in the person of Alivate Vulagi (his Father) whose work phone number at Establishment Restaurant is 7748105. The Appellant's sisters (Asivina Vulagi) phone nos. are 8652970/2801719.*



  
**Hon. Justice Suresh Chandra**  
**RESIDENT JUSTICE OF APPEAL**