

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

**CRIMINAL APPEAL NO. AAU 0082 of 2019**  
**[In the High Court of Suva Case No. HAM 81 OF 2019]**

**BETWEEN** : **SOLOMONE QIODRAVU**

**Appellant**

**AND** : **STATE**

**Respondent**

**Coram** : **Prematilaka, JA**

**Counsel** : **Appellant absent and unrepresented**  
: **Mr. R. Kumar for the Respondent**

**Date of Hearing** : **19 October 2020**

**Date of Ruling** : **21 October 2020**

**RULING**

- [1] The appellant who had been a juvenile (DOB 20 February 2001) at the time of the commissions of the offences had been charged in the Magistrates court of Nasinu under JUV 95 of 2018 on one count of aggravated burglary contrary to section 313 (1) of the Crimes Act, 2009 and another count of theft contrary to section 291(1) of the Crimes Act, 2009 committed on 25 December 2018 at Nasinu in the Central Division.
- [2] The appellant had been released on bail on 28 December 2018 by the Magistrates court on several conditions including the stipulation that he should attend the High Court of Suva on 01 February 2019. The appellant had attended High Court under HAC 015/2019 on 01/02/ 2019 (adjourned for appellant's counsel to advise him regarding a plea), on 04/03/2019 (appellant pleaded not guilty) and on 25/03/2019 (adjourned to check for any related *voir dire* grounds) where he had been remanded

by the High Court as he had failed to sign a fresh bail bond and the matter had been adjourned to 08 April 2019 (for possible amended information).

- [3] The appellant had filed a formal application for bail pending trial on 01 April 2020 under HAM 81 of 2019 in the High Court and though the respondent had not objected the High Court judge had refused the application on 18 June 2019 on the basis that the appellant was a flight risk, cannot be trusted, would endanger the public interest and make the protection of the community more difficult.
- [4] The appellant's trial lawyer Mr. Jolame Uludole of Bale Law had then preferred a timely notice of appeal against the said order of refusal of bail pending trial on 10 July 2019 to the Court of Appeal under section 21(3) of the Court of Appeal Act praying for the appellant to be enlarged on bail.
- [5] In the meantime, the substantive case HAC 015 of 2019 had been adjourned from 08 April 2019 on six occasions and on 01 August 2019 the High Court judge had allowed bail pending trial to the appellant who along with two sureties had signed Bail Terms and Conditions on the same day.
- [6] The appellant's appeal filed in this court had come up for the first time on 18 July 2019 where Mr. Uludole had appeared for the appellant and received directions as to further steps including written submissions. The appeal then came up on 14 July 2020 and the Court of Appeal registry had well in advance noticed Mr. Uludole of the date and he had confirmed the receipt of the email sent to jolameuludole@gmail.com from the CA registry. Production order had been sent to Suva remand centre. Yet, when the matter was called in court neither the appellant nor Mr. Uludole was present. The matter was re-fixed for 28 August 2020.
- [7] The appeal came up on 28 August 2020. The CA registry had noticed Mr. Uludole of the date by email to the same address – jolameuludole@gmail.com. Production order had been sent to Suva remand centre. Yet, once again when the matter was called in court neither the appellant nor Mr. Uludole was present and it was adjourned to 19 October 2020.

- [8] The CA registry had contacted Mr. Uludole over the phone (9305736) on 01 September 2020 and advised him of the next date and he had for the first time informed the registry that the appellant had been released on bail and it was not necessary to proceed with the appeal. Mr. Uludole should have known this fact by 01 August 2019 and should have informed this court of the same at least on 14 July 2020 or most preferably much earlier. The registry had advised Mr. Uludole to get the appellant to file an abandonment notice to withdraw the appeal. Suva remand centre had confirmed on 18 September 2020 that the appellant was not in remand custody.
- [9] The appeal was mentioned on 19 October 2020 and again neither the appellant nor Mr. Uludole was present. The state counsel informed court that he had had got in touch with Mr. Uludole about 9.00 a.m. on 19 October and Mr. Uludole had said that he had no objection for the appeal to be summarily dismissed as his client had been released on bail. The court advised the state to file an affidavit deposing to all relevant details in order for this court to make an appropriate court. The affidavit so filed dated 20 October 2020 *inter alia* confirms the fact that the appellant had been bailed out by the High Court and other details above described.
- [10] I find Mr. Uludole's conduct as the appellant's counsel to be most unprofessional, unbecoming of an officer of court and smacks of scant regard for the court. He had taken the path of least assistance towards this court. His negligent, if not deliberate, inaction to appear and assist court regarding this appeal on behalf of his client, the appellant, cost valuable judicial time and resources of the CA registry. This kind of conduct could only bring disrepute to the legal profession.
- [11] In **Vakacereivalu v State** [2014] FJCA 126; AAU09.2011 (25 July 2014) Goundar J sitting as a single judge of the Court of Appeal remarked on a somewhat similar situation as follows.

*'[1] This is an application for leave to appeal against a decision of the High Court, refusing bail pending trial to the appellant. Whilst this appeal was pending, the appellant was convicted and sentenced to 8 years' imprisonment for robbery with violence by the High Court.*



[2] Section 35(1) of the Court of Appeal Act gives a single judge power to grant leave to appeal against a bail decision. Section 35(2) gives a single judge power to dismiss a frivolous or vexatious appeal, or an appeal that is bound to fail because there is no right of appeal.

[3] Following the appellant's conviction, the issue of bail pending trial is academic. The appellant is no longer in custody on remand. He is now a serving prisoner. In these circumstances, this appeal against refusal of bail by the High Court cannot possibly succeed. The appeal is frivolous.

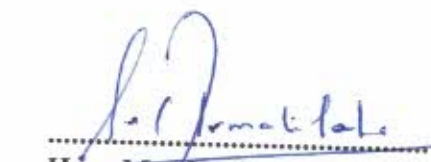
[4] The appeal is dismissed under section 35(2) of the Court of Appeal Act.

- [12] Chalanchini P dismissed the appeal under section 35(2) of the Court of Appeal Act where the appeal under section 21(3) of the Court of Appeal Act against refusal of bail pending trial was pending in the Court of Appeal but the appellant had been tried and convicted in the High Court in **Faivaz v State** [2019] FJCA 153; AAU51.2018 (19 July 2019). Chalanchini P had dismissed two similar appeals against refusal of bail pending trial in **Raivasi v State** [2018] FJCA 98; AAU0172.2016 (25 June 2018) and **Vunivesi v State** [2018] FJCA 99; AAU0177.2016 (25 June 2018) under section 35(2) of the Court of Appeal Act as during the time the appeal was pending in the Court of Appeal the trial had taken place in the High Court.
- [13] In the circumstances above enumerated, the appellant's appeal against the decision refusing bail pending trial has now become not only academic but also untenable in view of his being released on bail in the High Court. Therefore, following the previous precedents on section 21(3) of the Court of Appeal this application should be dismissed under section 35(2) of the Court of Appeal Act for having become frivolous and vexatious.

### **Order**

1. Appeal bearing No. AAU 082 of 2019 is dismissed under section 35(2) of the Court of Appeal Act.



  
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Hon. Mr. Justice C. Prematilaka  
**JUSTICE OF APPEAL**