

IN THE COURT OF APPEAL, FIJI
[On Appeal from the Magistrates' Court]

CRIMINAL APPEAL NO. AAU 86 of 2020
[In the Magistrates' Court of Nadi Case No. 147 of 2013]

BETWEEN : **POATE RADREKUSA**

Appellant

AND : **STATE**

Respondent

Coram : **Prematilaka, ARJA**

Counsel : **Ms. S. Ratu for the Appellant**
: **Mr. R. Kumar for the Respondent**

Date of Hearing : **27 August 2021**

Date of Ruling : **27 August 2021**

RULING

[1] The appellant had been arraigned in the Magistrates court of Nadi on one count of burglary (indictable offence triable summarily) contrary to section 312 (1)(3)(a) of the Crimes Act, 2009, and two counts of theft (summary offence) contrary to section 291 (1) of the Crimes Act, 2009.

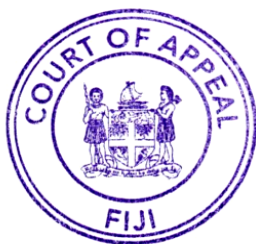
[2] The appellant had been tried *in absentia* in January 2019, convicted and sentenced to an imprisonment of 29 months. He had been arrested on 19 August 2019 and taken to Suva Correction Centre. He has now served the full sentence and been released from prison on 29 March 2021.

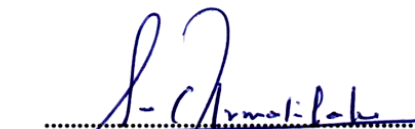
- [3] The appellant had signed a notice of appeal on 04 November 2019 against conviction and sentence in terms of section 246(1) of the Criminal Procedure Act, 2019 addressed to the High Court of Lautoka. It appears that Suva Correction Centre has lodged the appellant's appeal with Lautoka High Court on 04 December 2019. By its letter dated 14 January 2020 Lautoka High Court registry had informed Suva Correction Centre that the learned Magistrate had exercised extended jurisdiction in dealing with the appellant following an Order made by the learned High Court judge on 30 November 2016 and requested that legal advice be sought to pursue the appeal implying that the appeal should be lodged in the Court of Appeal.
- [4] The appellant had thereafter written to His Lordship the Chief Justice on 01 May 2020 seeking a clarification as to which court he should seek relief in appeal. No appeal had been received by the Court of Appeal as yet. However, consequent to a direction by the Hon. Chief Justice on 24 July 2020 that the matter may be considered by a Justice of Appeal in the Court of Appeal, the Court of Appeal registry had registered the appellants' appeal on 17 August 2020 under AAU 86/2020.
- [5] When the appeal came up before this court on 31 March 2021 the state counsel submitted that the appellant's appeal should have been dealt with by the High Court as at no stage had the learned Magistrate exercised extended jurisdiction regarding the appellant's case. I directed the appellant's counsel also to check upon it and appraise the court. The appellants' counsel has informed court in writing on 25 August 2021 that given that the charges were burglary and theft and the Magistrate had not exercised extended jurisdiction, the proper forum for the appeal to be heard is the High Court and requested that the appeal be dismissed under section 35(2) of the Court of Appeal Act.
- [6] It has been treated as settled law that the right of appeal against a decision of the Magistrates' court made only under extended jurisdiction under section 4 (2) of the Criminal Procedure Act lies with the Court of Appeal pursuant to section 21 of the Court of Appeal Act [vide **Kirikiti v State** [2014] FJCA 223; AAU00055.2011 (7 April 2014), **Kumar v State** [2018] FJCA 148; AAU165.2017 (4 October 2018)].

- [7] However, this view too can be open to debate in the face of clear constitutional provisions. A discussion on this aspect of law can be found in **Tuisamoa v State** [2020] FJCA 155; AAU0076.2017 (28 August 2020).
- [8] Nevertheless, if the Magistrate had not acted under extended jurisdiction as agreed upon by both counsel no appeal from the appellant's conviction and sentence could lie to the Court of Appeal.
- [9] Therefore, ordinarily I would have dismissed the appeal under section 35(2) of the Court of Appeal for want of right of appeal or leave to appeal but I would refrain from doing so in this instance as it is not the appellant who had filed it in this court but it had been registered by the Court of Appeal registry following the events initiated by the letter of the High Court registry on the premise that the appeal had originated from the Magistrates' court judgment and sentence delivered in the exercise of extended jurisdiction.
- [10] Instead, the proceedings in appeal AAU 086 of 2020 would be terminated forthwith and the Court of Appeal registry would be directed to forward the appellant's appeal to the High Court to deal with it according to law.

Orders

1. The proceedings in appeal No. AAU 086 of 2020 is terminated forthwith in the Court of Appeal.
2. The Court of Appeal registry is hereby directed to forward the appellant's appeal to the High Court at Lautoka to dealt with it according to law.




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Hon. Mr. Justice C. Prematilaka
ACTING RESIDENT JUSTICE OF APPEAL