IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Courtl

CRIMINAL APPEAL NO.AAU 118 of 2018
[In the High Court at Suva Case No. HAC 139 of 20171

BETWEEN	**WAISEA DOBUI**	
		Appellant
AND	**STATE**	
		Respondent
Coram	**Prematilaka, JA**	
Counsel	**Mr. M. Fesaitu for the Appellant** **Mr. M. Vosawale for the Respondent**	
Date of Hearing	18 January 2021	
Date of Rulina	19 January 2021	

RULING

[1] The appellant had been indicted in the High Court of Suva on four counts of rape contrary to section 207(1) and (2) (b) and (3) of the Crimes Act, 2009 and two counts of sexual assault contrary to section 210 (1) (a) of the Crimes Act, 2009 committed at at Qarani village, Gau in the Eastern Division. The victim was 12 years old and the appellant was her step father at the time of the commission of the offences.

[2] The information read as follows.

'COUNT ONE

Statement of Offence

RAPE: *Contrary to Section 207 (I) and (2) (b) and (3) of the Crimes Act 2009.*

Particulars of Offence

WAISEA DOBUI on the 17th day of March, 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of AB a child under the age of 13 years with his tongue.

COUNT TWO

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA DOBUI on the 17$^{1/1}$ day of March 2017, at Qarani village, Gau in the Eastern Division, unlawfully and indecently assaulted AB by rubbing his penis on her anus.

COUNT THREE

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

WAISEA DOBUI on the 24" day of March, 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina ofAB a child under the age of 13 years with his tongue.

COUNT FOUR

Statement of Offence

SEXUAL ASSAULT: Contrary to Section 210 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA DOBUI on the 24th day of March 2017, at Qarani village, Gau in the Eastern Division, unlawfully and indecently assaulted AB by rubbing his penis on her anus.

COUNT FIVE

Statement of Offence

***RAPE:** Contrary to Section 207 (I) and (2) (b) and (3) of the Crimes Act 2009.*

Particulars of Offence

WAISEA DOBUI on the 13th day of April 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of AB a child under the age of 13 years with his tongue.

<u>COUNT SIX</u>

Statement of Offence

RAPE: Contrary to Section 207 (I) and (2) (b) and (3) of the Crimes Act 2009.

Particulars of Offence

WAISEA DOBUI on the 13^{1h} day of April 2017, at Qarani village, Gau in the Eastern Division, penetrated the vagina of AB a child under the age of 13 years with his finger.

[3] The brief facts as could be gathered from the sentencing order are as follows.

> *It was proved at the conclusion of the hearing that you penetrated the vagina of the Complainant with your tongue on three different occasions on the 17th of March, 24th of March and 13th of April 2017. On the 24th of March 2017, you have unlawfully and indecently rubbed your penis on the anus of the Complainant. It was further proved that you have penetrated the vagina of the Complainant with your finger on the 13th of April 2017. The Complainant was twelve years old at the time of these incidents took place. She is your step-daughter.'*

[4] At the end of the prosecution case the appellant had been acquitted of count 02 for want of evidence. At the conclusion of the summing-up on 26 March 2018 the assessors had unanimously opined that the appellant was guilty of other 05 counts. The learned trial judge had agreed with the assessors in his judgment delivered on the same day, convicted the appellant on all remaining five counts and sentenced him on 27 March 2018 on four counts of rape to a sentence of 14 years each and on the remaining count of sexual assault to a sentence of 04 years of imprisonment; all sentences to run concurrently. After deducting the remand period the ultimate sentence was 13 years and 07 months with a non-parole period of 11 years and 07 months.

[5] The appellant's untimely application for leave to appeal against conviction and sentence had been filed in person on 21 November 2018 followed by written

submissions on 06 May 2019. The Legal Aid Commission had tendered a notice of motion dated 25 September 2020 seeking enlargement of time accompanied by the appellant's affidavit, amended grounds of appeal and written submissions. The state had tendered its written submissions on 05 November 2020.

[6] Presently, guidance for the determination of an application for extension of time within which an application for leave to appeal may be filed, is given in the decisions in **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4, **Kumar v State; Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17

[7] In ***Kumar*** the Supreme Court held

> 14] *Appellate courts examine five factors by way of a principled approach to such applications. Those factors are..*
>
> *N The reason for the failure to file within time.*
> *(ii) The length of the delay.*
> *(iii) Whether there is a ground of merit justifiiing the appellate court's consideration.*
> *(iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
> *(v) If time is enlarged, will the Respondent be unfairly prejudiced?*

[8] ***Rasaku*** the Supreme Court further held

> *'These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.'*

[9] The remarks of Sundaresh Menon JC in **Lim Hong Kheng v Public Prosecutor** [2006] SGHC 100 shed some more light as to how the appellate court would look at an application for extension of time to appeal.

> *'(a)... .....*
>
> *(b) In particular, I should apply my mind to the length of the delay, the sufficiency of any explanation given in respect of the delay and the prospects in the appeal.*
>
> *(c) These factors are not to be considered and evaluated in a mechanistic way or as though they are necessarily of equal or of any particular*

importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases.

(d) Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained.

(e) It would seldom, if ever, be appropriate to ignore any of these factors because that would undermine the principles that a party in breach of these rules has no automatic entitlement to an extension and that the rules and statutes are expected to be adhered to. It is only in the deserving cases, where it is necessary to enable substantial justice to be done, that the breach will be excused.'

[10] Sundaresh Menon JC also observed

'27 ... ... It virtually goes without saying that the procedural rules and timelines set out in the relevant rules or statutes are there to be obeyed. These rules and timetables have been provided for very good reasons but they are there to serve the ends of justice and not to frustrate them. To ensure that justice is done in each case, a measure of flexibility is provided so that transgressions can be excused in appropriate cases. It is equally clear that a party seeking the court's indulgence to excuse a breach must put forward sufficient material upon which the court may act. No party in breach of such rules has an entitlement to an extension of time.'

[11] Under the third and fourth factors in *Kumar,* test for enlargement of time now is 'real prospect of success'. In Nasila v State [2019] FJCA 84; AAU0004.2011 (6 June 2019) the Court of Appeal said

*123] In my view, therefore, the threshold for enlargement of time should logically be higher than that of leave to appeal and in order to obtain enlargement or extension of time the appellant must satisfy this court that his appeal not only has 'merits' and would probably succeed but also has a 'real prospect of success' (see **R** v Miller [2002] QCA 56 (I March 2002) on any of the grounds of appeal...... '*

Length of delay

[12] The delay is about 07 month and substantial.

[13] In Nawalu v State [2013] FJSC 11; CAV0012.12 (28 August 2013) the Supreme Court said that for an incarcerated unrepresented appellant up to 03 months might

persuade a court to consider granting leave if other factors are in his or her favour and observed.

> *'In **Julien Miller v The State** AA U0076/07 (23rd October 2007) Byrne J considered 3 months in a criminal matter a delay period which could be considered reasonable to justify the court granting leave.'*

[14] However, I also wish to reiterate the comments of Byrne J, in **Julien Miller v The State** AAU0076/07 (23 October 2007) that

> *... that the Courts have said time and again that the rules of time limits must be obeyed, otherwise the lists of the Courts would be in a state of chaos. The law expects litigants and would-be appellants to exercise their rights promptly and certainly, as far as notices of appeal are concerned within the time prescribed by the relevant legislation. '*

Reasons for the delay

[15] The appellant's excuse for the delay is that he was anticipating that his trial counsel would file his appeal but later with the assistance of his prison inmates he filed appeal papers belatedly. The appellant had been defended by two lawyers at the trial and with due diligence the appellant could have got at least one of them to file a timely appeal. If not, he himself could have appealed within time as he eventually did. Therefore, his explanation for the delay is not acceptable.

Merits of the appeal

[16] **In State v Ramesh Patel** (AAU 2 of 2002: 15 November 2002) this Court, when the delay was some 26 months, stated (quoted in Wacia ***v State*** [2013] FJCA 2; AAU62.2011 (18 January 2013) that delay alone will not decide the matter of extension of time and the court would consider the merits as well.

> *"We have reached the conclusion that despite the excessive and unexplained delay, the strength of the grounds of appeal and the absence of prejudice are such that it is in the interests of justice that leave be granted to the applicant."*

[17] Therefore, I would proceed to consider the third and fourth factors in ***Kumar*** regarding the merits of the appeal as well in order to consider whether despite the

delay and the absence of a convincing explanation, the prospects of his appeal would warrant granting enlargement of time.

[18] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide Naisua v State CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; House v The King [1936] HCA 40; (1936) 55 CLR 499, Kim Nam Bae v The State Criminal Appeal No.AAU0015 and Chirk King Yam v The State Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of *Kim Nam Bae's* case. **For a ground of appeal untimely preferred against sentence to be considered arguable there must be a real prospect of its** success **in appeal.** The aforesaid guidelines are as follows.

(i) Acted upon a wrong principle;
(ii) Allowed extraneous or irrelevant matters to guide or affect him;
(iii) Mistook the facts;
(iv) Failed to take into account some relevant consideration.

[19] Grounds of appeal urged on behalf of the appellant are as follows.

Conviction

1. *The learned trial judge erred in law and in facts by inadequately directing the assessors on how to approach the defense of alibi.*

Sentence

2. *The learned trial judge erred in principle by double counting having considered aggravating factors that is reflected already in selecting a starting point.*

Ols' ground of appeal

[20] The appellant complains inadequacy of *alibi* direction in that the trial judge had not directed the assessors that it is for the prosecution to disprove the *alibi.*

[21] In **Ram v State** [2015] FJCA 131; AAU0087.2010 (2 October 2015) the Court of Appeal said of the required direction in cases where there is a defense of *alibi* in the

following words which were reiterated in Mateni v ***State*** [2020] FJCA 5; AAU061.2014 (27 February 2020).

> *129] When an accused relies on alibi as his defence, in addition to the general direction of the burden of proof, the jury (in Fiji the assessors) should be directed that the prosecution must disprove the alibi and that even if they conclude that the alibi was false, that does not by itself entitle them to convict the accused (**R v Anderson** [1991] Grim. LR 361, CA; **R v Baillie** [1995] 2 Cr App R 31; **R v Lesley** [1996] 1 Cr App R 39,'*

[22] In Bese v State [2013] FJCA 76; AAU0067.2011 (10 July 2013) Gounder J held

> *112] When an accused raises alibi as his defence, in addition to the general direction on the burden of proof the jury should be directed that the prosecution must disprove the alibi and that even if they conclude that the alibi was false, that does not by itself entitle them to convict the accused (R v Anderson [1991] Grim. LR 361, CA; R v Baillie [1995] 2 Cr App R 31; R v Lesley [1996] 1 Cr App R 39; R v Harron [1996] 2 Cr App R 457)...... '*

[23] Having summarized the evidence relating to the appellant's *alibi* at paragraphs 37-44 the trial judge's directions on the *alibi* are found in paragraphs 61-65 of the summing-up.

> *62. The accused's defence is alibi. The accused says that he was not present at home during the material time for these offences on the 17th and 24th of March 2017 and also on the 13th of April 2017. The accused in his evidence said that he was with a group of villagers, drinking grog in the afternoon of the 17th of March 2017. The accused further said that he was at his farm till the sun set on the 24th of March 2017 and 13th of April 2017. He then came home and went to drink grog at Josefa's house. The accused called three witnesses to establish that he was not at home at any of the relevant time material to these offences.*
>
> *63. While the accused has put forward the defence of alibi, the burden of the proving the case against him remains on the prosecution. The prosecution must prove so that you are sure that it was the accused who have committed these offences on the Complainant.*
>
> *64. Both the accused and the witnesses of the defence were cross-examined by the learned counsel for the prosecution about the alibi. You are invited by the learned counsel for the prosecution in her closing address to conclude that they were lying.*
>
> *65. If you conclude that the accused's alibi is true or may be true, then the accused cannot have committed these crimes on the Complainant and you must find him not guilty. If, on the other hand, you are sure, having considered*

the evidence carefully, that the accused's alibi is false, that is a finding offact which you are entitled to take into account when judging whether he is guilty. But do not jump to the conclusion that because the alibi put forward is false the defendant must be guilty. You should bear in mind that sometimes an alibi is invented because the defendant thinks it is easier than telling the truth. The main question for you to answer is upon considering whole of the evidence presented at the trial, are you sure that it was the accused who has committed these offences as charged.

[24] It is true that the trial judge had not directed the assessors that that the prosecution must disprove the *alibi* but he had stated everything else that needs to be said on an *alibi* defense.

[25] The appellant's counsel should have sought redirections in respect of this simple omission in the summing-up as held in **Tuwai v State** [2016] FJSC35 (26 August 2016) and **Alfaaz v State** [2018] FJCA19; AAU0030 of 2014 (08 March 2018) and **Alfaaz v State** [2018] FJSC 17; CAV 0009 of 2018 (30 August 2018) rather than waiting to take it up as an appeal ground. The failure to do so would disentitle the appellant even to raise it in appeal with any credibility.

[26] However, the trial judge seems to have made up for that lapse by analyzing the defense of *alibi* at paragraphs 06-11 at length in his judgment and concluded that he did not accept it to be true and credible. This conclusion necessarily means that according to the judge the prosecution had disproved the *alibi.* I remarked in **Waininima v State** [2020] FJCA 159; AAU0142.2017 (10 September 2020)

> *[21] the position of the trial judge at a trial with assessors i.e. in Fiji, the assessors are not the sole judges of facts. The judge is the sole judge offacts in respect of guilt, and the assessors are there only to offer their opinions, based on their views of the facts and it is the judge who ultimately decides whether the accused is guilty or not (vide **Rokonabete v State [2006] FJCA 85;** AAU0048.2005S (22 March 2006), **Noa Maya v. The State [2015] FJSC 30;** CAV 009 of 2015 (23 October 2015] and **Rokopeta v State [2016] FJSC 33;** CAV0009, 0016, 0018, 0019.2016 (26 August 2016).*

[27] I think the correct approach that should be taken by the appellate court in dealing with this kind of complaint regarding an omission in the summing-up is the same as that is adopted upon an allegation of a non-direction which is to see whether the non-direction or omission had resulted in a miscarriage of justice and if so, whether it is a substantial miscarriage of justice.

[28] The proper test for the appellate court is laid down in Aziz v State [2015] FJCA 91; AAU112.2011 (13 July 2015)

> *155] The approach that should be followed in deciding whether to apply the proviso to section 23 (I) of the* Court of Appeal Act *was explained by the Court of Appeal in R v. Haddy* [1944] 1 KB 442. *The decision is authority for the proposition that if the Court of Appeal is satisfied that on the whole of the facts and with a correct direction the only reasonable and proper verdict would be one of guilty there is no substantial miscarriage of justice. This decision was based on section 4(1) of the Criminal Appeal Act 1907 (UK) which was in the same terms as section 23(1) of the* Court of Appeal Act.
>
> *[56] This test has been adopted and applied by the Court of Appeal in Fiji in R —v- Ramswani Pillai (unreported criminal appeal No. 11 of 1952; 25 August 1952);R —v- Labalaba (1946 — 1955) 4 FLR 28 and Pillav —v-R (1981) 27 FLR 202. In Pillav —v- R (supra) the Court considered the meaning of the expression "no substantial miscarriage of justice" and adopted the observations of North fin R —v- Weir* 11955] NZLR 711 *at page 713:*
>
> > *"The meaning to be attributed to the words 'no substantial miscarriage of justice has occurred' is not in doubt. If the Court comes to the conclusion that, on the whole of the facts, a reasonable jury, after being properly directed, would without doubt have convicted, then no substantial miscarriage of justice within the meaning of the proviso has occurred."*
>
> *[57] This will be so notwithstanding that the finding of guilt may have been due in some extent to the faulty direction given by the judge. In other words the misdirection may give rise to the conclusion that there has been a miscarriage of justice (ground 4 in section 23(1)) by virtue of the faulty direction but when considering whether to apply the proviso the appeal may be dismissed if the Court considers that there was no substantial miscarriage ofjustice.*
>
> > *In Vuki —v- The State (unreported AAU 65 of 2005; 9 April 2009) this Court observed at paragraph 29:*
> >
> > *"The application of the proviso to section 23 (1) _ _ of necessity, must be a very fact and circumstance — specific exercise."*

[29] The prosecution case depended on the evidence of the complainant, two recent complaint witnesses and medical opinion that the assessors and the trial judge had believed.

[30] With regard to the trial judge's omission to direct the assessors and himself that it is for the prosecution to disprove the *alibi* defense, though it may have caused a

miscarriage of justice it certainly had not caused a substantial miscarriage of justice within the meaning of the proviso to section 23(1), as on the whole of the facts, reasonable assessors, after being fully directed on *alibi,* would without doubt have convicted the appellant or put another way this court can be satisfied that on the whole of the facts and with a complete direction the only reasonable and proper verdict would have been one of guilty.

[31] Therefore, there is no real prospect of success of the first ground of appeal.

02" ground of appeal (sentence)

[32] The appellant's complaint is that the trial judge had erred in double counting having considered aggravating factors that are reflected already in selecting a starting point.

[33] The trial judge had carried out the process of sentencing in the following manner and picked the starting point at 12 years applying sentencing tariff set down in **Rai v State** J20141 FJSC 12; CAV0003.2014 (20 August 2014) for juvenile rape *i.e.* between 10-16 years of imprisonment

> *8. 'The victim was twelve years old at that time. Undoubtedly, a crime of this nature adversely affects the child both psychologically and socially. Because of this incident, the Complainant had to move away from her family and the village. She now lives with her grandparents. Hence, I find the level of harm is substantially high in this crime.*
>
> *9. You have committed these series of shameful crimes on the Complainant when she was alone at home. You found the opportunity when she was alone with no prospect of resist or escape, in order to unleash your venom sexual gratification on her. You then threatened her that you will do something to her, if she tells anyone about these incidents. I accordingly find the decree of culpability in this offending is substantially high.*
>
> *10. In view of the seriousness of this crime, and the level of harm and culpability, I select twelve (12) years as the starting point for each of the four counts of Rape and two (2) years for the count of Sexual Assault.*

[34] Thereafter, the trial judge had increased the sentence by 03 years for aggravating factors as follows.

> *'11. You have blatantly breached the trust reposed in you by the Complainant as her step-father. The age difference between you and the*

Complainant was substantially high at the time of this crime took place. By committing this crime, you have denied the Complainant, her natural growth in life. I consider these factors as aggravating circumstances of this crime.

14. In view of the above discussed aggravating circumstances, I increased three (3) years to reach interim imprisonment of fifteen (15) years for each of the four counts of rape and five (5) years for the Sexual Assault. 1 reduce one (1) year for your previous good character. Your final sentence for each of the four counts of Rape has now reached to fourteen (14) years of imprisonment. The final sentence for the sexual assault has reached to four (4) years of imprisonment.

15. Having considered the seriousness of this crime, the purpose of this sentence, your age and opportunities for rehabilitation, I find twelve (12) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for any parole for a period of twelve (12) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.'

[35] It cannot be said that aggravating factors had been counted twice in the matter of sentence. It is clear that features relating to objective seriousness of the offences had gone into the judge having picked the starting point at 12 years and they are not essentially part of aggravating factors.

[36] It is true that in **Senilolokula v State** [2018] FJSC 5; CAV0017.2017 (26 April 2018) the Supreme Court has raised a few concerns regarding selecting the 'starting point' in the two-tiered approach to sentencing in the face of criticisms of 'double counting' and question the appropriateness in identifying the exact amount by which the sentence is increased for each of the aggravating factors stating that it is too mechanistic an approach. Sentencing is an art, not a science, and doing it in that way the judge risks losing sight of the wood for the trees.

[37] The Supreme Court said in **Kumar v State** [2018] FJSC 30; CAV0017.2018 (2 November 2018) that if judges take as their starting point somewhere within the range, they will have factored into the exercise at least *some* of the aggravating features of the case. The ultimate sentence will then have reflected any *other* aggravating features of the case as well as the mitigating features. On the other hand, if judges take as their starting point the lower end of the range, they will not have factored into the exercise *any* of the aggravating factors, and they will then have to factor into the exercise *all* the aggravating features of the case as well as the mitigating features.

[38] Some judges following **Koroivuki v State** [2013] FJCA 15; AAU0018 of 2010 (05 March 2013) pick the starting point from the lower or middle range of the tariff whereas other judges start with the lower end of the sentencing range as the starting point.

[39] This concern on double counting was echoed once again by the Supreme Court in **Nadan v State** [2019] FJSC 29; CAV0007.2019 (31 October 2019) and stated that the difficulty is that the appellate courts do not know whether all or any of the aggravating factors had already been taken into account when the trial judge selected as his starting point a term towards the middle of the tariff If the judge did, he would have fallen into the trap of double-counting.

[40] I previously had the opportunity of examining a similar complaint in **Salayavi v State** [2020] FJCA 120; AAU0038 of 2017 (03 August 2020) where I stated:

> *130.1 In the present case, however, it is clear what features the learned trial judge had considered in selecting the starting point. Therefore, it becomes clear that there had been double counting when the same or similar factors were counted as aggravating features to enhance the sentence. Like in this case, if the trial judges state what factors they have taken into account in selecting the starting point the problem anticipated in* ***Nadan*** *may not arise. Therefore, in view of the pronouncements of the Supreme Court in* ***Nadan*** *it will be a good practice, if not a requirement, in the future for the trial judges to set out the factors they have taken into account, if the starting point is fixed 'somewhere in the middle of the range' of the tariff This would help prevent double counting in the sentencing process. In doing so, the guidelines in* ***Naikelekelevesi*** *and* ***Koroivuki*** *may provide useful tools to navigate the process of sentencing thereafter.'*

[41] The trial judge had indicated what factors he had considered in selecting the starting point and then set out the aggravating factors he had used to enhance the sentence. Thus, there is no double counting.

[42] In any event, it is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered (vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The

approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range **(Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015).

[43] The ultimate sentence of 13 years and 07 months imposed on the appellant is well within the sentencing tariff and not disproportionate to the gravity of the crimes committed by the appellant.

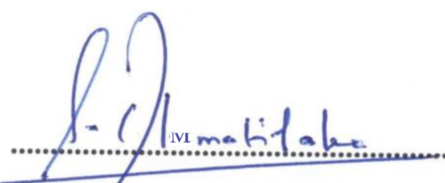
[44] Therefore, the appellant has failed to demonstrate a sentencing error having a real prospect of success under the sole ground of appeal against the sentence to deserve enlargement of time to appeal against sentence.

Prejudice to the respondent

[41] Though an extension of time would not prejudice the respondent directly, any fresh proceedings would cause a great deal of inconvenience to the complainant.

Order

1. Enlargement of time to appeal against conviction is refused.
2. Enlargement of time to appeal against sentence is refused.



Hon. r. Justice C. Prematilaka
J ICE OF APPEAL