

IN THE COURT OF APPEAL, FIJI
Appellate Jurisdiction

CRIMINAL APPEAL NO. AAU 0081 OF 2022
High Court No. HAA 41 of 2020 Ltk

BETWEEN : **HONG YANG LI**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, RJA**

Counsel : **Mr N. R. Padarath for Appellant**

Ms S. Swastika for Respondent

Date of Hearing : **15 March 2024**

Date of Ruling : **2 April 2024**

RULING

1. When the hearing in this Leave Application was held on 15 March 2024 the appellant was absent. He was absent when the appeal from the Magistrate's Court to the High Court was held.

2. After the hearing and in reviewing the case in preparation for drafting the Ruling, I found out that the appellant was not present when his case was heard in the High Court. I asked the Court Clerk to address a communication to counsel for the appellant to seek his explanation why his client was not present in Court on the hearing of this Leave to Application on xxx. The Counsel for the Appellant responded as follows:

“Kindly inform the Honourable Judge that Mr Hong Li was not present in court on the hearing date (15th March 2024). Mr Hong Li is not in the Country since his departure. Mr Hong Li was on a work permit which we are instructed has expired and he does not at the moment have any valid work permits.

The above issue was brought before the High Court also and the State counsel and the Mr Hong Li then counsel (Ms Vasiti) informed the court of the same and the appeal hearing proceeded in absence of Mr Hong Li. (see page 276 of the copy record).

The above is submitted for Honorable Judges Consideration. If any further clarification is required, please let me know.”

3. In this matter there is a serious issue of public policy that needs to be addressed:

‘Should the Court entertain an appeal from a person who is deliberately evading jurisdiction by flouting its order?’

4. In **Singh v State** [2001] FJCA 33 (AAU No: 0025/1999) the Court of Appeal was faced with a similar situation and they dismiss the matter before them. In doing the court stated as follows:

*"We see the issue as really one of public policy. Should the Court entertain an appeal from a person who is deliberately evading its jurisdiction and thereby flouting its orders? The answer can be found in the following statement of the practice of the Court of Criminal Appeal in **R v Flower** [1966] 1 QB 146, 151*

"..... The practice of this court where an appellant escapes, and for that reason is not present when an appeal is called on, is either to adjourn the appeal or dismiss it, according to the justice of the case."

5. On the circumstances of this case, the appellant is not in Fiji and is unlikely to be back again given. He is not a citizen and his work permit is already expired or terminated. In light of the brazen manner in which he absconded from the jurisdiction of the Magistrate Court, the appellant has denied himself by his action with right to appeal to this court.
6. This appeal is forthwith dismissed and it is so ordered.

ORDER:

1. The appeal of the Appellant is dismissed, not to be renewed again.



[Handwritten Signature]
Isikeli U Maitaitoga
Resident Justice of Appeal