

IN THE COURT OF APPEAL, FIJI

[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 0121 of 2018

[Suva High Court: HAC 161/2018]

BETWEEN : **SAILOSI VIRIKIBAU VUNIDAKUA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**

Counsel : **Fesaitu M for the Appellant**

: **Kumar R for the Respondent**

Date of Hearing : **3 December, 2025**

Date of Ruling : **21 January, 2026**

RULING

BAIL PENDING APPEAL

[1] The appellant had been indicted in the High Court on a single count of robbery contrary to section 311(1)(a) of the Crimes Act, 2009 committed with another on 20 April 2016 at Nabua in the Central Division. The charge against the appellant was as follows:

'Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1)(a) of the Crime Act 2009.

Particulars of Offence

SAILOSI VIRIKIBAU VUNIDAKUA in the company of another on the 20th day of April 2016, at Nabua in the Central Division, in the company of each other robbed NACANIEMI YALIMAITOGA KUMKEE of 1x Maxpo Angle grinder valued at \$ 85.00, 1x Bosch Grinder valued at \$848.00 and 1x Cigweld Welding Plant valued at \$1400.00, all to the value of \$2373.00 the property of Quality Power Engineering System Ltd.

- [2] After the summing-up, the assessors had expressed a majority opinion of guilty against the appellant on 30 August 2018. The High Court judge had found him guilty and convicted him, and in his judgment delivered on 31 August 2018. The appellant was sentenced on 28 September 2018 to an imprisonment of 09 years, 06 months and 20 days with a non-parole period of 07 years, 06 months and 20 days.
- [3] The appellant had tendered an appeal in person against conviction and sentence on 9 November 2018 which was out of time by about 12 days but could be considered timely. The Legal Aid Commission had filed amended grounds of appeal and written submission on 14 October 2020. The state had responded by its written submissions on 30 October 2020.
- [4] The Judge alone considered the grounds of appeal submitted by the appellant against conviction and appeal and in his ruling dated 20 January 2021 he refused leave to appeal against conviction but granted leave to appeal against sentence: **Vunidakua v State [2021] FJCA 16 (AAU 121 of 2018)**.

Bail Pending Appeal Application

- [5] The appellant through assistance of counsel from Legal Aid Commission [LAC] filed another Notice of Motion Seeking Bail Pending Appeal on 19 October 2025. An affidavit from the appellant was filed in support of the said motion.
- [6] Section 17(3) of the Bail Act 2002, sets out the following factors to be assessed by the court in determining bail pending appeal:

- i) likelihood of success in the appeal
- ii) likely time before the appeal hearing may take place;
- iii) the proportion of the original sentence which will have been served by the applicant when the appeal is heard

[7] Turning to the application for bail pending appeal. The application is made pursuant to section 33(2) of the Court of Appeal Act and comes before me pursuant to the jurisdiction given to a single judge of the Court under section 35(1) of the Act. It is appropriate to outline the principles upon which such an application is determined by this Court.

[8] **In Zhong v State [2014] FJCA 108 (AAU 044 of 2023)** the court set out the following guidelines in determining an application for bail pending appeal:

“[25] Whether bail pending appeal should be granted is a matter for the exercise of the Court's discretion. The words used in section 33 (2) are clear. The Court may, if it sees fit, admit an appellant to bail pending appeal. The discretion is to be exercised in accordance with established guidelines. Those guidelines are to be found in the earlier decisions of this court and other cases determining such applications. In addition, the discretion is subject to the provisions of the Bail Act 2002. The discretion must be exercised in a manner that is not inconsistent with the Bail Act.

[26] The starting point in considering an application for bail pending appeal is to recall the distinction between a person who has not been convicted and enjoys the presumption of innocence and a person who has been convicted and sentenced to a term of imprisonment. In the former case, under section 3(3) of the Bail Act there is a rebuttable presumption in favour of granting bail. In the latter case, under section 3(4) of the Bail Act, the presumption in favour of granting bail is displaced.

[27] Once it has been accepted that under the Bail Act there is no presumption in favour of bail for a convicted person appealing against conviction and/or sentence, it is necessary to consider the factors that are relevant to the exercise of the discretion. In the first instance these are set out in section 17 (3) of the Bail Act which states:

"When a court is considering the granting of bail to a person who has appealed against conviction or sentence the court must take into account:

- (a) *the likelihood of success in the appeal;*
- (b) *the likely time before the appeal hearing;*
- (c) *the proportion of the original sentence which will have been served by the appellant when the appeal is heard."*

[28] *Although section 17 (3) imposes an obligation on the Court to take into account the three matters listed, the section does not preclude a court from taking into account any other matter which it considers to be relevant to the application. It has been well established by cases decided in Fiji that bail pending appeal should only be granted where there are exceptional circumstances.*

[9] In **Apisai Vuniyayawa Tora and Others –v- R** (1978) 24 FLR 28, the Court of Appeal emphasised the overriding importance of the exceptional circumstances requirement:

"It has been a rule of practice for many years that where an accused person has been tried and convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pending of an appeal."

Assessment of this application

[10] After considering the submission of the applicant in this case, I am not convinced that the likelihood of success of the appeal against sentence is likely to succeed. The submission of the applicant is based on his claim that the facts of this case is in the category of ‘Street Mugging’. The basis for this claim is not justified by the submission of the appellant. I cannot accept this claim in the form of bar table submission; evidence must be clear from the trial record. It is not the case in this instance.

[11] In fairness to the applicant, I have reviewed the guideline decision of the Court of Appeal in **Vuniwai v State [2024] FJCA 100 (AAU 176 of 2019)** and again I am not convinced that the sentence is harsh and excessive and in the totality of the evidence in this case, it was open to the trial judge to pass the sentence it did.

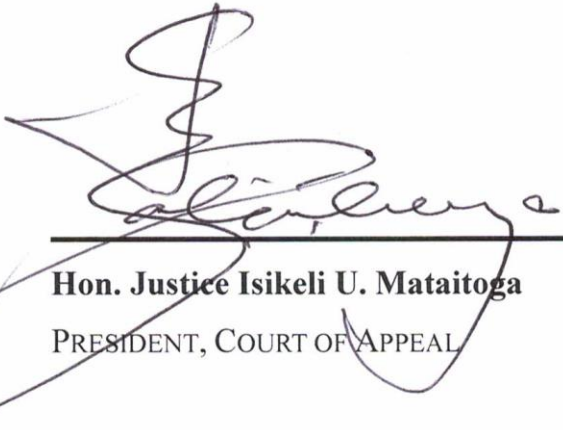

[12] I have asked the court registry to list this case in the February 2026 session of the Court of Appeal, that will give the full court the opportunity to review the sentence appeal. The applicant now has a definite date for the hearing of his sentence appeal.

[13] There were no exceptional circumstances submitted by the applicant. I cannot find from the facts of this case any such circumstances.

[14] It will appear from the above assessment carried out by the court that this application for bail pending appeal does not meet the required criteria of the applicable law. The application must fail.

ORDER:

1. The applicant's application for bail pending appeal is refused.



Hon. Justice Isikeli U. Mataitoga
PRESIDENT, COURT OF APPEAL