

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: 181 OF 2013**

**BETWEEN** : **TIMOCI IBECO RAVOUVOU**

*Applicant*

**AND** : **STATE**

*Respondent*

**Counsel** : **Applicant in Person**  
**Ms Semisi for Respondent**

**Date of Hearing** : **20 August 2013**

**Date of Ruling** : **22 August 2013**

**RULING**

1. This is a leave to appeal application filed out of time.
2. The applicant was charged before Nadi Magistrate Court for Theft and had pleaded guilty. He was convicted and sentenced to 18 months with non parole period of 12 months on 15<sup>th</sup> October 2012.
3. He had filed this leave to appeal application on 25<sup>th</sup> March 2013. That is received in the High Court registry on 17<sup>th</sup> April 2013.

4. Thus the application is 4 months out of time.

5. The Section 247 of the Criminal Procedure Decree provides:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty, and who has been convicted on such plea by Magistrates Court, except as to the extent, appropriateness or legality of the sentence.”

6. Further Section 248 of the Criminal Procedure Decree provides:

- (1) Every appeal shall in the form of a petition in writing signed by the appellant or the appellant’s lawyer, and within 28 days of the date of the decision appealed against-
  - (a) it shall be presented to the Magistrates Court from the decision of which the appeal is lodged;
  - (b) a copy of the petition shall be filed at the registry of the High Court; and
  - (c) a copy shall be served on the Director of Public Prosecutions or on the Commissioner of the Fiji Independent Commission Against Corruption.
- (2) The Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.
- (3) For the purposes of this section and without prejudice to its generality, “good cause” shall be deemed to include-
  - (a) a case where the appellant’s lawyer was not present at the hearing before the Magistrates Court, and for that reason requires further time for the preparation of the petition;
  - (b) any case in which a question of law of unusual difficulty is involved;
  - (c) a case in which the sanction of the Director of Public Prosecutions or of the commissioner or the Fiji Independent Commission Against Corruption is required by any law;

- (d) the inability of the appellant or the appellant’s lawyer to obtain a copy of the judgment or order appealed against and a copy of the record, within a reasonable time of applying to the court for these documents.

7. The principles for an extension of time to appeal are settled. The Supreme Court in *Kumar v State; Sinu v State [2012] FJSC 17; 2 CAV0001.2009* (21 August 2012) summarized the principles at paragraph [4]:

“Appellate courts examine five factors by way of a principled approach to such applications. These factors are:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate courts 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?

[3] More recently, in *Rasaku v State [2013] FJSC 4; CAV0009, 0013.2009* (24 April 2013), the Supreme Court confirmed the above principles and said at paragraph [21]:

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 endeavoring to avoid or redress any grave injustice that might result from the strict application of the rules of court.

8. The applicant was not represented at the Magistrates Court. The State had conceded that there are grounds of merit justifying this Court’s consideration.

9. The Court is also of the view that there are sufficient grounds to allow the application.

10. Leave to appeal against the sentence out of time allowed.

Sudharshana De Silva  
**Judge**

**At Lautoka**  
**22<sup>nd</sup> August 2013**

**Solicitors : Applicant in person**  
**Office of the Director of Public Prosecutions for Respondent**