

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 29 OF 2022

IN THE MATTER of an Application for Leave to Appeal out of Time.

AND IN THE MATTER of an Appeal from the decision of the Lautoka Magistrate's Court in Criminal Case No. 113 of 2018: State v. Saiyad Faizal Khan.

BETWEEN: **SAIYAD FAIZAL ASLAM KHAN**

APPELLANT

AND: **STATE**

RESPONDENT

Counsel : Ms. Unaisi Baleilevuka for the Appellant
 Mr. Unal Lal with Ms. Sheenal Swastika for the Respondent

Date of Hearing : 8 August 2024

Date of Ruling : 13 September 2024

JUDGMENT

[1] This is an Application made by the Applicant/Appellant (hereinafter referred to as the Appellant) by way of a Notice of Motion, filed on 26 July 2022, seeking Leave to Appeal Out of Time against the judgment delivered by the Resident Magistrate, Magistrate's Court of Lautoka, in Criminal Case No. 113 of 2018, on 12 October 2018.

- [2] The Notice of Motion is supported by an Affidavit in Support filed by the Appellant on 26 July 2022.
- [3] It is revealed when perusing the Case Record of the Magistrate's Court of Lautoka that the Appellant was charged (by way of an Amended Charge filed on 2 March 2018) before the Magistrate's Court of Lautoka, with the following offences:

1ST COUNT

Statement of Offence (a)

CONSPIRACY TO DEFEAT JUSTICE AND INTERFERENCE WITH WITNESS:

Contrary to Section 190 (a) of the Crimes Act 2009.

Particulars of Offence (b)

SAIYAD FAIZAL ASLAM KHAN alias Deniss Khan with another, between the 1st day of November 2017 to the 31st day of December 2017, at Lautoka, in the Western Division, conspired with **PETERO YASAU RAVOKA** to knowingly and maliciously accuse **TARIQ SADAT ALI BAHADUR** falsely for an offence of Sexual Assault.

2ND COUNT

Statement of Offence (a)

CONSPIRACY TO DEFEAT JUSTICE AND INTERFERENCE WITH WITNESS:

Contrary to Section 190 (a) of the Crimes Act 2009.

Particulars of Offence (b)

SAIYAD FAIZAL ASLAM KHAN alias Deniss Khan with another, between the 1st day of November 2017 to the 31st day of December 2017, at Lautoka, in the Western Division, conspired with **MOHAMMED NAFIZ KHAN** to knowingly and maliciously accuse **TARIQ SADAT ALI BAHADUR** falsely for an offence of Sexual Assault.

3RD COUNT

Statement of Offence (a)

BREACH OF BAIL CONDITION: Contrary to Section 25 (1) (b) and 26 (1) of the Bail Act No. 26 of 2002.

Particulars of Offence (b)

SAIYAD FAIZAL ASLAM KHAN alias Deniss Khan with another, between the 1st day of November 2017 to the 31st day of December 2017, at Lautoka, in the Western Division, breached the conditions imposed by the Lautoka High Court vide Case File No. HAC 63/16, by committing two counts of CONSPIRACY TO DEFEAT JUSTICE AND INTERFERENCE WITH WITNESSES.

- [4] The Appellant pleaded not guilty to the charges and the matter proceeded to trial. At the conclusion of the trial, the Learned Resident Magistrate held that the prosecution has proved the case against the Appellant beyond reasonable doubt. Accordingly, on 12 October 2018, the Appellant was found guilty and convicted of the two counts of Conspiracy to Defeat Justice and Interference with Witnesses. The Learned Magistrate's Judgment is found at pages 10 to 19 of the Magistrate's Court Record.
- [5] On 7 December 2018, the Learned Magistrate pronounced his Sentence. Accordingly, the Appellant was sentenced to 11 months imprisonment, out of which 7 months to be served in custody and the balance period of 4 months was suspended for 3 years. The Learned Magistrate's Sentence is found at pages 6 to 9 of the Magistrate's Court Record.
- [6] It must be mentioned that the above sentence was pronounced in the absence of the Appellant. At page 87 of the Magistrate's Court Record it is revealed that on 26 October 2018 the Appellant had not been present in Court and a bench warrant had been issued for his arrest. Later the same day, the Learned Magistrate had been informed that as per the information received from the Department of Immigration, the Appellant had left the country. At page 88 of the Magistrate's Court Record it is

stated: *“Court also finds that the accused is intentionally evading the Court proceedings by flying out of the country”.*

- [7] This is an application made by the Appellant seeking leave to file an appeal out of time against the above judgment delivered by the Resident Magistrate, Magistrate’s Court of Lautoka, on 12 October 2018.
- [8] However, on 19 June 2023, this Court was of the view that prior to taking up the Notice of Motion for Leave to Appeal Out of Time, Court wanted to hear submissions from both parties on the maintainability of this appeal in the absence of the Appellant, who is said to be overseas.
- [9] As such, this matter was taken up for hearing before me on 11 October 2023. Counsel for both the Appellant and the State were heard. Both parties filed written submissions, and referred to case authorities, which I have had the benefit of perusing.
- [10] On 15 March 2024, this Court made a Ruling that it was of the opinion, considering all the facts and circumstances of this case and the submissions made by both the Counsel for the Appellant and the State, that in the interest of justice, this application should be determined on its merits.
- [11] Accordingly, the substantive matter was taken up for hearing before me on 8 August 2024. Counsel for both the Appellant and the State were heard. Both parties filed written submissions, and referred to case authorities, which I have had the benefit of perusing.

THE AFFIDAVIT IN SUPPORT FILED BY THE APPELLANT

- [12] The Notice of Motion to Appeal out of Time, is supported by an Affidavit in Support filed by the Appellant on 26 July 2022.
- [13] Therein, the Appellant submits inter alia, that he was arrested for this case on 31 January 2018 and was charged and produced in the Magistrate’s Court of Lautoka on 2 February 2018. His oral application for bail had been refused by the Learned Magistrate. However, on 29 March 2018, he was granted bail by the Learned

Magistrate, Magistrate's Court of Lautoka. A copy of the Bail Ruling dated 29 March 2018, has been annexed to the Affidavit as Annexure SFAK 1.

- [14] However, on the same day the Appellant had been arrested again by the Police on allegations of General Dishonesty Causing Loss and had been remanded into custody.
- [15] The Appellant deposes that he was taken again to the Lautoka Police Station for the recording of his Caution Interview and was kept in Police custody for between 7 to 10 days prior to being produced in Court.
- [16] He submits that he was continuously harassed and intimidated by the Police Officers every time he was released on bail. Some senior Police Officers were always finding ways to charge him with false offences and keep him in Police custody for days before releasing him.
- [17] The Appellant further deposes that he had filed an application for bail review in the High Court of Lautoka. The said application had been taken up for hearing on 31 July 2018. On 10 August 2018, the Appellant had been granted bail by the High Court of Lautoka. A copy of the Bail Ruling dated 10 August 2018, has been annexed to the Affidavit as Annexure SFAK 2.
- [18] The Appellant states that whilst in remand, he was subjected to physical abuse by Prison Officers, specifically on 6 July 2018 and 25 July 2018. On informing the Learned Magistrate of the said assault, the Magistrate had referred the Appellant to the Lautoka Hospital for medical treatment. Photographs of the injuries suffered by the Appellant have been annexed to the Affidavit as Annexure SFAK 3.
- [19] On 9 July 2018, the Appellant had lodged a complaint at the Lautoka Police Station with regard to the said assault at the Remand Centre. The Medical Examination Report of the Appellant has been annexed to the Affidavit as Annexure SFAK 4.
- [20] The Appellant deposes that on 31 July 2018, he had lodged another complaint at the Lautoka Police Station with regard to the assault at the Remand Centre. A second Medical Examination Report of the Appellant has been annexed to the Affidavit as Annexure SFAK 5.

- [21] The Appellant deposes that the reasons for the failure to file this appeal within time was due to the fact that he was more concerned of his life and the harassment and intimidation he was subject to by the Police Officers. He states that he was constantly taken to the Lautoka Police Station on false allegations made by unknown people and he verily believed that his life was at stake. He also submits that he had problems in getting a lawyer to represent him for his appeal, because every law firm that he had approached in Lautoka refused to take his case and did not wish to file his appeal.
- [22] As to the length of delay in filing this appeal, the Appellant deposes that he feared for his life because he was subject to harassment and intimidation by very prominent senior Police Officers with the assistance of his fellow Muslim persons who attended Lovu Mosque with him. He submits that he was threatened via email and phone calls by unknown persons and that his family was also threatened.
- [23] The Appellant submits that he was charged for cases which arose from alleged incidents which occurred over the last 8 to 10 years and most of those cases are still pending in the Magistrate's Court of Lautoka.
- [24] The Appellant states that he was applying for right of asylum as he personally believes that his human rights were breached and that he was subject to persecution. A copy of his Asylum Certificate granted and approved by the United Nations High Commission of Refugees has been annexed to the Affidavit as Annexure SFAK 6.
- [25] The Appellant further deposes that there are grounds of merit justifying this Court's consideration and verily believes that he has a very good prospect of success in his appeal. A copy of his Petition of Appeal which indicates his proposed Grounds of Appeal against Conviction and Sentence has been annexed to the Affidavit as Annexure SFAK 7.
- [26] The Appellant finally submits that the Respondent will not be unfairly prejudiced if time is enlarged for filing of this appeal, since there has been a miscarriage of justice caused to him.

PROPOSED GROUNDS OF APPEAL AGAINST THE CONVICTION AND SENTENCE OF THE RESIDENT MAGISTRATE, MAGISTRATE'S COURT OF LAUTOKA

[27] Following are the proposed Grounds of Appeal proposed by the Appellant:

GROUNDS OF APPEAL AGAINST CONVICTION

- (i) THAT the Learned Trial Magistrate erred in law and in fact by not advising the Appellant the right to response to the charges been amended on the day of the trial.
- (ii) THAT the Learned Trial Magistrate erred in law and in fact in convicting the Appellant/Applicant after relying on inadmissible evidence.
- (iii) THAT the Learned Trial Magistrate erred in law and in fact in relying on and/or considering and/or taking into account inadmissible and/or prejudicial evidence in finding the Appellant/Applicant guilty.

GROUNDS OF APPEAL AGAINST SENTENCE

- (i) THAT the Appellant appeals against sentence being manifestly harsh and excessive and wrong in principal in all the circumstances of the case.
- (ii) THAT the Learned Trial Magistrate took irrelevant matters into consideration when sentencing the Appellant/Applicant.

THE LAW

[28] Section 246 of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act) deals with Appeals to the High Court (from the Magistrate's Courts). The Section is reproduced below:

“(1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.

(2) No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission Against Corruption.

(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be

informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.

(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.

(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.

(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.

[29] Section 248 (1) of the Criminal Procedure Act provides that *“Every appeal shall be in the form of a petition in writing signed by the appellant or the appellant’s lawyer, and (filed) within 28 days of the date of the decision appealed against.”*

[30] However, Section 248 (2) of the Criminal Procedure Act sets out that *“The Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.”*

[31] Section 248 (3) of the Criminal Procedure Act stipulates:

“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 of 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."

[32] Section 256 of the Criminal Procedure Act refers to the powers of the High Court during the hearing of an Appeal. Section 256 (2) and (3) provides:

"(2) The High Court may —

(a) confirm, reverse or vary the decision of the Magistrates Court; or

(b) remit the matter with the opinion of the High Court to the Magistrates Court; or

(c) order a new trial; or

(d) order trial by a court of competent jurisdiction; or

(e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or

(f) the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed."

PRINCIPLES RELATING TO ENLARGEMENT OF TIME FOR FILING OF APPEALS

[33] It has now been well established that there are several factors that an Appellate Court needs to take into consideration when dealing with such applications.

[34] In *(Kamlesh) Kumar v. State; (Mesake) Sinu v. State* [2012] FJSC 17; CAV0001.2009 (21 August 2012), His Lordship Chief Justice Anthony Gates has elaborated on the

principles to be applied or considered by the Appellate Courts when exercising its discretion in such matters. These factors are:

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

ANALYSIS

[35] In this case the Appellant was found guilty and convicted of the two counts of Conspiracy to Defeat Justice and Interference with Witnesses, contrary to Section 190 (a) of the Crimes Act No. 44 of 2009 (Crimes Act), by the Learned Resident Magistrate, Magistrate's Court of Lautoka, on 12 October 2018. He was sentenced in absentia on 7 December 2018.

[36] In terms of Section 248 (1) of the Criminal Procedure Act, an appeal against this decision had to be filed within 28 days of the decision. Therefore, in this matter, the appealable period lapsed on or about 5 January 2019.

[37] This application was filed in the High Court of Lautoka only on 26 July 2022. Thus, these proceedings have been instituted over 42 months after the appealable period had lapsed.

[38] In terms of Section 248 (2) of the Criminal Procedure Act it is stated that the Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this Section for filing of an appeal. Section 248 (3) of the Criminal Procedure Act broadly sets out as to what good cause shall deem to include.

- [39] In *(Kamlesh) Kumar v. State; (Mesake) Sinu v. State* (supra), the Supreme Court has elaborated on the principles to be applied or considered by the Appellate Courts when exercising its discretion in such matters. These include the reasons for the failure to file the appeal within time and length of the delay.
- [40] The Appellant deposes in his Affidavit that the reasons for the failure to file this appeal within time was due to the fact that he was more concerned of his life and the harassment and intimidation he was subject to by the Police Officers. He states that he was constantly taken to the Lautoka Police Station on false allegations made by unknown people and he verily believed that his life was at stake. He also submits that he had problems in getting a lawyer to represent him for his appeal, because every law firm that he had approached in Lautoka refused to take his case and did not wish to file his appeal.
- [41] As to the length of delay in filing this appeal, the Appellant deposes that he feared for his life because he was subject to harassment and intimidation by very prominent senior Police Officers with the assistance of his fellow Muslim persons who attended Lovu Mosque with him. He submits that he was threatened via email and phone calls by unknown persons and that his family was also threatened.
- [42] However, all the above reasons may have been justified if the Appellant had remained in Fiji. In this case, it is manifest that the Appellant had left the country even at the time the sentence in this matter was pronounced by the Learned Resident Magistrate Lautoka.
- [43] As stated previously, at page 87 of the Magistrate's Court Record it is revealed that on 26 October 2018 the Appellant had not been present in Court and a bench warrant had been issued for his arrest. Later the same day, the Learned Magistrate had been informed that as per the information received from the Department of Immigration, the Appellant had left the country. At page 88 of the Magistrate's Court Record it is stated: *"Court also finds that the accused is intentionally evading the Court proceedings by flying out of the country"*.

[44] Therefore, it is clear from the above, that by October 2018, the Appellant had left the country.

[45] If the Appellant had the desire to file an appeal he could have done so within reasonable time following his departure from Fiji. The purported threats to his life that he has adverted to in this application, would have ceased by that time. However, in the instant case, the Appellant has filed this application over 42 months later (over three and a half years later). The length of delay is not reasonable and cannot be justified in any manner. Therefore, this Court cannot accept the reasons provided by the Appellant for the failure to file this appeal within time.

[46] However, in terms of the principles set out in *(Kamlesh) Kumar v. State; (Mesake) Sinu v. State* (supra), even where there has been substantial delay, nonetheless the Appellate Court has to consider whether there are grounds of appeal that will probably succeed. In other words, whether there is a ground of merit justifying this Court's consideration.

[47] Therefore, it is still necessary for this Court to go into the proposed Grounds of Appeal filed by the Appellant to determine this fact.

[48] Originally the proposed Grounds of Appeal were filed against the conviction and sentence. However, during the hearing of this matter, the Learned Counsel appearing on behalf of the Appellant submitted that she is withdrawing the Grounds of Appeal against sentence and only proceeding with the Grounds of Appeal against the conviction.

[49] The Grounds of Appeal against conviction are as follows:

- (i) That the Learned Trial Magistrate erred in law and in fact by not advising the Appellant the right to response to the charges been amended on the day of the trial.
- (ii) That the Learned Trial Magistrate erred in law and in fact in convicting the Appellant/Applicant after relying on inadmissible evidence.

(iii) That the Learned Trial Magistrate erred in law and in fact in relying on and/or considering and/or taking into account inadmissible and/or prejudicial evidence in finding the Appellant/Applicant guilty.

[50] As per the Magistrate's Court Record it is revealed that the Appellant was first produced in Court on 2 February 2018. On that day he was charged with the two counts of Conspiracy to Defeat Justice and Interference with Witnesses, contrary to Section 190 (a) of the Crimes Act. The charges had been read and explained to the Appellant on the said day (see pages 77 and 78 of the Magistrate's Court Record).

[51] Subsequently, on 2 March 2018, the State had filed the Amended Charge. The said charges were again read out and explained to the Appellant as revealed at page 79 of the Magistrate's Court Record. At page 81 of the Magistrate's Court Record it is stated that on 25 June 2018, the Appellant had pleaded not guilty to the two counts. Therefore, it seems that although there were three charges set out in the Amended Charge, the Learned Magistrate had only proceeded in respect of the two charges of Conspiracy to Defeat Justice and Interference with Witnesses, contrary to Section 190 (a) of the Crimes Act.

[52] Section 190 of the Crimes Act reads as follows:

190. A person commits a summary offence if he or she —

(a) conspires with any other person to knowingly and maliciously accuse any person falsely of any crime; or

[Emphasis is mine]

(b) conspires to do anything to obstruct, prevent, pervert or defeat the course of justice; or

(c) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from appearing and giving evidence, or endeavours to do so; or

(d) obstructs or in any way interferes with or knowingly prevents the execution of any legal process (civil or criminal); or

(e) in any way obstructs, prevents, perverts or defeats, or attempts to obstruct, prevent, pervert or defeat, the course of justice.

[53] Therefore, in this case, in order for the prosecution to prove the first count of Conspiracy to Defeat Justice and Interference with Witnesses, they must establish beyond any reasonable doubt that;

- (i) The Accused/Appellant;
- (ii) During the specified period (in this case between the 1 November 2017 to 31 December 2017);
- (iii) At Lautoka, in the Western Division;
- (iv) Conspired with Petero Yasau Ravoka;
- (v) To knowingly and maliciously;
- (vi) Accuse Tariq Sadat Ali Bahadur falsely of the crime of Sexual Assault.

[54] Similarly, in order for the prosecution to prove the second count of Conspiracy to Defeat Justice and Interference with Witnesses, they must establish beyond any reasonable doubt that;

- (i) The Accused/Appellant;
- (ii) During the specified period (in this case between the 1 November 2017 to 31 December 2017);
- (iii) At Lautoka, in the Western Division;
- (iv) Conspired with Mohammed Nafiz Khan;
- (v) To knowingly and maliciously;
- (vi) Accuse Tariq Sadat Ali Bahadur falsely of the crime of Sexual Assault.

[55] The Appellant's first Ground of Appeal against conviction is that the Learned Trial Magistrate erred in law and in fact by not advising the Appellant the right to response to the charges been amended on the day of the trial. This must be in relation to the amendment to the charges that the prosecution sought to make at the end of the case for the prosecution. At page 174 of the Magistrate's Court Record, it is stated as follows:

“Sir, before the closure of the prosecution’s case, there is only one minor change to the charge(s) it will not affect the case in any way. The charge(s) earlier had Dennis Khan it is written there with another... (the words) with another may be deleted”.

[56] Section 182 of the Criminal Procedure Act deals with *variance between charge and evidence and amendment of charge*. The section is reproduced below:

182. — (1) Where, at any stage of the trial before the close of the case for the prosecution, it appears to the court that the charge is defective (either in substance or in form), the court may make such order for the alteration of the charge, either by —

(a) amendment of the charge; or

(b) by the substitution or addition of a new charge —

as the court thinks necessary to meet the circumstances of the case

(2) Where a charge is altered under sub-section (1) —

(a) the court shall call upon the accused person to plead to the altered charge; and

(b) the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his lawyer and, in such last-mentioned event, the prosecution shall have the right to re-examine any witness on matters arising out of the further cross-examination.

(3) Variance between the charge and the evidence produced in support of it with respect to —

(a) the date or time at which the alleged offence was committed; or

(b) the description, value or ownership of any property or thing the subject of the charge —

is not material and the charge need not be amended for such variation —

(4) Where the variation is with respect to the date or time at which the alleged offence was committed the court shall determine that the proceedings have in fact been instituted within the time (if any) limited by law for their institution, and shall make any appropriate order to enforce the applicable time limits.

(5) Where an alteration of a charge is made under sub-section (1) or there is a variance between the charge and the evidence as described in sub-section (3), the court shall, if it is of the opinion that the accused has been misled or deceived, adjourn the trial for such period as may be reasonably necessary.

- [57] As per the above provision, at any stage of the trial before the close of the case for the prosecution, if it appears to the Court that the charge is defective (either in substance or in form), the Court may make such order for the alteration of the charge by way of an amendment to the charge.
- [58] It is as per this provision of law that the Learned Magistrate has permitted the amendment to the charges that the prosecution sought to make at the end of the case for the prosecution.
- [59] It is the opinion of this Court that this was a minor technical amendment that was made to the charges and that no prejudice at all was caused to the Appellant as a result of this amendment. Neither could it be said that the Appellant was misled or deceived as a result of this amendment to the charges. Therefore, the first Ground of Appeal against conviction is without merit.
- [60] I find that the second and third Grounds of Appeal against conviction are interconnected and can be dealt with together. They are that the Learned Magistrate erred in law and in fact in finding the Appellant guilty and convicting him relying on inadmissible evidence or evidence that was prejudicial to him.
- [61] The above Grounds of Appeal against conviction are very broad in nature. The Appellant does not specify as to what is the portion of the evidence that he considers inadmissible or prejudicial to him. It must be noted that the transcript of the evidence led during this trial runs from pages 94 to 229 of the Magistrate's Court Record. The transcript of the evidence of the prosecution witnesses is found at pages 94 to 174 of the Magistrate's Court Record.
- [62] The Learned Magistrate's Judgment is found at pages 10 to 19 of the Magistrate's Court Record. He has duly summarized the evidence of the nine prosecution witnesses led during the trial and also the evidence of the Appellant and the four witnesses called by the defence during the trial. Whilst summarizing the evidence of the witnesses, he has gone on to analyse the evidence in relation to the elements of the offence of Conspiracy to Defeat Justice and Interference with Witnesses, contrary to Section 190 (a) of the Crimes Act. He has identified the relevant elements of the

offence at pages 11-12 of the Magistrate's Court Record. Accordingly, the Learned Magistrate has found the Appellant guilty of the two charges and convicted him.

[63] I find that the Learned Magistrate has relied on admissible evidence prior to finding the Appellant guilty and convicting him. It cannot be said that the Learned Magistrate has erred in law and in fact in convicting the Appellant after relying on inadmissible evidence. Therefore, the second and third Grounds of Appeal against conviction are also without merit.

FINAL ORDERS

[64] In light of the above, the final orders of this Court are as follows:

1. Leave for enlargement of time to file Petition of Appeal is disallowed.
2. The application is dismissed.
3. There will be no order for costs.



At Lautoka

This 13th Day of September 2024


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

Solicitors for the Appellant:

Messrs Fortis Lawyers & Consultants, Barristers & Solicitors, Nadi.

Solicitors for the Respondent:

Office of the Director of Public Prosecutions, Lautoka.