

IN THE COURT OF APPEAL, FIJI ISLANDS

AT SUVA

CRIMINAL APPEAL NO. AAU0074 OF 2007  
(High Court Criminal Appeal No. HAA067 of 2007L)

BETWEEN : TOMASI VUNIYACAWA

Appellant

AND : THE STATE

Respondent

Coram : The Hon Justice Devendra Pathik  
Justice of Appeal

Counsel : Appellant – In Person

: Ms. A. Driu for the Respondent

Date of Hearing  
& Ruling : 16<sup>th</sup> January 2008

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**RULING**  
(Leave to Appeal)

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- [1] This is an application by the Appellant seeking leave to appeal from a judgment on sentence of Govind J. in the High Court delivered on 20 January 2007 when he dismissed the appeal as being without merit and affirmed the sentence of imprisonment of 5 years imposed by the Learned Trial Magistrate at Nasinu.
- [2] The Appellant with others was charged with one count of Robbery with Violence contrary to **section 293** of the Penal Code Cap. 17. He pleaded guilty.

- [3] When asked what he had to submit on this application all he said was that the sentence is both harsh and excessive and he seeks a reduction in the sentence. He also complained that he had not seen the Record of the Magistrates Court when he appeared before the appeal Judge whilst admitting to Court that he did not raise this with the learned Judge.
- [4] The Appellant further told this Court that he is asking to be forgiven and that he will not appear in Court again as he has learnt his lesson. He is a 30 year old carpenter, married with 2 children.
- [5] The facts of the case as outlined by learned Judge are “*that on the 21<sup>st</sup> of November 2005 he with 4 others entered the Office of the complainant and threatened him with an empty whisky bottle and a knife and stole from him a gold chain and pendant, a gold bracelet, a wristwatch, a camera mobile phone, sunglasses and laptop and other items to the total value of \$30,400.00*”. None of the property stolen was recovered.
- [6] The learned Judge agreed with Counsel for the State that the sentence was ‘*if anything on the lenient side*’. The appellant has 17 previous convictions. His Lordship further agreed with the remarks of the Trial Magistrate that “*an innocent person was attacked and such offences ought to be dealt with seriously as such offences are prevalent and should not be allowed to get any worse.*”
- [7] The learned State Counsel opposed the leave application as on this second appeal, as required under s22 of the **Court of Appeal Act**, the appellant has not shown that the ‘*sentence was an unlawful one or was passed in consequence of an error of law*’. She said that the sentence is neither harsh nor excessive.

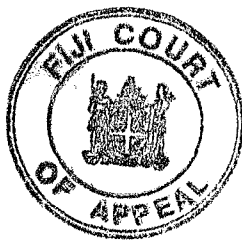
- [8] On appeal from High Court in its appellate jurisdiction in criminal cases section 22(1) provides:

**“22(1) Any party to an appeal from a Magistrate’s Court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a Magistrate’s Court:**

**(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –**

**(a) that the sentence was an unlawful one or was passed in consequence of an error of law; or....”**

- [9] I am not satisfied that the appellant has shown cause as required by the said **section 22** of the Act. I therefore determine that the leave application is bound to fail.
- [10] For the above reasons I refuse to grant leave to appeal and order that the application be dismissed.



  
(D. Pathik)

Judge of Appeal