

IN THE COURT OF APPEAL FIJI ISLANDS

SUVA

[Criminal Appeal No. AAU 045 of 2008]

BETWEEN : ELIKI MOTOTABUA  
(APPELLANT)  
  
AND : THE STATE  
(RESPONDENT)

BEFORE THE HON.  
JUDGE OF APPEAL : HON. JUSTICE JOHN E. BYRNE  
  
: APPELLANT IN PERSON  
  
: MS N. TIKOISUVA (FOR THE RESPONDENT)

DATE OF HEARING  
AND RULING : 1<sup>st</sup> OCTOBER 2009

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**RULING**

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- [1] The Appellant is well on the way to being declared a vexatious litigant. He seems to have an almost insatiable appetite for seeking to abuse the process of this Court. When one combines that with a stubborn refusal to be dissuaded from his own views on a matter of law, the time has come to prevent any further attempts by him to abuse the court's process.
- [2] On the 9<sup>th</sup> of July 2009 I gave a ruling refusing him leave to appeal to the Full Court and that he be granted legal aid.
- [3] On the 22<sup>nd</sup> of February 2005 the appellant was discharged by the Magistrate's Court on a charge of being in possession of drugs. The discharge order was made under Section 201(2)(b) (ii) of the Criminal Procedure Code. A discharge order is not a bar to subsequent proceedings for the same offence.
- [4] On 6<sup>th</sup> February 2008, two years after the date of discharge, the appellant filed an application to the High Court to appeal out of time against the discharge Order. The ground given for appealing the discharge order was that the Police wanted to re-charge the appellant for an offence for which he was discharged two years previously. He appeared before Goundar, J on the 10<sup>th</sup> of April 2008 and was self-represented.
- [5] Counsel for the State submitted that by a letter dated 30<sup>th</sup> October 2006 the Director of Public Prosecutions advised the Police that the Appellant could not be re-charged with the offence for technical reasons. A copy of the letter was given to the Appellant in the High Court.

- [6] Goundar, J upheld the submission by the state that there was no merit in the appellant's application. He held, in a ruling delivered on the 11<sup>th</sup> of April 2008, that the letter dated 30<sup>th</sup> of October 2006 from the Director of Public Prosecutions made it abundantly clear that the State would not re-charge the Appellant for the offence for which he was discharged on 22<sup>nd</sup> of February 2005. One would have thought that would be enough to satisfy any normal litigant but it did not satisfy the appellant.
- [7] On 24<sup>th</sup> November 2008 he appeared before me in this Court when I informed him that I would consider whether he should be granted legal aid to appeal against the ruling of Goundar, J.
- [8] On the 19<sup>th</sup> of January 2009 he appeared before me again when I told him that I would not recommend that he should receive legal aid to pursue any further appeal. I relied on **Section 35** of the Court of Appeal Act which empowers a single Judge of the Court among other things to :
- (a) give leave to appeal to the full court; and
  - (f) to recommend that legal aid be granted to an appellant.

Subsection 2 states that if on the filing of an application for leave to appeal a Judge of the Court determines that the appeal is vexatious or frivolous or is bound to fail because there is no right of appeal or right to seek leave to appeal, the Judge may dismiss the appeal.

- [9] During my brief reasons for refusing leave I referred to the judgment of the Supreme Court in Criminal Appeal No. CAV 0004 of 2005S between the Appellant and the State. In that case the appellant applied for leave to file 25 additional grounds of appeal from a decision of the Supreme Court in February 2008. The Court said, referring to these additional grounds: ***“none of them raises any new matter. Most of them involved a contemptuous canvassing of this Court’s reasons”***.
- [10] The appellant appeared before me today in this matter (AAU 0025 of 2008) and sought leave to apply for legal aid to enable him to appeal against the decision of the High Court given by Goundar, J.
- [11] I informed the appellant that the matter was closed or ***‘res judicata’*** I had already dealt with his application and refused it in my ruling of the 9<sup>th</sup> of July 2009.
- [12] That did not satisfy the appellant who in a manner bordering on insolence stated that I had not dealt with the matter because the number of the appeal assigned to this case was wrong. It should not have been Criminal Appeal No. AAU 0025/2008 but rather AAU0045/2008. The alleged mistake must have been made by the Court Registry. When I informed the appellant that if this were so, and I did not accept it was, he had a duty to inform me at the time that the wrong number had been assigned to this matter.
- [13] He then said that it was not number 25 but number 35 of 2008 whereupon I told him that this was pure invention as he knew very well that what I said was true. He himself had accepted the alleged mistake in all his appearances before me.

- [14] Not only is the appellant a person of very dubious credibility but he also is determined to make a nuisance of himself in the courts. This will not be allowed. The Courts have other more important matters to deal with than those of the appellant who refused to accept "No" for an answer. In these circumstances I direct that the court registry refuse to accept any further correspondence or applications from the appellant in respect of criminal appeal Numbers AAU 0025 and AAU 0045 of 2008. These cases are now closed and will not be re-opened.

Dated at Suva this 1<sup>st</sup> day of October 2009.



A handwritten signature in cursive script, reading "John E. Byrne", is written over a horizontal dotted line.

JOHN E. BYRNE

JUDGE OF APPEAL