

**IN THE COURT OF APPEAL**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO: AAU0113 OF 2011**  
**(H Ct Case No. HAA 027/11)**

**BETWEEN** : **KELEMEDI NATARAKU** *Appellant*

**AND** : **THE STATE** *Respondent*

**BEFORE** : **Mr. Justice Daniel Goundar**

**COUNSEL** : **No Appearance of Appellant**  
**Ms M. Fong for Respondent**

**Date of Hearing** : **26 November 2013**

**Date of Ruling** : **27 November 2013**

**RULING**

[1] This is an appeal against a judgment of the High Court at Lautoka in its appellate jurisdiction. Appeals from the appellate jurisdiction of the High Court fall within section 22 of the Court of Appeal Act.

[2] On 22 July 2011, the appellant was sentenced to 24 months' imprisonment after he pleaded guilty to a charge of burglary in the Magistrates' Court at Nadi. He appealed against sentence to the High Court, and on 26 September 2011, the appeal was allowed and the sentence was reduced to 20 months' imprisonment by Madigan J.

- [3] On 8 November 2011, this appeal was filed. The appeal is out of time by thirteen days. Leave is required for an extension of time to appeal outside the statutory 30-day appeal period. The court is more likely to grant an extension of time if satisfied that a grave injustice will occur if the appeal is not heard (*Rasaku v State* CAV009, 0013.2009). The documents filed by the appellant provide no explanation for the delay.
- [4] When the matter came before me for leave hearing, I was informed by the Registry that the appellant had served his sentence and was released from prison in 2012. After being released from prison, the appellant had not been in contact with the Registry, nor has he given his residential address.
- [5] The hurdle for the appellant is not only that his appeal is out of time, but his right of appeal is limited to a question of law only under section 22 of the Court of Appeal Act. A single justice of appeal has power under section 35 (2) of the Court of Appeal Act to dismiss an appeal summarily in the absence of the appellant if satisfied that the appeal is bound to fail because there is no right of appeal (*Raura v State* Crim. App. No. CAV0010 of 2005S).
- [6] Perusal of the appellant's grounds of appeal shows he is not raising any question of law only in relation to his appeal against sentence. Although the power to dismiss an appeal summarily in the absence of the appellant should be exercised sparingly, I am satisfied that in this case the appeal should be dismissed for two reasons. First, the appeal is bound to fail because there is no right of appeal. Second, the appeal against sentence is moot because the appellant had already served his sentence and had been released from prison.

**Result**

[7] Leave to appeal out of time is refused.

Appeal dismissed under section 35(2) of the Court of Appeal Act.



**DANIEL GOUNDAR**

**JUDGE**

**Solicitors:**

No Appearance of Appellant

Office of the Director of Public Prosecutions for Respondent.