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IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 21 of 1986

Between: WATISONI BAINIVANUA Appellant

- and -

R E G I N A M Respondent

Appellant in person.
R. Chand for the Respondent.

Date of Hearing: 16th September, 1987

Delivery of Judgment: 24th September, 1987

JUDGMENT OF THE COURT

Speight, V.P.

On 1st March 1985 the Resident Magistrate sitting at Lautoka dealt with the above named appellant on 11 charges. In respect of the two most serious he imposed 4 years imprisonment and 2½ years cumulative - an effective sentence of 6½ years.

The prosecution appealed on the ground that this was manifestly inadequate (section 308 of the Criminal Procedure Code Cap. 21). On the 24th May 1985 the matter came before the Supreme Court at Lautoka when counsel for the Crown and the accused in person were heard. The learned Judge on appeal accepted the Crown's submission and substituted increased sentences on some of the more serious convictions - in particular a sentence of 12 years was imposed for the gravest offence.

Appellant appealed to this court and that was heard in June 1986. Although a second appeal does not lie against severity of sentence (Section 22 Court

of Appeal Act Cap 12) the question raised in this appeal was whether the sentence imposed exceeds the maximum which can be imposed by the Supreme Court in its appellate jurisdiction (Sections 7(a) and 12(2)(b) of the Criminal Procedure Code) - and hence amounted to a point of law.

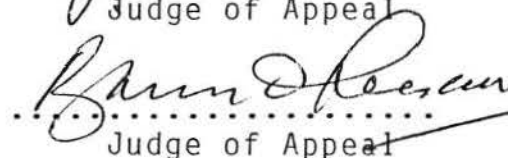
This court, in a judgment of 23 July 1986, ruled that in the circumstances the maximum available was 10 years and the matter was sent back to the Supreme Court for further consideration. On that occasion the learned Judge revised the challenged sentences in accordance with the ruling given and imposed sentences of 5 years in lieu of 6 years as previously and made the sentence on the gravest offence cumulative on others - so imposing an effectual 10 years imprisonment which would have been within the jurisdiction of the resident magistrate and hence correspondingly of the Supreme Court on appeal.

Against this the appellant has again appealed. We decided to hear him, for he was acting without counsel, and the matter has had this somewhat protracted history.

However section 22 of the Court of Appeal Act already referred to makes it clear that this court has no jurisdiction to entertain an appeal against severity of sentence imposed in the Supreme Court on appeal from the Magistrate's Court. The Appeal must be dismissed. We add however, that as far as merit is raised, the offence in respect of which the cumulative imprisonment was imposed was extremely grave, and to have dealt with it otherwise would have been to fail to recognise its gravity.


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Vice-President


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Judge of Appeal


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Judge of Appeal