

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Civil Appeal No. AAU 94/05
(High Court Criminal Action No. HAC 22/03S)

BETWEEN:

FORAETE EPINISI JIONE

Appellant

AND

THE STATE

Respondent

Coram: Scott, JA
Pathik, J
Winter, J

Hearing: 10 August 2006

Counsel: *Appellant in person*
R. Gibson with A. Singh for the Respondent

Judgment: 16 August 2006

JUDGMENT OF THE COURT

[1] This is an application for bail pending appeal heard by the Full Court under the provisions of section 35 (3) of the Court of Appeal Act.

- [2] On 31 October 2005, after trial in the High Court, the Appellant was convicted of five counts of fraudulent falsification of accounts and one count of larceny by servant, with the total sum involved amounting to \$179,153.27. He was sentenced to three years imprisonment.
- [3] Ten grounds of appeal against the conviction were filed. They may be summarized as follows:
- (i) The delay in bringing the Appellant to trial was such as to deny him a fair trial;
 - (ii) the Appellant was not advised of his right to counsel;
 - (iii) the trial date was brought forward thus depriving the Appellant of his opportunity to instruct counsel;
 - (iv) some of the prosecution evidence was wrongly admitted;
 - (v) the prosecution was wrongly permitted to serve copies of disclosures during the course of the trial.
- [4] The Appellant, who was a bank officer when the offences are alleged to have been committed, also appeals against the sentence on the ground that it was harsh and excessive.
- [5] The statutory presumption in favour of granting bail provided by section 3 (3) of the Bail Act 2002 is displaced by section 4 (b) of the Act where, as in this case, the Appellant has been convicted and is appealing against his conviction. In these circumstances, the matters which must be taken into account by a court considering an application for bail are:

- (i) the likelihood of success in the appeal;
- (ii) the likely time before the appeal hearing; and
- (iii) the proportion of the original sentence which will have been served by the Appellant when the appeal is heard.

[6] The record of the High Court trial has now been prepared and the appeal has been listed for hearing in the November sessions of the court. It is therefore known that the appeal will be heard in approximately two and half months by which time the Appellant will have served approximately twelve months or one third of the sentence imposed upon him.

[7] In his oral submissions to us the Appellant (who had also filed impressive written submissions) emphasized three principal factors which he suggested gave rise to a very real likelihood that his appeal would be successful. These factors were:

- (a) the delay in prosecuting him, in breach of his constitutional right to a fair trial within a reasonable time (sections 29 (1) and (3) of the 1997 Constitution);
- (b) the breach of his right to be represented by counsel at the trial (section 28 (d) of the Constitution); and
- (c) the failure to comply with the provisions of section 192 of the Criminal Procedure Code (Cap. 21).

[8] The Appellant told us that his trial had not been fair. He suggested that the trial judge wrongly permitted a late

amendment to the information which resulted in his defence being prejudiced, that she wrongly allowed copies of written statements to be edited and that she ought to have refused the prosecution's application to call an additional witness who furthermore had been present in court during the course of the trial.

[9] Mr. Gibson, who also filed helpful written submissions, conceded that some aspects of what was not a simple trial may perhaps have been slightly unusual. It was possible that the Appellant, who was representing himself, had misinterpreted what had occurred. He did not however accept that any of the Appellant's complaints demonstrated every chance of success on appeal.

[10] As we explained to the Appellant, it was not for this court, at this stage and at the hearing of this application to reach a definite conclusion on any of the points raised. Some of the matters raised by the Appellant were plainly more substantial than others. Some appeared to be premised on a misunderstanding of the legal position. Some did not appear, on their face, to be consistent with the record. Having, however, considered what the Appellant told us, what Mr. Gibson said in reply and having the benefit of the record before us, we did not consider that a likelihood of success on the appeal had been demonstrated.

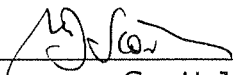
[11] As already noted, the appeal against conviction and sentence will be heard in the November sessions of the court. By then the Appellant will have served one third of the sentence imposed upon him. Taking these elements into account together with the view we have taken of the grounds of appeal we are not satisfied

that the Appellant has been able to demonstrate exceptional circumstances justifying a grant of bail. Accordingly the application is refused.

RESULT:

Application dismissed.

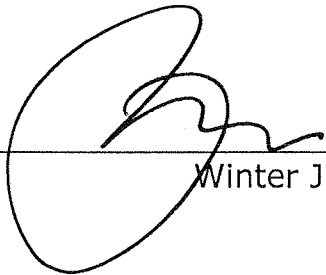




Scott J.A.



Pathik J.



Winter J.

Solicitors:

Office of the Director of Public Prosecutions for the Respondent