

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

**CRIMINAL APPEAL NO. AAU0038 OF 2008S**  
(High Court Criminal Action No. HAC 120 of 2007S)

**BETWEEN:**            **LOLE VULACA, RUSIATE KOROVUSERE**  
                                 **AND PITA MATAI**

**Appellants**

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

**Respondent**

**In Chambers at Court:**     **Justice Izaz Khan, Judge of Appeal**

**Hearing:**                    **Monday, 30<sup>th</sup> June 2008, Suva**

**Counsel:**                    **I. Khan for the Appellants**  
                                 **A. Prasad for the Respondent**

**Date of Decision:**         **Thursday, 3<sup>rd</sup> July 2008, Suva**

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**DECISION**

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1. Lole Vulaca, Rusiate Korovusere and Pita Matai were all tried by Shameem J and convicted on 23<sup>rd</sup> April, 2008. Lole Vulaca and Rusiate Korovusere were sentenced for life and Pita Matai was sentenced for two years.
2. An appeal against conviction and sentence was filed on 2<sup>nd</sup> May, 2008. This was clearly within the thirty days given for the filing of appeals in the Court of Appeal under s.26(1) of the Court of Appeal Act Cap.12.

3. In accordance with the procedure of the Court Registry, the defendants were notified on 27<sup>th</sup> June, 2008 that an application for leave to appeal would be heard by a single judge of the Court of Appeal at 2.15 pm on 30<sup>th</sup> June, 2008 and that all parties were required to file submissions.
4. I heard the application on 30<sup>th</sup> June, 2008 when Mr Iqbal Khan appeared for all the applicants and Ms Ashisna Prasad appeared for the State.
5. I had submissions from the State but none from the applicants. Mr Khan said that he did not have time to prepare and file submissions because of the shortness of the notice bringing this application before the court. But he did not seek an adjournment and the matter was heard.
6. In his submissions, Mr Khan took me through the grounds of appeal and submitted that the grounds of appeal on conviction and sentence raised questions of law and he relied on s.21 (1) (a) of the ***Fiji Court of Appeal Act*** as the justification for the appeal without leave.
7. He said that these grounds would be properly particularised after the records were available.
8. Ms Prasad submitted that as no particulars of the grounds of appeal were given it was impossible for the State to discern whether the grounds related to questions of law only or both of law and fact or of only fact.

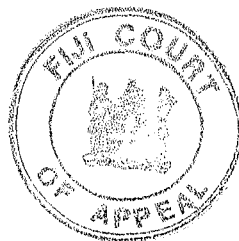
9. Mr Khan said that the grounds could not be particularised because the records were not available and Ms Prasad said that it was not the practice of the court to prepare the records without leave to appeal in cases where leave was necessary.

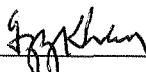
10. I can sympathise with both counsel but I do not know what the solution would be.

11. Although the grounds of appeal are not particularised, they do raise questions of law which when properly particularised would constitute arguable grounds.

12. As for the first two applicants, that is, Lole Vulaca and Rusiate Korovusere, the appeal on conviction and sentence, being for murder does not require leave under s.21(1)(a) and (c). In relation to the third applicant Pita Matai leave is required as his sentence is not one fixed by law.

13. As the appeal was filed in time and as there would appear to be some strength in the grounds of appeal, consistently with the principles espoused in cases such as R v. Knight (1995) CRNZ 332 and Ilaisa Sousou v. The State [2003] FJCA 41; AAU0002/2003, I grant leave to appeal for all three applicants.



  
Izaz Khan, JA

At Suva  
Thursday 3<sup>rd</sup> July, 2008