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

CRIMINAL APPEAL NO. AAU0077 OF 2008S
CRIMINAL APPEAL NO. AAU0091 OF 2008S
CRIMINAL APPEAL NO. AAU0097 OF 2008S
(High Court Criminal Action No. HAC 94 of 2006L)

BETWEEN:

SAKEASI ROKO AND OTHERS

Appellants

AND:

THE STATE

Respondent

In Chambers: Randall Powell, Justice of Appeal

Hearing: Wednesday, 5th November 2008, Suva

Counsel: Appellants in Person
A. Driu for the Respondent

Date of Ruling: Wednesday 5th November 2008, Suva

RULING

Sakeasi Roko – AAU0077 of 2008S

- [1] On 30 January 2007 Sakeasi Roko (“Mr Roko”), Sereimaia Nalulu (“Mr Nalulu”) and Aporosa Nalimavaruru (“Mr Nalimavaruru”) pleaded guilty that on 12 August 2006 at Matawalu village they had unlawful carnal knowledge of a 15 year old girl without her consent. The girl was a virgin and she was raped by these three and abetted by two others.

- [2] The trial judge sentenced them to five years imprisonment. He started with a sentence of 7 years, added 3 years for the girl's age, her virginity and the fact that it was rape by a gang, then deducted 5 years for mitigating factors namely their age, the fact that they were first offenders, that reconciliation had taken place and most importantly that by their pleas of guilty they had saved the victim from giving evidence before the Court.
- [3] Mr Roko sought to appeal in a document dated 18 February 2008 which reached the Court on 30 July 2008.
- [4] Section 26(1) of the Court of Appeal Act provides:
- (1) *Where a person convicted desires to appeal under this Part to the Court of Appeal, or to obtain leave of that Court to appeal, he shall give notice of appeal or notice of this application for leave to appeal in such manner as may be directed by the rules of Court within thirty days of the date of conviction or decision. Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given, may be extended by the Court of Appeal.*
- [5] The appeal or leave appeal is fifteen months out of time or nearly twelve months if the date of the document is considered.
- [6] As this court held in *Vimal Construction & Joinery Works Limited & Anor v Vinod Patel & Company Limited* [2008] CVA ABU0093 of 2006S, "litigants should not assume that leave to appeal will be given to bring or maintain appeals or other applications where those appeals or applications are out of time unless there are clear and cogent reasons for doing so it is difficult to see why "merit" of the appeal or proceeding, without more, would justify an extension of time except where the delay was minimal and no prejudice was occasioned by a respondent."

Vimal Construction was a civil case but the principle applies equally to criminal proceedings except to the extent that in criminal matters a delays of up to three months have been often been permitted where the appellant has been in prison and where there are difficulties in making and getting the application to the Court.

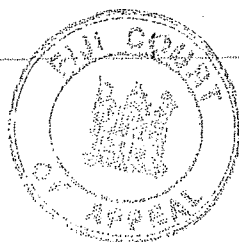
- [7] In these proceedings the delay is not minimal and no good reasons are advanced for the delay. Moreover the proposed grounds, which are principally that that the trial judge erred in assuming that the victim was a virgin in the absence of a medical certificate, don't raise any issues of law and are hopeless, especially when it is borne in mind that he pleaded guilty. If it is an appeal against sentence then in my opinion the only possible error that the trial judge made was in its leniency.
- [8] Leave for Mr Roko to appeal out of time is refused.

Mr Nalulu –AAU0091 of 2008S

- [9] Mr Nalulu sought to appeal in a document dated 26 August 2008 which reached the Court on 17 September 2008.
- [10] The appeal or leave appeal is eighteen months or more out of time. Mr Nalulu seeks a non-custodial sentence.
- [11] The delay is not minimal and no good reasons are advanced for the delay except for late discovery of what he asserts to be his constitutional rights and that he was "*ill-advised by other inmates that my sentences appeal has no merit.*"
- [12] The advice from the other inmates was good advice. The proposed grounds are an eclectic collection of nonsense, don't raise any issues of law and are bound to fail.
- [13] Leave for Mr Nalulu to appeal out of time is refused.

Mr Nalimavaruru – AAU0097 of 2008S

- [14] Mr Nalimavaruru sought to appeal in a document dated 4 August 2008 which reached the Court on 1 October 2008. Thus his application is between eighteen and twenty months.
- [15] The delay is not minimal and no good reasons are advanced for the delay except for lack of legal upbringing having only recently learned from the Legal Aid Commission “*that every convicted prisoner has the right to appeal against his sentence.*”
- [16] That is not right of course, at least if the appeal is from the High Court in its original jurisdiction: see section 21(1)(c) of the *Court of Appeal Act*.
- [17] The proposed grounds are don't raise any issues of law, and are without merit. They include the assertion that the 5 year sentence was “*harsh and excessive*”. In fact if an appeal was allowed all three would-be appellants would run a significant risk that their sentences would be increased significantly.
- [18] Leave for Mr Nalimavaruru to appeal out of time is refused.



Randall Powell

Randall Powell
Justice of Appeal

Solicitors:

Appellants in Person
Office of the Director of Public Prosecutions, Suva for the Respondent