

IN THE FIJI COURT OF APPEAL

SUVA, FIJI

CRIMINAL JURISDICTION

[Criminal Appeal No. AAU 0027 of 2009]

BETWEEN : TEVITA CAMA

APPELLANT

AND : THE STATE

RESPONDENT

**BEFORE THE HONOURABLE
JUSTICE OF APPEAL**

: Mr. JUSTICE JOHN E. BYRNE

: APPELLANT IN PERSON

: S. QICA (For the Respondent)

**Date of Hearing and
Ruling**

: 26TH OCTOBER 2009.

***RULING ON APPLICATION FOR LEAVE
TO APPEAL OUT OF TIME***

- [1] The Applicant seeks leave to appeal out of time from a Judgment of Goundar, J in the High Court delivered on the 9th October 2008. Mr. Justice Goundar had before him an appeal by the applicant against sentences totaling 3 ½ years imposed by the Magistrates Court in three separate cases.
- [2] In Case No. 1419/07, on 17th December 2007 the applicant was sentenced to an overall term of 12 months imprisonment on one count each of burglary and larceny from a dwelling house.
- [3] In Case No. 1504/07, on 21st May 2008 the applicant was sentenced on one count of larceny from the person to a term of 12 months imprisonment consecutive to the pre-existing sentence.
- [4] In Case No. 608/08, on 25th of August 2008, the applicant was sentenced on one count of shop breaking with intent to commit a felony to a term of 18 months in prison consecutive to the pre-existing sentence. The applicant was therefore sentenced to 3 ½ years imprisonment for three separate offences of theft.
- [5] At the time the applicant committed these offences he was 23 years old and unemployed. The Learned Judge said that the guilty pleas and personal circumstances were the mitigating factors in the case. The aggravating factors were the value of goods stolen, the non-recovery of most of the stolen items and prevalence of these offences in our community.
- [6] The Learned Judge found no reason to interfere with the decision of the Magistrates Court and said that the separate nature of these offences justified an accumulation of

sentences and the overall sentence of 3 ½ years reflected the total criminality involved having regard to the mitigating and aggravating features I have just mentioned. The Judge held that the appeal had no merits and dismissed the appeal against the sentences.

- [7] On the 28th of September 2009 the High Court Registry in Suva received an application from the applicant for leave to appeal out of time. This was mistakenly sent to the High Court Registry which in turn sent it to the Registry of the Court of Appeal where it was received on the 5th of October 2009.
- [8] On the 11th of September 2009 the applicant wrote to the Registry making an application for Leave to appeal out of time against conviction and sentence. He said in that letter that the reason for his undue delay was that his first application which was lodged in time had been misplaced by the Registrar of this Court in Suva. He claimed that the delay was not of the applicant's making but that the Registrar.
- [9] This caused me to enquire from the Registry whether there was any truth in this allegation and I was told that there was not; that the application had been received on the date stamped on it namely 5th October 2009.
- [10] When I put this to the applicant he then said that the mistake had been by the Prison Authorities and not that of the Court of Appeal Registry. I immediately concluded that the applicant was inventing an excuse which he knew he could not justify.
- [11] Normally this Court makes an allowance of approximately three months for the filing of an application for leave to appeal out of time from a judgment of the High Court

because this Court realizes that prisoners are at a disadvantage compared with other persons not incarcerated in filing appeals within time.

- [12] The Applicant could give me no satisfactory reason for his failure to lodge his application within at the latest three months from the 9th October 2008. Practically this meant that his application for leave should have been filed no later than the end of January 2009. It is therefore 9 months overdue. For this reason I dismiss the application because no satisfactory reason has been given for the delay.
- [13] I would only add that I am satisfied that the sentences imposed by the Magistrates Court and confirmed by Mr. Justice Goundar were well within the tariff for these offences so that the applicant has no reason to complain that he was denied justice.

Dated at Suva this 26th October, 2009.



A handwritten signature in black ink, which appears to read "John E. Byrne". The signature is written in a cursive style and is positioned above a horizontal dotted line.

JOHN E. BYRNE
JUDGE OF APPEAL