

IN THE COURT OF APPEAL  
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 106 OF 2014  
(High Court HAC 18 of 2013)  
(Magistrates Court Nasinu 27/2013)

BETWEEN : MELI LEQAVUNI

Appellant

AND : THE STATE

Respondent

Counsel : Mr M Yunus for the Appellant  
Mr L J Burney for the Respondent

Date of Hearing : 10 December 2014

Date of Judgment : 17 December 2014

JUDGMENT

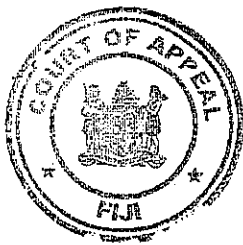
[1] This is an application for leave to appeal against sentence. The test for leave is whether the Appellant can point to an arguable error in the exercise of the sentencing discretion by the learned Magistrate.

- [2] The application for leave is made pursuant to section 21 (1) (c) of the Court of Appeal Act Cap 12 (the Act). Under section 35(1) of the Act a justice of appeal may exercise the jurisdiction of the Court to determine an application for leave to appeal.
- [3] Not only is the application one for leave to appeal against sentence but also an application for an enlargement of time. Under section 26(1) of the Act an appellant is required to file and serve his notice of appeal or application for leave within 30 days of the decision. Counsel for the Respondent informed the Court that the delay was not inordinate and that since the application raised an arguable error, the Respondent would not oppose the application for an enlargement of time.
- [4] The initial application had indicated that the Appellant was also seeking leave to appeal against his conviction. Counsel for the Appellant informed the Court that the Appellant was not proceeding with the application in respect of conviction.
- [5] The Appellant had been charged with one count of aggravated burglary under section 313 (1) (a) of the Crimes Decree 2009 and one count of theft under section 291 (1) of the Decree. It was alleged that on 23 December 2012 at Nasinu the Appellant broke into and entered a building as a trespasser with intent to steal. The building belonged to Abhirav Singh. The particulars of the second offence were that the Appellant with one other on the same day having broken into and entered the said building stole goods to the value of \$9,039.00 belonging to Abhirav Singh.
- [6] The Appellant pleaded guilty. He was convicted and sentenced to a term of 6 years imprisonment with a non-parole term of 4½ years. The Magistrate was exercising the extended jurisdiction of the High Court.
- [7] It is submitted that the arguable error arises from the fact that the learned Magistrate has at about half way through the sentencing decision considered sentencing guidelines for robbery and aggravated robbery. In doing so it is arguable that the sentencing discretion has miscarried and that as a result an error has underpinned the sentencing decision.

[8] In passing I note that the particulars of the offence for aggravated burglary under section 313 (1) of the Crimes Decree 2009 do not set out the necessary elements to constitute the offence. There is no reference to being in company or being in possession of an offensive weapon. It may also be argued that the particulars for the offence of theft under section 291 of the Crimes Decree 2009 contain superfluous particulars without recourse to the language of the section. I also note that the Appellant was unrepresented at the hearing in the Magistrates Court.

*Order:*

*Leave to appeal against sentence is granted.*



*W. Calanchini*  
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**Hon. Mr Justice Calanchini**  
**PRESIDENT, COURT OF APPEAL**