

**IN THE COURT OF APPEAL**  
**[On appeal from the High Court]**

**CRIMINAL APPEAL NO: AAU 0070 OF 2014**  
**[High Court Case No: HAC 35/12Lab]**

**BETWEEN** : RUPENI VESIKULA  
*Appellant*

**AND** : THE STATE  
*Respondent*

**Coram** : Goundar JA

**Counsel** : Mr. M. Yunus for Appellant  
Mr. L. Fotofili for State

**Date of Hearing** : 9 January 2015

**Date of Ruling** : 16 January 2015

**RULING**

- [1] Following a trial in the High Court at Labasa, the appellant was convicted of sodomy rape of a 12-year old boy. He was sentenced to 12 years' imprisonment with a non parole period of 9 years. This is his application for an extension of time for leave to appeal against conviction. Initially, he had appealed against sentence as well, but on the date of the leave hearing the sentence appeal was abandoned.
- [2] When counsel for the appellant appeared for leave hearing, he informed the court that the appeal against conviction was advanced on two grounds only. Initially, there were three grounds. Ground one was abandoned at the leave hearing. The grounds of appeal are:
- (i) The Learned Trial Judge erred in law and in fact when he did not direct and/or guide the assessor on the cross examination of the prosecution witness by the Appellant resulting in a substantial miscarriage of justice.

- (ii) The Learned Trial Judge erred in law and in fact when he failed to properly guide the assessor on how to approach and weigh the fresh evidence of uncharged acts.

[3] The relevant factors for an extension of time to appeal are:

- (i) the reason for failure to file within time;
- (ii) the length of the delay;
- (iii) whether there is a ground of merit justifying the appellate court's consideration;
- (iv) where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged will the respondent be unfairly prejudiced? (Kamlesh Kumar v The State unreported Criminal Appeal No. CAV0001/09; 21 August 2012)

[4] At trial the appellant was represented by an experienced private counsel. Following conviction, the appellant says he was not aware of his right of appeal. He filed his appeal in person five months late.

[5] In my judgment, five months delay is long and the reasons for it are not compelling. Judicial experience shows unrepresented prisoners are able to file timely appeals, and if there is a delay in forwarding of appeal papers by the prison administration, the length of delay is generally less than three months. Despite the long delay, I am obliged to consider other factors. There is no specific prejudice asserted by the State, except that the victim is a child and finality in the criminal litigation involving him is in his best interest.

[6] The question is whether the grounds of appeal have merits?

[7] The first ground is vague and difficult to comprehend. The appellant gives no detail of the evidence that was elicited under cross examination and was relevant to a fact in issue at the

trial. The trial judge's duty was to give a fair summary of the evidence as they related to the issues that the assessors had to consider. Reading of the summing up shows the trial Judge complied with that obligation. Without specific particulars of the alleged error, this ground is not arguable.

- [8] The State concedes the second ground is arguable. In the medical report of the complainant, the examining doctor wrote that the complainant had informed him of other incidents of sexual assault on him by the appellant that were not subject of the charges. The appellant was only charged with one incident of rape. The complainant gave evidence of only one incident of rape. It appears that the medical report of the complainant was admitted in evidence without any objection from the appellant's trial counsel. The evidence of uncharged incidents was not only hearsay but prejudicial to the appellant. The uncharged incidents were propensity evidence and arguably of no probative value. Unfortunately, the summing up lacks directions on the uncharged incidents contained in the complainant's medical report. This ground is arguable.

**Result**

Extension of time granted

Leave refused on ground one

Leave granted on ground two.



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 Hon. Mr. Justice D. Goundar  
**JUSTICE OF APPEAL**

**Solicitors:**

Office of the Legal Aid Commission for Appellant  
 Office of the Director of Public Prosecutions for State