

**IN THE COURT OF APPEAL, FIJI**  
**[On appeal from the High Court of Fiji]**

**CRIMINAL APPEAL NO: AAU0079 OF 2012**  
**(High Court Case No. HAC 019 of 2012)**

**BETWEEN** : **TANIELA DROSE**  
**Appellant**

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

**Coram** : **Goundar JA**

**Counsel** : **Mr. M. Yunus for the Appellant**  
**Mr. S. Vodokisolomone for the Respondent**

**Date of Hearing** : **18 March 2016**

**Date of Ruling** : **24 March 2016**

**RULING**

[1] This is an appeal against a judgment of the High Court in its revisionary jurisdiction. The appellant was sentenced to 5 years and 10 months' imprisonment on two counts of cultivating an illicit drug by the Magistrates' Court at Suva. On review, the High Court substituted a sentence of 6 years' imprisonment with a non-parole period of 5 years.

[2] The appeal is governed by section 22 of the Court of Appeal Act, Cap. 12. The relevant provisions state:

*"22. (1) Any party to an appeal from a magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only;*

*Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate's court.*

*(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –*

- (a) that the sentence was an unlawful one or was passed in consequence of an error of law; or*
- (b) that the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence.*

*(2) For the purposes of this section, a decision of the High Court in the exercise of its revisional jurisdiction or on a case stated, under the provisions of the Criminal Procedure Code, shall be deemed to be a decision of the High Court in such appellate jurisdiction as aforesaid. (Cap.21)."*

[3] At the hearing, the appeal was abandoned. Both the appellant and his counsel advised the Court that they did not want to proceed with the appeal because they are unable to show that the sentence imposed by the High Court was unlawful or was imposed in consequence of an error of law. I accept this concession made by the appellant.

[4] After reading the documents filed by the appellant, I am satisfied that the sentence imposed on the appellant is neither unlawful, nor was imposed in consequence of an error of law. In these circumstances, the appeal is bound to fail because the appellant has no right of appeal.

[5] Exercising my powers under section 35(2) of the Court of Appeal Act, Cap. 12, I dismiss the appeal on the ground that the appeal is bound to fail because there is no right of appeal.



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**Hon. Justice D. Goundar**  
**Justice of Appeal**