

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

CRIMINAL APPEAL AAU 154 OF 2015
(High Court extended jurisdiction to MC at Nasinu 1324-12)

BETWEEN : **ROVARAMUA KOMAISAVAI**
EPI TUKAI

Appellants

AND : **THE STATE**

Respondent

Coram : **Calanchini P**
Chandra RJA
Rajasinghe JA

Counsel : **Ms M Tarai for the Appellants**
Mr S Vodokisolomone for the Respondent

Date of Hearing : **22 June 2017**

Date of Judgment : **20 July 2017**

JUDGMENT

[1] The Appellants were convicted on their pleas of guilty of the offence of aggravated robbery by the Magistrates Court at Nasinu exercising the extended jurisdiction of the High Court. On 16 September 2015 both Appellants were sentenced to terms of imprisonment of 5 years and 6 months.

[2] The Appellants filed a joint notice of application for leave to appeal against conviction and sentence dated 16 October 2016. The appeal is regarded as timely since the notice

was hand written, dated and signed by the incarcerated and unrepresented Appellants within the time prescribed by section 26 of the Court of Appeal Act 1949 (the Act).

- [3] The first Appellant has applied to abandon his appeal against conviction and sentence under Rule 39 of the Court of Appeal Rules (the Rules). The second Appellant has applied to abandon his appeal against conviction and has been granted leave to appeal against sentence.
- [4] In accordance with the decision of the Supreme Court in Masirewa -v- The State (CAV 14 of 2008; 17 August 2010) the applications to abandon the appeal against conviction and sentence by the first Appellant and the application to abandon the appeal against conviction by the second Appellant were listed for hearing before this Court at the same time as the second Appellant's appeal against sentence.
- [5] The first Appellant confirmed that his decision to abandon his appeal was made voluntarily. He confirmed that he had received legal advice on both his conviction and sentence appeals. He indicated that he understood the consequences for him in the event that his applications were to be granted. Under the circumstances the application by the first Appellant to abandon his appeal against conviction and sentence is granted and the appeal is dismissed.
- [6] The second Appellant confirmed that his decision to abandon his appeal against conviction was made voluntarily. He confirmed that he had received legal advice in relation to his appeal against conviction. He indicated that he understood the consequences for him in the event that his appeals were to be granted. The application to abandon the appeal against conviction is granted and the appeal is dismissed.
- [7] The second Appellant's appeal against sentence is based on the fact that he was a juvenile at the time of his having committed the offence.
- [8] It is apparent from the sentencing decision that he was sentenced on the basis that he was 19 years old. It would appear that the reference to 19 years old was intended to be a reference to the age of the second Appellant at the date of sentencing. His birth

certificate states that he was born on 1 August 1995. However the offence was committed on 27 October 2012. As a result the second Appellant was 17 years 3 months old at the time of offending. In section 2 of the Juveniles Act 1973 a juvenile is defined as a person who has not attained the age of 18 years and includes a child and a young person. A child is a person who has not reached 14 years and a young person is a person who has turned 14 but has not reached 18 years. Under these definitions the second appellant was a young person and consequently a juvenile at the time the offence was committed. Under section 30(1) of the Juveniles Act no child can be ordered to be imprisoned for any offence and a young person shall not be ordered to be imprisoned for more than 2 years for any offence. It stands to reason then, that the second Appellant could not have been sentenced to a term of imprisonment of more than 2 years.

[9] As a result the appeal against sentence is allowed and the sentence imposed by the Magistrates Court is set aside. A sentence of 18 months imprisonment is ordered in its place with effect from 16 September 2015.

Orders:

1. *First Appellant's appeal against conviction and sentence is dismissed.*
2. *Second Appellant's appeal against conviction is dismissed.*
3. *Second Appellant's appeal against sentence is allowed and the sentence imposed by the Magistrates Court is set aside.*
4. *Second Appellant is sentenced to 18 months imprisonment with effect from 16 September 2015.*



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

S Chandra
.....
Hon. Mr. Justice S Chandra
RESIDENT JUSTICE OF APPEAL

T Rajasinghe
.....
Hon. Mr. Justice T Rajasinghe
JUSTICE OF APPEAL