

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU 0093 OF 2023**  
**[Suva High Court: HAC 27 of 2022]**

**BETWEEN** : **MESULAME WAQABACA**

**Appellant**

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

**Respondent**

**Coram** : Mataitoga, P

**Counsel** : Appellant in Person  
Kantharia B for the Respondent [ODPP]

**Date of Hearing** : 4 December, 2024

**Date of Ruling** : 18 February 2025

**RULING**

1. The appellant [Mesulame Waqabaca] was charged with 1 count of Damaging Property contrary to section 369(1) of the Crimes Act 2009 and a second count of Escaping from Lawful Custody, contrary to section 196 of the Crimes Act 2009. The trial was before the Magistrate Court in Suva.

2. The first count on Damaging Property was withdrawn by the Prosecution and the matter proceeded only on the Escaping from Unlawful Custody charge on 17 January 2022. The appellant pleaded guilty to the remaining charged before the Chief Magistrate.
3. After some issues were raised by the appellant with regard to disputed facts, he finally accepted the same.
4. He was convicted on his guilty plea and sentenced to 8 months imprisonment to be served consecutively to his imprisonment in HAC 08 of 2006.

### Appeal to High Court

5. In the High Court the appellant raised two grounds of appeal. The first was that his guilty plea was equivocal. After reviewing the circumstances in which the guilty plea was made, the High Court rejected this ground of appeal as having no merit.
6. The second ground was against sentence, where the appellant submits that the Magistrate erred in law in imposing a sentence of 8 months imprisonment to be consecutive to his remaining term of life imprisonment in HAC 054 of 2009.
7. On appeal to the High Court, the Judge held as follows:

*“The Appellant argues that the learned Magistrate erred in law by imposing a consecutive sentence instead of a concurrent term.*

*Section 22 (4) of the Sentencing and Penalties Act states that:*

*“Every term of imprisonment imposed on a prisoner by a court in respect of a prison offence or an escape offence must, unless otherwise directed by the court based on exceptional circumstances, be served consecutively on any uncompleted sentence of imprisonment.*

*Accordingly, the learned Magistrate had accurately ordered that the term of imprisonment of eight months be served consecutive to his remaining term of imprisonment in HAC 054/2009. Hence, I do not find any merit in this ground of appeal.”*

**Waqabaca v State [2023] FJHC 421;(HAA 027/2022)**

Section 22 (1) of the Court of Appeal Act 2009

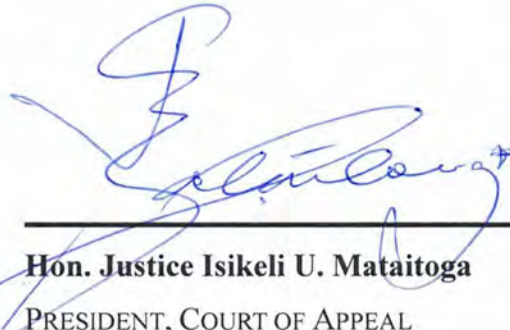
8. The appellant exercised his right to appeal to the Court of Appeal from the appellate jurisdiction of the High Court under section 22 of the Court of Appeal Act. This is a second-tier appeal, and maybe allowed if the appeal ground involve a question of law only.
9. The ground of appeal to this Court is:

*“That the sentencing Magistrate erred in law in imposing an 8 months consecutive sentence to a life sentence in criminal case no: HAC 54 of 2009. A sentence cannot be made cumulative on life sentence: R v Joly [1982] VR 46; R v. Falow [1980] 2 NSWLR 166.”*
10. The first assessment is to determine whether the ground of appeal submitted by the appellant involves a question of law only. The ground of appeal submitted involve a question of interpretation of section 22(1) and (4) of the Sentencing and Penalties Act, which clearly is a question of law.
11. I now have to establish if the application of section 22(1) and (4) of the Sentencing and Penalties Act by the sentencing magistrate, was correctly applied and that is another question of law as well.
12. It is established that the appeal grounds involved questions of law only.
13. The issue now is whether the grounds submitted has a reasonable prospect of success. This is where it is clear that ground submitted is unlikely to succeed on appeal. The appellant’s reliance on the 2 Australian cases of R. v. Jolly (supra) and R. v. Falow (supra) law does not help because for Fiji, the relevant law is in section 22(1) and (4) of the Sentencing & Penalties Act and on the facts in this appeal, it had been applied correctly.
14. The ground of appeal has no merit.

**ORDER:**

Leave to appeal against sentence by the appellant is refused.



  
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**Hon. Justice Isikeli U. Maitoga**  
PRESIDENT, COURT OF APPEAL