

IN THE HIGH COURT OF FIJI

AT LABASA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO: HAA 018 OF 2024

BETWEEN : **JOJI TUIVALAGI**

APPELLANT

AND : **STATE**

RESPONDENT

Counsel : **Ms R Raj for the Appellant**
Mr J Nasa for the Respondent

Date of Hearing : **21 August 2025**

Date of Judgment : **4 September 2025**

JUDGMENT

Background

- [1] On 22 June 2018, the Appellant appeared before the Magistrates' Court in Savusavu and pleaded guilty to charges of unlawful cultivation and possession of *Cannabis Sativa* after waiving his right to counsel.
- [2] Before the prosecution could tender any facts, the Appellant, represented by Legal Aid counsel, applied to vacate his guilty plea on the ground that his confession to police was made under duress. The learned Magistrate refused to vacate the plea and proceeded with the case, without giving reasons.
- [3] On 18 May 2022, almost four years later, the learned Magistrate sentenced the Appellant to 7 years, 10 months, and 10 days imprisonment after hearing the facts and mitigation. In mitigation, the Appellant again maintained that he had been under duress and only admitted the facts because the Magistrate had refused to vacate his guilty plea.

- [4] The lengthy delay in sentencing was due to several factors, including late filing of facts by the prosecution, the unavailability of a resident magistrate in Savusavu, and the Covid-19 pandemic. The Appellant was not responsible for the delay.

Appeal History

- [5] On 4 October 2022, the Appellant filed Criminal Appeal Case No. 28 of 2022. The appeal was filed about four months late, and the Appellant applied for an extension of time to appeal. Neither the application nor the appeal was heard for two years.
- [6] On 12 August 2024, Dalituicama J summarily dismissed the application because the State failed to file a response to the Appellant 's application for extension of time. According to Appellant 's counsel, the judge orally advised that a fresh application and appeal could be filed.
- [7] On 20 August 2024, the Appellant filed a fresh appeal together with an application for an extension of time, supported by an affidavit explaining the reasons for the delay, which by then was two years.
- [8] At the hearing of the new application, I invited both parties to address the question of jurisdiction to hear a fresh application for an extension of time after the earlier application had been summarily dismissed. Counsel for the State conceded that he had not considered the jurisdictional issue, while counsel for the Appellant submitted that she had filed fresh proceedings based on the advice of Dalituicama J.

The Law

- [9] It is settled law that the right of appeal in criminal matters is statutory. The relevant provisions governing appeals from the Magistrates' Court to the High Court are contained in sections 246–259 of the Criminal Procedure Act (CPA):

- Section 248(1) CPA provides a 28-day statutory period for filing an appeal.
- Section 249 requires that appeals be presented in the prescribed form and petition.
- Section 249(7) provides that where an appeal is out of time, the petition must include an application for leave to appeal out of time.
- Section 252 empowers the Court to hear applications for an extension of time.
- Section 251 empowers the Court to summarily dismiss an appeal, but only in limited circumstances:
 - i. Where the evidence sufficiently supports the conviction and there is no reasonable doubt as to its correctness; or
 - ii. Where the appeal cannot lead to a reduction of sentence.

Analysis

[10] In this case, the Appellant 's first appeal complied with section 249(7) of the CPA. It was not defective in form. The appeal was dismissed, not because of any failure by the Appellant, but because the State failed to file its affidavit in response.

[11] Paragraphs [3]–[4] of Dalituicama J's ruling confirm this:

"On first call, the State confirmed being served. The State then sought time to file its Affidavit Response.

A Response is not filed so in lieu of dealing with the merits of the application, the Court summarily dismissed with brief oral reasons the application. The written reasons are now provided."

[12] Although the ruling did not expressly cite section 251 of the CPA, that is the only statutory provision that empowers the High Court to summarily dismiss an appeal. However, the dismissal here was not based on the statutory

grounds under section 251. Instead, the Appellant 's case was dismissed entirely because of the State's inaction. In effect, the Appellant bore the adverse consequences of the prosecution's failure.

[13] The difficulty for the Appellant is that, once an appeal has been summarily dismissed, there is no statutory power to extend time or to entertain a fresh appeal. The Court's jurisdiction is exhausted.

[14] The Appellant may indeed have a genuine grievance requiring redress. However, absent legislative authority, this Court cannot re-open or hear his appeal after it was summarily dismissed on 12 August 2024.

Conclusion and Orders

[15] The Court finds it has no jurisdiction to hear the fresh application or appeal.

Accordingly:

- The Application for Extension of Time to Appeal is dismissed.
- The Petition of Appeal is also dismissed.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon Mr Justice Daniel Goundar

Solicitors:

Legal Aid Commission for the Appellant

Office of the Director of the Prosecutions for the Respondent