

**MOSESE VAKADRAKALA v STATE (AAU0020 of 2004S)**

HIGH COURT — APPELLATE JURISDICTION

5 SCOTT RJA

18 June 2004

10 **Practice and procedure — leave to appeal against sentence — mutiny — Constitution of the Republic of Fiji 1997 ss 25(1), 28(1)(1) — (UK) Army Act 1955 ss 108, 109, 110, 113 — Court of Appeal Act s 35(2) — Republic of Fiji Military Forces Act ss 23(1), 23(2)(a)**

The Applicant was one of the 54 accused who were convicted by the General Court Martial of the offence of mutiny with 8 years' imprisonment as sentence.

15 The Applicant represented himself and sought leave to appeal against sentence on the ground that his counsel failed to present his appeal within time.

The Respondent submitted that no appeal against sentence may be made by a person who was convicted and sentenced by a court martial.

20 **Held** — Nowhere in Pt VI of the Republic of Fiji Military Forces Act can be found a right of appeal against sentence. Likewise, in the Court of Appeal Act, appeals from courts martial were not mentioned. There is also no right of appeal against sentence in ss 109 and 110 of the Army Act 1955 (UK). Thus, the Applicant has no right of appeal against the sentence imposed on him and the question of granting leave to appeal out of time does not arise.

25 Application dismissed.

**Case referred to**

*Valuone Rogoyawa v State* [1998] FJCA 47, cited.

Applicant in person

30 *A. Prasad* for the Respondent

**Scott RJA.** On 29 January 2003 the Applicant (together with 53 others) was convicted on his own plea by a General Court Martial of the offence of mutiny contrary to the Army Act 1955 (UK). He was sentenced to 8 years' imprisonment. The *sentence, as required by s 23(2)(a) of the Republic of Fiji Military Forces Act (Cap 81 — the RFMF Act)* was confirmed by H E the President on 25 April 2003.

35 The Applicant now seeks leave to appeal out of time against the sentence imposed. His principal contention is that his lawyer failed, despite *instructions, to* present his appeal within time. He now represents himself.

40 The first question which was raised by Ms Prasad is whether a person who has been convicted and sentenced by a court martial has any right of appeal against sentence at all.

45 Part VI of the RFMF Act deals with appeals from courts martial. No right of appeal against sentence appears in the part and *with* the exception of s 23(2)(a) already referred to there is no mention in the RFMF Act of appeals against or reviews of sentences imposed.

50 In *Valuone Rogoyawa v State* [1998] FJCA 47, the Court of Appeal accepted that the RFMF Act does not confer a right of appeal against sentence as opposed to conviction. The question of whether such a right is conferred through any other provision was not *however* considered. There is no mention of appeals from courts martial in the Court of Appeal Act.

It seems wrong; that a person upon whom a very substantial sentence of imprisonment has been imposed should have no right to have the propriety of that sentence reviewed. Under s 28(1)(1) of the 1997 Constitution a person has the right:

5 if found guilty to appeal to a higher court.

Under s 25(1) of the Constitution a person has a right:

...to freedom from ... disproportionately severe treatment or punishment.

10 The basis of the Applicant's substantive appeal would be that he and his fellow mutineers were much more severely dealt with than others dealt with by an earlier court martial.

Under s 23(1) of the RFMF Act the UK Army Act as modified applies to courts martial held under the provisions of the RFMF Act.

15 Under s 108 of the Army Act a convicted person may present a petition of appeal against the sentence imposed upon him.

Under ss 109 and 110 a sentence may be reviewed, varied or confirmed. Section 113 provides that a confirmed sentence may be reviewed by petition being presented to a "reviewing authority".

20 The "reviewing authority" are:

(a) Her Majesty the Queen; or

(b) the defence council; or

(c) any officer superior in command to the confirming officer.

25 Since Fiji is a republic (a) is obviously inapplicable. There is no defence council in Fiji as far as I am aware. Since this sentence *was* confirmed by the Commander-in-Chief of the RFMF (c) is also inapplicable. It seems that no right of appeal against sentence can be brought into the RFMF Act by means of the Army Act.

30 I accept the State's submission that as the law stands in Fiji the Applicant has no right of appeal against the sentence imposed upon him. The question of granting leave to appeal out of time does not therefore arise.

It seems that there is a most unfortunate lacuna in the law. While dismissing this application under the provisions of s 35(2) of the Court of Appeal Act I request the Chief Registrar to send a cope of this decision to the Solicitor-General and to the Human Rights Commission.

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*Application dismissed.*

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