

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

CRIM. MISC. CASE NO: HAM 027/2009

BETWEEN:

MANASA WAQA

Applicant

AND:

THE STATE

Respondent

Date of Hearing: 30th June 2009

Date of Ruling: 10th July 2009

Counsel: Applicant in person
Ms S. Hamza for State

RULING

[1] On 8 August 2008, the applicant was sentenced in the Magistrates' Court to a total sentence of two years imprisonment after pleading guilty to one count each of robbery with violence, found in possession of house breaking implements and resisting arrest.

- [2] The applicant appealed against sentence and on 23 January 2009, his appeal was dismissed and his sentence for robbery with violence was increased to 5½ years imprisonment (see, ***Manasa Waqa v The State*** Criminal Appeal No. HAA095 of 2008).
- [3] On 3 April 2009, this application to appeal out of time against conviction was filed.
- [4] The applicant contends that his pleas of guilty are equivocal because he was unrepresented at the trial and the trial court did not ensure that he was freely and voluntarily pleading guilty. At the hearing, the applicant submitted that he did not know how to frame his grounds of appeal against conviction, that his trial was unfair and that he did not have the disclosures with him at the hearing in the Magistrates' Court. These issues were also raised at the hearing of the appeal before Shameem J. Since the applicant was unrepresented, the learned Judge proceeded on the basis that the applicant was also appealing against conviction. In her judgment, Shameem J said:

“State counsel refuted this, saying that the Appellant had received full and final disclosure on the 27th of March 2008, and that he pleaded guilty because the evidence showed that he had been found red-handed in possession of the stolen credit cards shortly after the robbery. State counsel further said that 2 years imprisonment was very lenient for a home invasion, and that the Appellant was clearly a principal offender because he had been in possession of the breaking implements.

The Appellant then agreed that he had taken part in the robbery but said that he had only been the lookout. He said he was told to ensure that no one disturbed the robbery and that he was given the

credit cards by the other offenders who had also given him the breaking implements to keep until the next morning.

After this admission in the course of the appeal, it is clear that the Appellant was rightly convicted for robbery with violence. Although he now says the breaking implements were not his, the facts to which he agreed in the Magistrates' Court, were that his mother told the police that the implements belonged to the Appellant. If this is the case, and I accept that it is, on the basis of the Appellant's admission of the facts in the lower court, then he was more than a mere lookout. He had taken part in the robbery carrying a pinch bar, balaclava and torch. The complainant's evidence was that the robbers had been carrying "crow bars." Clearly the Appellant should have been sentenced as one of the principal offenders."

- [5] As can be seen from the judgment, the grounds raised in this application were considered by Shameem J and were found to be without merits.
- [6] The applicant has appealed against the judgment of Shameem J to the Court of Appeal on 27 February 2009 (Appeal No. AAU007/09). He did not disclose his appeal to the Court of Appeal to this Court.
- [7] The applicant is using two courts to seek the same relief.
- [8] The application before me is clearly an abuse of process because the applicant is seeking to re-litigate an issue already considered by this Court and is now before the Court of Appeal.
- [9] For these reasons, the application is struck out as being an abuse of court process.

Daniel Goundar
JUDGE

At Suva
10th July 2009

Solicitors:

Applicant in person
Office of the Director of Public Prosecutions for State