

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO. HAA 027/2009**

**BETWEEN:**                      **LEPANI VARANI**                      **Appellant**

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

Hearing:      30<sup>th</sup> July 2009

Judgment:    10<sup>th</sup> August 2009

Counsel:      Appellant in Person

Ms S Puamau for the State

**J U D G M E N T**

1. On 8<sup>th</sup> May 2009, the Nasinu Magistrate Court sentenced the appellant to 12 months prison, for breaching bail, contrary to sections 25 (1) (b)

and 26 (1) of the Bail Act 2002. The appellant appeals against conviction and sentence.

2. The charge were as follows:

## **C H A R G E**

### **[COMPLAINT BY PUBLIC OFFICER]**

#### ***Statement of Offence***

**BREACH OF BAIL CONDITION:** Contrary to Section 25(1) (b) and 26(1) of the Bail Act 2002

#### ***Particulars of Offence***

LEPANI VARANI between the 25<sup>th</sup> day of April 2009 and 4<sup>th</sup> day of May 2009 at Nasinu in the Central Division being an accused person released on bail on 25<sup>th</sup> day of March 2009 with conditions to present himself at Nakasi Police Station on every Saturdays and Mondays did fail to do so without reasonable excuse.

3. The appellant filed two grounds of appeal on conviction, but in fact, it could be distilled into one, that is;

- (i) The Learned Resident Magistrate erred in law and fact when he convicted me, on the basis I was charged by police, beyond the 48 hours required by law.
  
- 4. On his appeal on sentence, the appellant filed four grounds, but they could be distilled into one, that is;
  - (i) The sentence is harsh and excessive.
  
- 5. I have carefully perused the court record, and listened to the parties' verbal submission.
  
  
- 6. On the appellant's complaint against his conviction, the facts revealed, he was arrested by police on 6<sup>th</sup> May 2009. On 8<sup>th</sup> May 2009, he was brought before the Nasinu Magistrate Court. He waived his right to counsel. The breach of bail charge was put to him. He pleaded guilty to the same. The prosecution read out their summary of facts. He agreed that he breached his bail conditions. On that basis, the Learned Resident Magistrate found him guilty, and also convicted him, as charged. According to the facts, the appellant was brought to court within 2 days, that is, 48hours after arrest. If the 48hours was exceeded by less than 60 minutes, that would be "as soon as possible thereafter", which was permissible under common law. This ground therefore fails.

7. On his sentence, the appellant complained, it was "harsh and excessive". The maximum sentence for "breaching bail" is either, a fine not exceeding \$2,000, or a sentence of 12 months imprisonment. (Section 26 (1), Bail Act 2002). On this issue, State Counsel conceded that, the 12 months prison sentence was "excessive", on the ground that no discount was given for the appellant's guilty plea. She said, the appellant is entitled to a  $\frac{1}{3}$  discount, that is, a sentence of 8 months prison. The appellant, on the other hand, asked for a fine of \$500, instead of the 12 months prison sentence.
  
8. The appellant is currently facing two counts of "shop breaking, entering and larceny", contrary to section 300 (a) of the Penal Code, Chapter 17, in the Nasinu Magistrate Court, that is, Criminal Case No. 344/09. The subject of this appeal is in relation to the bail condition in that case. It should be made known to the appellant, and those like him, that breach of bail conditions in the Magistrate Court will not be tolerated by the High Court, simply because, they cause delay and increase case backlog in the Courts. For these reasons, a \$500 fine is not appropriate. I accept State Counsel's suggestion of an 8 months prison sentence.

9. I quash the 12 months prison sentence imposed by the Nasinu Magistrate Court, and substitute a sentence of 8 months prison, with effect from 8<sup>th</sup> May 2009. The appeal against sentence succeeds to that extent.

[Salesi Temo]

**ACTING JUDGE**

AT Suva

10<sup>th</sup> August 2009