

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE MAGISTRATES COURT
exercising extended jurisdiction

CRIMINAL APPEAL AAU 120 of 2017
(Magistrates Court at Nasinu No. 8 of 2016)

BETWEEN : **KANITO MATAGASAU** *Appellant*

AND : **THE STATE** *Respondent*

Coram : Calanchini P

Counsel : Ms S Nasedra for the Appellant
Mr S Vodokisolomone for the Respondent

Date of Hearing : 13 July 2018

Date of Ruling : 13 July 2018

RULING

[1] The appellant's appeal is listed for callover on 6 August 2018 to fix a hearing date in the September session of the Court. This is the appellant's application for bail pending appeal. The application is not opposed by the State.

- [2] The exceptional circumstances in this case are set out in detail in the Ruling dated 3 July 2018 granting the appellant leave to appeal against sentence.
- [3] The appellant was convicted on his plea of guilty on one count of aggravated robbery by the Magistrates Court at Nasinu exercising jurisdiction extended by the High Court. On 27 October 2016 the appellant was sentenced to a term of imprisonment of 3 years and 9 months. Although the application for leave to appeal against sentence was late an enlargement of time was granted on the basis that the appeal was likely to succeed.
- [4] Briefly, the appellant was sentenced on the basis that he was at the time sentencing an adult over the age of 18 years. However at the time of the offence he was only 17 years and 7 months old. He was at the time of offending a young person under section 2 of the Juveniles Act 1973 and could not be sentenced to more than 2 years imprisonment under section 30(2) of the Juveniles Act. As a result the appeal has a very high likelihood of succeeding thereby constituting exceptional circumstances.
- [5] As the appellant has been incarcerated since 27 October 2016 the other requirements specified in section 17(3) of the Bail Act 2002 do not prevent bail pending appeal being granted on the following conditions:

1. *The appellant is to reside at Tacirua Primary School compound.*
2. *The appellant is to advise the Court of Appeal Registry of any change of residential address.*
3. *The appellant is to report to the Valelevu Police Station every Saturday between 6.00am and 6.00pm.*
4. *The appellant is to attend the Court of Appeal on 6 August 2018 at 11.30am for the callover of his sentence appeal.*
5. *The appellant is required to attend Court when called upon by notice to do so.*

6. *The appellant is to provide a surety in the person of Siteri Lalaciwa Valeicili whose mobile phone number is 979 4424 (being his mother).*



W. Calanchini

Hon Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL