

IN THE COURT OF APPEAL, FIJI
[On Appeal from the Magistrates' Court]

CRIMINAL APPEAL NO: AAU0081/2015
[Magistrates' Court Case No.1001/2012]

BETWEEN : **EPARAMA MANI** *Appellant*

AND : **THE STATE** *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Appellant in person
Mr. S. Vodokisolome for the Respondent

Date of Hearing : 11 April 2017

Date of Ruling : 11 April 2017

RULING

[1] This is an appeal from the extended jurisdiction of the Magistrates' Court. The appellant was charged with one count of aggravated robbery. The charge alleged that the appellant with others on 14 July 2012 stole a laptop and a mobile phone from one Andrew Ting Eng Bing. The case remained unheard in the Magistrates' Court till 9 March 2015 when the prosecution informed the court that they were unable to proceed with the trial because the complainant was in Papua New Guinea and could not be subpoenaed. The appellant objected to any further adjournment and applied for costs. He further asserted his right to be tried within a reasonable time. The learned Magistrate dismissed the charge but refused to award costs against the prosecution.

[2] The appellant seeks an enlargement of time to appeal against the Magistrates' Court's decision to dismiss the charge instead of acquitting him. Section 35(1) of the Court of

Appeal Act, Cap 12 gives a single judge power to grant an enlargement of time to appeal. The factors to be considered are:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate courts consideration?
- (iv) Where there has been substantial delay, nonetheless is there a ground that will probably succeed?
- (v) If time is enlarged, will the respondent be unfairly prejudiced? (*Kumar v State* unreported Cr App No CAV0001 of 2009; 21 August 2012).

[3] The length of the delay is about three months. The main reason given by the appellant for the delay is that he was unfamiliar with the appeal procedures in cases of extended jurisdiction. Counsel for the State submits that the question whether the appellant should have been acquitted is a question of law alone and therefore the appellant has a right of appeal under section 21(1)(a) of the Court of Appeal Act, Cap. 12. Further, the question is not a frivolous question because the learned Magistrate exercised his discretion to dismiss the charge instead of acquitting the appellant in the circumstances when the prosecution made in plain that there was no real prospect of proceeding with the charge due to unavailability of a crucial witness. I am satisfied that there is a ground of appeal that will probably succeed.

Result

[4] Enlargement of time granted.



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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

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