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GOVERNMENT OF THE REPUBLIC OF FIJI DECREE NO. 7

COURT OF APPEAL ACT (AMENDMENT) DECREE 1990

In exercise of the powers vested in me as President and Commander-in-Chief of the Republic of Fiji, I acting in accordance with the advice of the Prime Minister and the Cabinet, hereby make the following Decree—

Short title

1. This Decree may be cited as the Court of Appeal Act (Amendment) Decree 1990.

Section 21 of the Court of Appeal Act amended

(Right of Appeal in Criminal Cases)

2. Section 21 of the Court of Appeal Act is amended by the revocation of Section 21 and replacing the same with a new Section 21 as follows—

"Right of appeal in criminal cases

21.—(1) A person convicted on a trial held before the High Court may appeal under this Part to the Court of Appeal—

- (a) against his conviction on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.

(2) The State on a trial held before the High Court may appeal under this Part to the Court of Appeal—

- (a) against the acquittal of any person on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court of Appeal or upon the Certificate of the judge who tried the case that it is a fit case for appeal against the acquittal on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Appeal against the sentence passed on the conviction of any person unless the sentence is one fixed by law."

Section 23 of the Court of Appeal Act amended

(Determination of appeal in ordinary cases)

3. Section 23 of the Court of Appeal Act is amended by the revocation of Section 23 and replacing the same with a new Section 23 as follows—

"Determination of appeal in ordinary cases

23.—(1) The Court of Appeal—

- (a) on any such appeal against conviction shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal; and

(b) on any such appeal against acquittal shall allow the appeal if they think that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the Court before whom the appellant was acquitted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal;

Provided that the Court may, notwithstanding that they are of the opinion that the point raised in the appeal against conviction or against acquittal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred.

(2) Subject to the appeal provisions of this Act the Court of Appeal shall—

- (a) if they allow an appeal against conviction, either quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial; and
- (b) if they allow an appeal against acquittal, either set aside the acquittal and direct a judgment and verdict of conviction to be entered, or if, the interests of justice so require, order a new trial.

(3) On an appeal against sentence, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution thereof as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just."

Commencement

4. This Decree shall come into force when it is made.

Made this 15th day of March 1990.

PENAIK K. GANILAU
President and Commander-in-Chief