

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT**

**CRIMINAL APPEAL NO: AAU 30 of 2010**  
**(High Court HAC 176 of 2008S)**

**BETWEEN** : **RICHARD RONIL KUMAR**

**Appellant**

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

**Respondent**

**Coram** : **Calanchini AP**  
**Chandra JA**

**Counsel** : **Appellant in person.**  
**Mr M Korovou for the Respondent.**

**Date of Hearing** : **17 May 2013**

**Date of Ruling** : **30 May 2013**

**RULING**

[1]. By letter dated 10 August 2012 the Appellant made application to abandon his appeals against conviction and against sentence.

[2]. As a result the application was listed on 17 May 2013 before the Court of Appeal for its consideration pursuant to Rule 39 of the Court of Appeal Rules (the Rules).

- [3]. Pursuant to the authority given under section 6(2) of the Court of Appeal Act Cap 12 the application was listed before two judges as a duly constituted Court for the hearing of the application.
- [4]. The Appellant was convicted on 5 May 2010 by the High Court on one count of rape contrary to section 149 and 150 of the Penal Code and five counts of incest under section 178 of the Penal Code Cap 17. He was sentenced on 14 May 2010 to a total sentence of seven years imprisonment.
- [5]. When the application was called before the Court of Appeal the Appellant confirmed that he was applying to withdraw his appeal against conviction and sentence. The procedure to be followed by the Court in the present application was outlined by the Supreme Court in **Jone Masirewa –v- The State** (unreported criminal appeal CAV 14 of 2008 delivered 17 August 2010) at paragraph 11:

*“Where written or oral applications are made by an unrepresented petitioner seeking leave to withdraw an appeal, appellate courts should proceed with caution. It would be prudent for instance to ask the (appellant), on the day the matter is listed for hearing, why the (appeal) was to be withdrawn, whether any pressure had been brought to bear on the (appellant) to do so, and whether the decision to abandon had been considered beforehand. This inquiry should be made of the petitioner personally and recorded even in cases where the petitioner is represented. The purpose of the inquiry is to establish that the decision to withdraw has been made deliberately, intentionally and without mistake. Ideally, the decision should be informed also.”*

- [6]. Under Rule 39 the Court of Appeal is empowered to order that an appeal should be dismissed presumably, upon it granting an application by an appellant to abandon or withdraw his appeal. In my view the fact that it is the Court of Appeal that dismisses the appeal indicates that the procedure is more than a routine administrative task capable of being performed by the Registry. The effect of the words used in Rule 39 when considered with the decision of the Supreme Court in **Masirewa –v- The State** (supra) is that the application must be placed before the Court of Appeal. The Court of Appeal is required to hear the application in accordance with the procedure set out

by the Supreme Court. In the event that the Court of Appeal is satisfied that the Appellant's application is bona fide, voluntary and informed, the Court will grant the application and the appeal will then be dismissed by the Court of Appeal.

- [7]. The Appellant informed the Court that the reason for his application to abandon his appeals was because he had served about half his sentence and that with a remission he could expect to be released in about January 2015. He confirmed that he understood the consequences if his application were granted. He stated that his application had been made voluntarily and without any pressure or coercion.
- [8]. As a result the application is granted and his appeals against conviction and sentence to this Court are dismissed.

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**HON. JUSTICE W. D. CALANCHINI**  
**ACTING PRESIDENT**

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**HON. JUSTICE SURESH CHANDRA**  
**JUSTICE OF APPEAL**

