

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU0068 of 2013
(High Court HAC 0154 of 2012)

BETWEEN : **EPELI NAISOBUKA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Calanchini P**
Kumararatnam JA

Counsel : **Appellant in person**
Mr L Fotofili for the Respondent

Date of Hearing : **10 September 2014**

Date of Ruling : **13th October 2014**

RULING

Calanchini P

[1] I agree that the appeal should be dismissed.

Kumararatnam JA

- [2] The Appellant had been charged with one count of sexual assault contrary to section 210(1) (a) of the Crimes Decree No: 44 of 2009 and one count of rape contrary to Section 207 (1) (2) (a) (3) of the Crimes Decree No: 44 of 2009. When the case No: HAC 154 of 2012S came for trial before High Court, the Appellant pleaded guilty to both counts and was sentenced to 2 years imprisonment on 16/05/2013. He subsequently appealed against sentence on 28/05/2013.
- [3] When his application for leave came before a single judge of the Court on 02 June 2014 the Appellant indicated that he wanted to abandon his appeal. The Appellant then filed his notice of abandonment of appeal on 02 July 2014.
- [4] In accordance with the Supreme Court decision in Masirewa v The State (unreported CAV 14 of 2008; 17 August 2010) the learned Justice of Appeal referred the application to the Full Court for determination under Rule 39 of the Court of Appeal Rules.
- [5] The President of Court of Appeal acting under Section 6(2) of Court of Appeal Act directed that the Court be constituted by two judges to hear this application.
- [6] The Appellant at the hearing stated that he was not aware of his appeal against the sentence but wanted to abandon the appeal as he would be released from the prison on 15 September 2014. He also confirmed that his application had been made voluntarily and without any inducement. Under those circumstances the application to abandon the appeal should be granted and the appeal is dismissed.

Orders:

Appeal dismissed.



W. Calanchini

**HON. MR JUSTICE CALANCHINI
PRESIDENT COURT OF APPEAL**

[Signature]

**HON. MR JUSTICE KUMARARATNAM
JUSTICE OF APPEAL**