

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

**CRIMINAL APPEAL AAU0080 of 2012**  
**(Magistrate Court No: 264 of 2011)**

**BETWEEN** : **OSEA GAUNAVOU**

**Appellant**

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

**Respondent**

**Coram** : **Calanchini P**  
**Kumararatnam JA**

**Counsel** : **Mr S Sharma for the Appellant**  
**Mr L Fotofili for the Respondent**

**Date of Hearing** : **10 September 2014**

**Date of Ruling** : **13<sup>th</sup> October 2014**

**RULING**

**Calanchini P**

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

**Kumararatnam JA**

- [2] The Appellant had been convicted following a plea of guilty by the Learned Magistrate at Navua for one count of Aggravated Robbery contrary to Section 311(1) (a) of The Crimes Decree No: 44 of 2009. On 29 June 2012, the Appellant was sentenced to 3 ½ years' imprisonment. The Magistrate Court declined to set a non-parole period. Subsequently he filed an application for leave to appeal against his conviction and sentence.
- [3] When his application for leave came before a single judge of the Court on 18 March 2014 the Appellant indicated that he wanted to abandon his appeal. The Appellant then filed his notice of abandonment of appeal on 07 April 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 his application.
- [6] The Appellant submitted that he has completed his non-parole period and he is eligible for early release by the Commissioner of Prisons. He confirmed that he wanted to abandon his appeal against both conviction and sentence. 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.

**Order:**

*Appeal dismissed.*



*W. Calanchini*

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

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