

IN THE COURT OF APPEAL
AT SUVA

CRIMINAL APPEAL NO. AAU0092 OF 2012
(High Court Criminal Action No. HAC 252 of 2011)

BETWEEN : EPELI RATABACACA

Appellant

AND : THE STATE

Respondent

Coram : Hon. Justice Suresh Chandra, Justice of Appeal
Hon. Justice Prabakaran Kumararatnam, Justice of Appeal

Counsel : Mr. F. Vosarogo for the Appellant
Mr. L. Fotofili for the Respondent

Date of Hearing : 7 March 2014

Date of Ruling : 11 March 2014

RULING

Justice Chandra

- [1] The Appellant was charged with (1) one count of sexual assault contrary to section 210(1)(a) of the Crimes Decree 2009; (2) One count of Rape contrary to section

207(1) and 207(2)(b) of the Crimes Decree 2009; (3) One count of Rape contrary to section 207(1) and 207(2) of the Crimes Decree 2009.

- [2] On 8th November 2012, the Appellant was found not guilty and acquitted on Counts 2 and 3 but found guilty on Count 1. The Appellant was sentenced on 14th November 2012 to 2 years imprisonment with a non parole period of 15 months.
- [3] The Appellant appealed against his conviction and sentence to the Court of Appeal on 13th December 2012.
- [4] When the Appellant's application for leave to appeal was taken up for hearing on 18th February 2014 before a Single Judge, the Appellant appearing through Counsel made an application to withdraw the application for leave to appeal.
- [5] The Appellant had also notified the Registry in writing dated 17th February 2014, that he wished to withdraw his application for leave to Appeal.
- [6] The Single Judge gave his ruling on 21st February 2014 referring this application of the withdrawal to the Full Court.
- [7] In Jone Masirewa –v- The State (unreported Criminal Appeal CAV 14 of 2008 delivered 17 August 2010) the Supreme Court outlined the procedure to be

followed by Court in an application for withdrawal of an application for leave as follows:

“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be prudent for instance to ask the (appellant), on the day the matter is listed for hearing, why the (appeal) was to be withdrawn, whether any pressure had been brought to bear on the (appellant) to do so, and whether the decision to abandon had been considered beforehand.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.”

[8] The Court heard the application for withdrawal to consider whether the Petitioner’s application was bona fide and voluntary as when such an application for withdrawal is granted the appeal will be deemed to have been dismissed by Court.

[9] The Petitioner informed Court that he wanted to withdraw his application for leave to appeal and confirmed that his decision was voluntary and was made without coercion or pressure and that he understood the consequences of his decision.

[10] As a result, the application for withdrawal of the application for leave to appeal is granted and the appeal is dismissed.

Justice Kumararatnam

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

Hon. Justice S. Chandra

JUSTICE OF APPEAL

Hon. Justice P. Kumararatnam

JUSTICE OF APPEAL