

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 19 OF 2013
(High Court HAC 115 of 2011)

BETWEEN : **PONIPATE BAINIVALU**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**
Malalgoda JA

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

Date of Hearing : **16 May 2014**

Date of Decision : **30 May 2014**

DECISION

Calanchini P

- [1] Following a trial in the High Court at Suva by Judge sitting with three assessors the Appellant was convicted on the charge of aggravate robbery. On 12 March 2012 the

Appellant was sentenced to a term of imprisonment of 8 years with a non-parole term of 6 years.

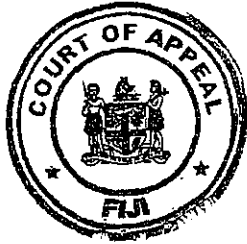
- [2] By letter dated 8 November 2012 but filed in the Court of Appeal Registry on 9 January 2013 the Appellant applied for leave to appeal against sentence out of time.
- [3] In an undated letter filed on 8 August 2013 the Appellant applied to abandon his appeal against sentence pursuant to Rule 39 of the Court of Appeal Rules. In accordance with the decision of the Supreme Court in Masirewa -v- The State (unreported CAV 14 of 2008; 17 August 2010) the application was listed before the Court of Appeal.
- [4] At the hearing of his application the Appellant confirmed that he had made his application voluntarily on the basis of legal advice received from his legal practitioner. He also confirmed that he was aware of the consequence in the event that his application was granted.
- [5] Under the circumstances the application to abandon the appeal against sentence should be granted and the appeal dismissed.
- [6] It was impractical for the purposes of determining this application to summon a Court of three judges. (Rule 6(2) of the Court of Appeal Rules).
- [7] Before concluding it is noted that in the same Court of Appeal file there is a second appeal lodged by the Appellant in respect of High Court proceedings HAC 114 of 2011. As the present application related only to HAC 115 of 2011, the appeal in respect of HAC 114 of 2011 remains on foot.

Malalgoda JA

- [8] I agree with the decision of Calanchini P.

Orders:

Appeal against sentence passed in HAC 115 of 2011 is dismissed.



W. Calanchini

HON. MR JUSTICE CALANCHINI
PRESIDENT, COURT OF APPEAL

Malalgoda

HON. MR JUSTICE MALALGODA
JUSTICE OF APPEAL