

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 93 OF 2016
(High Court HAC 334 of 2015)

BETWEEN : **ERONI VAKALEVULEVUI**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**
Chandra JA

Counsel : **Mr T Lee for the Appellant**
Mr M Vosawale for the Respondent

Date of Hearing : **22 November 2018**

Date of Ruling : **30 November 2018**

RULING

Calanchini P

- [1] The appellant was convicted on his plea of guilty in the High Court on one count of assault with intent to commit rape, one count of sexual assault and one count of rape. On 11 December 2015 the appellant was sentenced to 10 years 2 months imprisonment with a non-parole term of 8 years 10 months.

- [2] The Appellant subsequently filed a notice of appeal against conviction and sentence that was out of time by about 6 months. On 14 June 2015 the Appellant filed an application to abandon his appeal against conviction pursuant to Rule 39 of the Court of Appeal Rules.
- [3] In accordance with the decision of the Supreme Court in Masirewa –v- The State (CAV 14 of 2008; 17 August 2010) that application to abandon the late appeal was listed for hearing before the Court of Appeal. At the hearing the appellant confirmed that his decision to abandon the appeal was made voluntarily. He confirmed that he had received legal advice and that he understood the consequences in the event that his application were granted. He acknowledged that he had unequivocally pleaded guilty to the three counts.
- [4] The application for enlargement of time to appeal sentence is to be listed before a justice of appeal on a date to be fixed.
- [5] Under the circumstances the application to abandon the late appeal against conviction is granted and the appeal is dismissed.

Chandra JA

- [6] I agree.

Orders:

- 1) *Appeal against conviction is dismissed.*
- 2) *Appellant to file an application for enlargement of time to appeal sentence, supporting affidavit and submissions within 28 days from today.*

- 3) Respondent is to file and serve written submission within 28 days thereafter.
- 4) Application to be listed for hearing before a Justice of Appeal on a date to be fixed.



W. Calanchini

Hon Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL

S. Chandra

Hon Mr Justice S Chandra
JUSTICE OF APPEAL