

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO: AAU0073 of 2014
(Magistrate Court No: CF 2111 of 2013 at Suva)

BETWEEN : **THE STATE** *Appellant*

AND : **1. MALAKAI TOKA**
2. PITA DOMONI
3. SAMISONI ROKUVA
4. LOTE TAMANI *Respondents*

Coram : **Calanchini, P**
Prematilaka, JA
Nawana, JA

Counsel : **Ms. P. Madanavosa for the Appellant**
Ms. S. Nasedra for the 3rd Respondent
1st, 2nd and 4th Respondents in Person

Date of Hearing : **20 February 2019**

Date of Ruling : **7 March 2019**

RULING

Calanchini, P

[1] I agree with the orders proposed by Nawana JA.

Prematilaka, JA

[2] I agree.

Nawana, JA

- [3] The four respondents were convicted on 23 April 2014 for Aggravated Burglary and for Theft punishable under Sections 313 (1) (a) and 291(1) of the Crimes Act, 2009 by the Magistrate's Court at Suva exercising extended jurisdiction.
- [4] The respondents were convicted upon their pleas of guilt.
- [5] The learned Magistrate imposed a term of fourteen month-imprisonment on each respondent in respect of Count No (1); and, a term of six month-imprisonment on each respondent in respect of Count No (2). The sentences of the 1st-3rd Respondents were suspended for a period of three years, while the sentence of the 4th respondent was suspended for a period of two years having taken into account that the 4th respondent was a juvenile.
- [6] The appellant filed a timely notice of appeal against the sentence on 21 May 2014. Leave had been granted by a single justice of appeal and the matter was set down for hearing on 20 February 2019.
- [7] On 19 February 2019, the appellant filed an application to abandon the appeal against the sentence pursuant to Rule 39 of the Court of Appeal (Amendment) Rules, 2018.
- [8] In accordance with the decision of the Supreme Court in **Masirewa-v- The State** (CAV 14 of 2008; 17 August 2010), the application to abandon the application was taken up for hearing before the Court of Appeal on 20 February 2019.

[9] At the hearing, learned counsel for the appellant confirmed the decision to abandon the appeal. Learned counsel confirmed that the appellant had understood the consequences in the event the application was granted.

[10] In the circumstances, the application to abandon the appeal should be granted and the appeal dismissed.

The Orders of the Court are:

(1) Application for abandonment of the appeal granted.

(2) Appeal against sentence is dismissed.

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



C. Prematilaka
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**Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL**

P. Nawana
.....

**Hon. Mr. Justice P. Nawana
JUSTICE OF APPEAL**