

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

CRIMINAL APPEAL NO: AAU0092 of 2014
(High Court Case No: HAC 143 of 2014)

BETWEEN : **ELIKI TURAGANABORISI** *Appellant*

AND : **THE STATE** *Respondent*

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

Counsel **Mr. M. Fesaitu for the Appellant**
Ms. P. Madanavosa for the Respondent

Date of Hearing : **20 February 2019**

Date of Ruling : **7 March 2019**

RULING

Calanchini, P

[1] I agree with the Ruling drafted by Nawana JA.

Prematilaka, JA

[2] I agree.

Nawana, JA

- [3] The appellant was convicted on one count of rape punishable under Section 149 of the Penal Code by the Magistrate, Suva, after trial. The case was then transferred to the High Court for sentencing.
- [4] The learned High Court Judge sentenced the appellant to a term of 13-year mandatory period of imprisonment by a ruling dated 18 July 2014.
- [5] The appellant appealed against the sentence.
- [6] On 15 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.
- [7] 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.
- [8] At the hearing, the appellant was present and represented by counsel.
- [9] The appellant agreed with the application for withdrawal of the appeal and said that it was at his own free will without being influenced. The appellant stated that the reason for the withdrawal was based on his intent to serve the sentence.
- [10] The appellant also said that he had legal advice on the withdrawal; and, that he was well aware of the consequences including the fact that he cannot re-agitate the appeal.
- [11] At the hearing, Mr. Michael Fesaitu, learned counsel for the appellant confirmed the decision to abandon the appeal and that he had understood the consequences in the event the application was granted. Mr. Fesaitu submitted that he had given legal advice on the withdrawal of the appeal.

[12] In the circumstances, the application to abandon the appeal should be granted. The appeal should stand dismissed.

The Orders of the Court are:

- (1) *Application for abandonment of the appeal granted.*
- (2) *Appeal of the appellant is dismissed.*
- (3) *Sentence affirmed.*

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

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Hon. Mr. Justice P. Nawana
JUSTICE OF APPEAL