

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

CRIMINAL APPEAL NO. AAU 82 OF 2018
(HAA 1 of 2018)

BETWEEN : **ASIF ISMAIL**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**
Chandra JA

Counsel : **Mr Iqbal Khan for the Appellant**
Ms S Kiran for the Respondent

Date of Hearing : **24 September 2019**

Date of Ruling : **25 October 2019**

RULING

Calanchini P

[1] Following a trial in the Magistrates Court at Lautoka the appellant was convicted on one count of unlawfully and maliciously causing grievous harm. The Appellant filed a timely notice of appeal against conviction in the High Court prior to sentencing on 22 August 2018. The High Court dismissed the appeal for want of jurisdiction.

- [2] The Appellant subsequently filed a timely notice of appeal against the decision of the High Court pursuant to section 22 of the Court of Appeal Act 1949. On about 18 July 2019 the Appellant filed an application to abandon his appeal 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) the application to abandon the appeal was listed for hearing before the Court of Appeal.
- [4] The decision to abandon the appeal arises as a result of the decision of the High Court upon subsequently hearing an appeal against conviction and sentence in the same matter. In a Judgment delivered on 5 December 2018 the High Court allowed the appeal against conviction and remitted the matter to the Magistrates Court for a hearing “*de novo*” before a different Magistrate.
- [5] Under the circumstances the application to abandon the appeal is granted and the appeal is dismissed.


Chandra JA

- [6] I agree.


Order:

Appeal dismissed.





Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL



Hon Mr Justice S Chandra
JUSTICE OF APPEAL