IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE MAGISTRATES COURT
Exercising extended jurisdiction

CRIMINAL APPEAL NO. AAU 109 OF 2019
(Magistrates Court No: 46 of 2017 at Suva)

BETWEEN   :   SIKELE NAKALEVU

Appellant

AND   :   THE STATE

Respondent

Coram   :   Calanchini P
                                    Chandra JA

Counsel   :   Ms L Ratidara for the Appellant
                                    Ms S Kiran for the Respondent

Date of Hearing   :   20 November 2019

Date of Ruling   :   11 December 2019

RULING

Calanchini P

[1]   The appellant and two others were convicted on their pleas of guilty on one count of aggravated burglary and one count of theft by the Magistrates Court at Suva exercising extended jurisdiction. On 17 August 2018 the appellant was sentenced to 21 months imprisonment without a non-parole period being fixed.

[2]   The Appellant subsequently filed a notice of appeal against sentence that was out of time by at least 4 months. On 18 October 2019 the Appellant filed an application to abandon his appeal against sentence 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. At the hearing the appellant was not present and the Court was informed that he had been discharged on 29 October 2019. The appellant had left contact details with his Legal Aid lawyers. The appellant may apply to this Court for the appeal to be listed for further mention in the event that he wishes to pursue the application.

[4]   Under the circumstances the application to abandon the appeal against sentence is granted and the appeal is struck out.

Chandra JA

[5]   I agree.

Orders:

1. *Appeal against sentence is struck out.*
2. *Appellant given liberty to apply to this Court for further mention.*

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Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL

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Hon Mr Justice S Chandra
JUSTICE OF APPEAL