

KELEPI SERUKALOU v STATE (AAU0061 of 2011)

COURT OF APPEAL — CRIMINAL JURISDICTION

5 CALANCHINI AP, CHITRASIRI and BASNAYAKE JJA

25 May, 7 June 2012

10 **Criminal Law — appeals — withdrawal of appeal against conviction — whether appeal against conviction should be deemed abandoned — unrepresented applicant — precautions — voluntary decision — informed decision — Court of Appeal Rules r 39.**

15 The appellant applied to withdraw his appeal against conviction. The application was made pursuant to Rule 39 of the Court of Appeal Rules and therefore was treated as an application to abandon the appeal.

Held –

(1) The guidelines outlined in *Jone Masiwera v The State* should apply with equal force to an application under r 39 of the Court of Appeal Rules by an appellant to abandon an appeal.

20 *Jone Masirewa v The State* (unreported criminal appeal No CAV 14 of 2008), not followed.

(2) The appellant has made his decision voluntarily and without any pressure having been brought to bear on him. The Court is satisfied that he has made his decision informed of the consequences.
Application granted

Appellant in person.

30 *P. Bulamainavalu* for the Respondent.

Calanchini AP. The Appellant by letter dated 14 May 2012 applied to withdraw his appeal against conviction.

35 The application was made pursuant to r 39 of the Court of Appeal Rules and was, as a result, treated as an application to abandon the appeal against conviction. The matter came before the Court of Appeal to consider the Appellant's application and to determine whether the appeal against conviction should be deemed abandoned.

40 In *Jone Masirewa v The State* (unreported criminal appeal No CAV 14 of 2008 delivered on 17 August 2010) the Supreme Court considered a similar application by an appellant who appeared unrepresented and commented at paragraph 11:

45 *'Where written or oral applications are made by an unrepresented petitioner seeking leave to withdraw an appeal, appellate courts should proceed with caution. It would be prudent for instance to ask the petitioner on the day the matter is listed for hearing, why the petition was to be withdrawn, whether any pressure had been brought to bear on the petitioner to do so, and whether the decision to abandon had been considered beforehand. This inquiry should be made of the petitioner personally and recorded even in cases where the petitioner is represented. The purpose of the inquiry is to establish that the decision to withdraw has been made deliberately, intentionally and without mistake. Ideally, the decision should be informed also.'*

50 One of the reasons for taking these precautions was alluded to by the Supreme Court in the same decision at paragraph 8:

“... an appellate court has not permitted later, following a change of heart, a withdrawal of such abandonment, nor found a jurisdiction for doing so: *R -v- Myha Grant [2005] EWCA Crim 2018; R -v- Medway [1976] QB 779.*”

5 In my judgment these guidelines should apply with equal force to an application under r 39 made by an appellant to abandon an appeal.

In the present application I am satisfied that the Appellant has made his decision voluntarily and without any pressure having been brought to bear on him. I am satisfied that he has made his decision informed of the consequences. I would grant the application.

10 I would also add that an initial view of the material in this matter would indicate that there existed very little likelihood of the Appellant being granted leave to appeal against conviction as he had pleaded guilty at the trial.

The Appellant’s appeal against sentence remains on foot and his application for leave to appeal will be listed for hearing on a date to be fixed.

15 **Chitrasiri JA.** I agree with the Ruling and the reasons thereof set out by Calanchini AP.

Basnayake JA. I also agree with the reasoning and the conclusion of Calanchini AP.

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Application granted.

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