

IN THE SUPREME COURT OF FIJI
AT SUVA

CRIMINAL APPEAL NO. CAV0008 OF 2012
(Court of Appeal No. AAU0065 of 2005)

BETWEEN : **RUSILA VUKI**

Petitioner

AND : **THE STATE**

Respondent

Coram : **Hon. Justice Suresh Chandra, Justice of the Supreme Court**
Hon. Justice William Calanchini, Justice of the Supreme Court
Hon. Justice Paul Madigan, Justice of the Supreme Court

Counsel : **Ms. N. Nawasaitoga for the Petitioner**
Ms. P. Madanavosa for the Respondent

Date of Hearing : **8 November 2013**

Date of Judgment : **20 November 2013**

JUDGMENT

Justice Chandra

- [1] The Petitioner was charged with one count of murder contrary to section 199 and 200 of the Penal Code, Cap.17.

- [2] On 4th August 2005, the Petitioner was unanimously found guilty by the Assessors and the verdict was accepted by the trial Judge. The Petitioner was sentenced to life imprisonment.
- [3] The Petitioner's application for leave to appeal to the Court of Appeal was refused by a single Judge and thereafter she applied to the Full Court seeking leave.
- [4] The Court of Appeal granted leave to appeal but by its judgment dated 19th March 2009 dismissed the appeal.
- [5] By letter dated 28th June 2012 the Petitioner sought to appeal against the decision of the Court of Appeal.
- [6] When the Petitioner's application for leave was taken up for hearing on 8th November 2013, the Petitioner appearing through Counsel made an application to withdraw the application for leave to appeal.
- [7] The Court questioned the Appellant regarding her application as to whether she was making her application for withdrawal voluntarily without any coercion or pressure and she replied that she was withdrawing her application for appeal out of her own free will.
- [8] The Petitioner has also notified the Registry in writing dated 8th November that she wishes to withdraw her application for leave to Appeal.

- [9] In **Jone Masirewa –v- The State** (unreported Criminal Appeal CAV 14 of 2008 delivered 17 August 2010) the Supreme Court outlined the procedure to be followed by Court in an application for withdrawal of an application for leave as follows:

“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be prudent for instance to ask the (appellant), on the day the matter is listed for hearing, why the (appeal) was to be withdrawn, whether any pressure had been brought to bear on the (appellant) to do so, and whether the decision to abandon had been considered beforehand.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.”

- [10] The Court has heard the application for withdrawal as stated above to consider whether the Petitioner’s application is bona fide and voluntary as when such an application for withdrawal is granted the application and the appeal will be deemed to have been dismissed by Court.
- [11] The Petitioner has informed Court that she wanted to withdraw her application for leave to appeal and confirmed that her decision was voluntary and was made without coercion or pressure and that she understood the consequences of her decision.
- [12] As a result, the application for withdrawal of the application for leave to appeal is granted and the appeal is dismissed.

Justice Calanchini

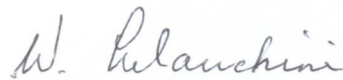
[13] I agree that the appeal should be dismissed.

Justice Madigan

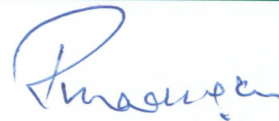
[14] I also agree that the appeal should be dismissed.



HON. JUSTICE S. CHANDRA
JUSTICE OF THE SUPREME COURT



HON. JUSTICE W. D. CALANCHINI
JUSTICE OF THE SUPREME COURT



HON. JUSTICE P. MADIGAN
JUSTICE OF THE SUPREME COURT