

**IN THE SUPREME COURT OF FIJI**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. CAV 002 of 2017S**  
[from Court of Appeal No. AAU122/2011]

**BETWEEN:** Rohit Khan  
**Petitioner**

**AND:** The State  
**Respondent**

**Coram:** The Hon. Chief Justice Anthony Gates  
President of the Supreme Court  
The Hon. Mr. Justice Saleem Marsoof  
Judge of the Supreme Court  
The Hon. Madam Justice Chandra Ekanayake  
Judge of the Supreme Court

**Counsel:** Mr. S. Waqainabete for the Petitioner  
Ms P. Madanavosa for the Respondent

**Hearing:** Tuesday 11<sup>th</sup> July 2017  
**Date of Judgment:** Thursday 20<sup>th</sup> July 2017

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**JUDGMENT OF THE COURT**

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**Gates P:**

- [1] On 17<sup>th</sup> November 2011 the Petitioner had been convicted in the Labasa High Court of one count of murder contrary to section 237 and one count of Act with intent to cause grievous harm, contrary to section 255(b), both charges brought under the Crimes Act.
- [2] He was sentenced to a mandatory term of life imprisonment with a minimum term fixed of 15 years before application could be made for a pardon. He was sentenced to 4 years imprisonment concurrent on the 2<sup>nd</sup> count. Part of the way into his trial he had withdrawn his not guilty plea and pleaded guilty to the 2 charges.
- [3] The Petitioner had filed an appeal to this court against sentence only. On 25<sup>th</sup> May 2017 he filed a Notice of Abandonment of appeal purportedly under Rule 18. Since the

making of the Supreme Court Rules 2016 this should have been Rule 15. The Notice was signed both by the Petitioner and by his counsel. The filing of the Notice gave proper notice of abandonment to Solicitors for the Respondent, and in doing so, saved unnecessary costs.

- [4] It is the practice of this court to proceed with caution in cases of withdrawal. This is to ensure that litigants make a deliberate and considered decision to withdraw a petition and so that they understand the finality of their withdrawal. This course was approved and decided in **Jone Masirewa** CAV0014 of 2008S 17<sup>th</sup> August 2010 following **R v Myha Grant** [2005] EWCA Crim. 2018; 149 SJ 1186; **R v Medway** [ 1976] QB779.
- [5] From **Masirewa** certain questions are to be put to the Petitioner himself, though he be represented by counsel. His counsel quite properly informed us that the Petitioner was steadfast in his position.
- [6] When asked by the court “why do you want to withdraw your appeal”, the Petitioner said “I want to serve my sentence.” He was asked if any pressure had been put on him to withdraw, he answered “No pressure has been brought.”
- [7] He was asked whether he had carefully considered the decision to withdraw, and he said he had considered carefully. Finally he was asked “Do you understand that you are abandoning your appeal and will not be able to come back and seek to argue your appeal again?” He said he understood he could not come back to argue.
- [8] Taking all of those circumstances together the court was prepared to allow the Petitioner to withdraw his petition.
- [9] The orders of the Court therefore are as follows:
1. Leave granted for withdrawal of the petition following abandonment of the appeal.
  2. Petition for leave to appeal dismissed.
  3. No order as to costs.





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Hon. Justice Anthony Gates  
**President Supreme Court**



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Hon. Justice Marsoof  
**Judge of the Supreme Court**



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Hon. Justice Ekanayake  
**Judge of the Supreme Court**

Solicitors for the Petitioner:  
Solicitors for the Respondent:

Director, Legal Aid Commission  
Director of Public Prosecutions

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