

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO: AAU 108 of 2008
(High Court HAA 48 of 2008)

BETWEEN : **JOSEPH CHRISTOPHER**

Appellant

AND : **THE STATE**

Respondent

Coram : **Calanchini AP**
Chandra JA

Counsel : **Appellant in person.**
Mr M Korovou for the Respondent.

Date of Hearing : **17 May 2013**

Date of Ruling : **30 May 2013**

RULING

[1]. When the Appellant's application for leave to appeal the decision of the High Court exercising its appellate jurisdiction came before a single Judge of the Court on 12 November 2012 the learned Judge was informed by the Appellant that he wanted to withdraw his appeal against conviction. He had previously abandoned his original appeal against sentence in the High Court.

- [2]. As a result the application was transmitted to the Court of Appeal for its consideration pursuant to Rule 39 of the Court of Appeal Rules (the Rules).
- [3]. Pursuant to the authority given under section 6(2) of the Court of Appeal Act Cap 12 the application was listed before two judges as a duly constituted Court for the hearing of the application.
- [4]. The Appellant was convicted in the Magistrates' Court at Nadi on 25 January 2008 on one count of robbery with violence and was sentenced to a term of ten years imprisonment plus four strokes of corporal punishment subject to High Court confirmation. On appeal to the High Court against conviction, the appeal was dismissed and the sentence was quashed and in its place a prison term of ten years was ordered.
- [5]. When the application was called before the Court of Appeal the Appellant confirmed that he was applying to withdraw his appeal against conviction and sentence. The procedure to be followed by the Court in the present application was outlined by the Supreme Court in **Jone Masirewa –v- The State** (unreported criminal appeal CAV 14 of 2008 delivered 17 August 2010) at paragraph 11:

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prudent for instance to ask the (appellant), on the day the matter is listed for hearing, why the (appeal) was to be withdrawn, whether any pressure had been brought to bear on the (appellant) to do so, and whether the decision to abandon had been considered beforehand.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

- [6]. Under Rule 39 the Court of Appeal is empowered to order that an appeal should be dismissed presumably, upon it granting an application by an appellant to abandon or withdraw his appeal. In my view the fact that it is the Court of Appeal that dismisses

the appeal indicates that the procedure is more than a routine administrative task capable of being performed by the Registry. The effect of the words used in Rule 39 when considered with the decision of the Supreme Court in **Masirewa –v- The State** (supra) is that the application must be placed before the Court of Appeal. The Court of Appeal is required to hear the application in accordance with the procedure set out by the Supreme Court. In the event that the Court of Appeal is satisfied that the Appellant’s application is bona fide, voluntary and informed, the Court will grant the application and the appeal will then be dismissed by the Court of Appeal.

[7]. The Appellant informed the Court that the reason for his application to withdraw his appeal against conviction was because he had already served five years of his sentence and because he has benefited from many rehabilitation programmes and hoped to continue with further rehabilitation courses whilst he serves the balance of his sentence. He stated that he understood the consequences if his application were granted. He confirmed that his application was made voluntarily and without any pressure or coercion.

[8]. As a result the application is granted and the appeal against conviction to this Court is dismissed.

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HON. JUSTICE W. D. CALANCHINI
ACTING PRESIDENT

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HON. JUSTICE S. CHANDRA
JUSTICE OF APPEAL