

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**CRIMINAL APPEAL NO. AAU 15 OF 2016**  
**(High Court HAC 58 of 2014 at Labasa)**

**BETWEEN** : **SAMUELA BALEIDREKETI** *Appellant*

**AND** : **THE STATE** *Respondent*

**Coram** : **Calanchini P**  
**Chandra JA**

**Counsel** : **Ms S Nasedra and Mr M Fesaitu for the Appellant**  
**Ms L Bogitini for the Respondent**

**Date of Hearing** : **20 May 2019 and 28 May 2019**

**Date of Ruling** : **27 June 2019**

**RULING**

**Calanchini P**

[1] The appellant was convicted by the High Court at Labasa on one count of rape. On 25 June 2015 the appellant was sentenced to 13 years imprisonment with a non-parole term of 10 years.

- [2] The Appellant subsequently filed a notice of appeal against conviction and sentence that was out of time by about 6 months. On 25 April 2018 the Appellant filed an application to abandon his appeal against conviction and on 23 January 2019 filed an application to abandon his sentence appeal 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 confirmed that his decision to abandon the appeal was made voluntarily. Although he had not received legal advice he confirmed that he understood the consequences in the event that his application were granted. He also confirmed that he had been advised of the anticipated date of discharge.
- [4] The Court noted that the appellant was serving a sentence that would see him incarcerated for a further 12 years. However, the appellant could not be moved in his determination to abandon both his conviction and sentence appeals.
- [5] Under the circumstances the application to abandon the appeal against conviction and sentence should be granted and the appeal dismissed.

**Chandra JA**

- [6] I agree.

Order:

*Appeal against conviction and sentence is dismissed.*



*W. Calanchini*

Hon Mr Justice W D Calanchini  
**PRESIDENT, COURT OF APPEAL**

*S Chandra*

Hon Mr Justice S Chandra  
**JUSTICE OF APPEAL**