

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

CRIMINAL APPEAL NO. AAU 148 OF 2016
(High Court HAC 216 of 2011)

BETWEEN : **MOSESE NABATI**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**
Chandra JA

Counsel : **Ms S Nasedra for the Appellant**
Ms L Bogitini for the Respondent

Date of Hearing : **23 May 2019**

Date of Ruling : **27 June 2019**

RULING

Calanchini P

[1] The appellant was convicted on one count of rape and one count of indecent assault by the High Court at Lautoka. The complainant was a child aged 10 years at the time. On 24 November 2015 the appellant was sentenced to 12 years imprisonment for the rape conviction and 4 years imprisonment for the indecent assault conviction. The sentences were order to be served concurrently with a non-parole term of 9 years.

- [2] The Appellant subsequently filed a notice of appeal against conviction and sentence that was out of time by 9 months. On 21 March 2019 the Appellant filed an application to abandon his appeal against conviction and sentence 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. He confirmed that he had received legal advice and that he understood the consequences in the event that his application were granted. He indicated that his decision to abandon the appeal was based on legal advice received from his counsel.
- [4] Under the circumstances the application to abandon the appeal against conviction and sentence should be granted and the appeal dismissed.

Chandra JA

- [5] 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