

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

**CRIMINAL APPEAL NO. AAU 75 OF 2015**

(HAM 62 of 2014)

(Magistrates Court No: 738 of 2008 at Lautoka)

**BETWEEN** : **JOSEFA LUTUNATABUA**

***Appellant***

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

***Respondent***

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

**Counsel** : **Ms V Narara for the Appellant**  
**Ms W Elo for the Respondent**

**Date of Hearing** : **2 October 2019**

**Date of Ruling** : **25 October 2019**

**RULING**

**Calanchini P**

- [1] The appellant was convicted on his plea of guilty by the Magistrates Court at Lautoka on one count of robbery with violence, one count of unlawful use of motor vehicle and counts of unlicensed driving and driving an uninsured vehicle. On 6 July 2010 he was

sentenced to 8 years 9 months imprisonment with a non-parole term of 6 years. A subsequent appeal against sentence was dismissed by the High Court on 5 May 2012.

- [2] The Appellant then filed a notice of appeal under section 22 of the Court of Appeal Act against sentence that was out of time by about 3 years. On 3 July 2019 the Appellant filed an application to abandon his appeal against 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.
- [4] Under the circumstances the applications to abandon the appeal against sentence is granted and the appeal is dismissed.

**Chandra JA**

- [5] I agree.

Order:

*Appeal against 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**