

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 0014 of 2020
[In the High Court at Lautoka Case No. HAC 116 of 2015]

BETWEEN : **SOSICENI TOA**

AND : **THE STATE**

Appellant

Respondent

Coram : **Mataitoga, RJA**
Morgan, JA
Dobson, JA

Counsel : **Appellant in person**
Mr. L.J. Burney for the Respondent

Date of Hearing : **02 July 2024**

Date of Judgment : **26 July 2024**

JUDGMENT

Mataitoga, RJA

1. The appellant was indicted and tried in the High Court at Lautoka with the following:

“FIRST COUNT **Statement of Offence**

ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS: Contrary to section 4 (1) and section 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

SOSICENI TOA between the 9th day of July 2015 and the 13th day of July 2015 together with persons unknown attempted to import illicit drugs, namely

methamphetamine weighing approximately 20.3kg, into the Republic of Fiji, without lawful authority.

SECOND COUNT
Statement of Offence

ATTEMPTED UNLAWFUL IMPORTATION OF ILLICIT DRUGS: Contrary to section 4 (1) and section 9 of the Illicit Drugs Control Act 2004.

Particulars of Offence

SOSICENI TOA and other persons unknown between the 17th day of May 2015 and the 25th day of July, 2015 attempted to import illicit drugs, namely methamphetamine weighing approximately 79.3kg, into the Republic of Fiji, without lawful authority.”

2. The trial in the High Court at Lautoka, had 5 assessors not the usual 3. The trial lasted 8 days. At the end of the trial the 5 assessors had a unanimous verdict for both counts charged against the appellant. They found the appellant guilty of the first count but not for the second count of the charge in the indictment.
3. The trial judge reviewed the evidence and accepted the finding of the assessors and found the appellant guilty of count 1 but not of count 2. He convicted the appellant for count 1 and acquitted him for count 2 in the judgment dated 20 December 2019.
4. The appellant was sentenced to 9 years 2 months 14 days imprisonment with a non-parole period of 8 years.
5. On 4 March 20 20 the appellant filed an Application with Notice of Leave to Appeal Against Conviction and Sentence which was timely. On 10 August 2022 when the leave to appeal hearing was heard before the single judge of the Court, the appellant filed a Form 3 pursuant to Rule 39 of the Court of Appeal Rules to abandon his appeal against sentence
6. The application for leave to appeal against conviction proceeded to hearing, on 2 grounds. These grounds were analyzed by the judge, he concluded that it did not merit

granting the application for leave because it did not have a reasonable prospect of success on appeal¹. Leave was refused vide ruling dated 12 August 2022.

7. The appellant filed a renewed appeal to the full Court dated 24 August 2022, pursuant to section 35(3) of the Court of Appeal Act 2009. The appeal is against conviction and there were 2 grounds of appeal submitted in support of the notice of appeal.
8. On 2 July 2024 the appellant's appeal against conviction was to be heard before the Court. At the hearing the court was advised that appellant had decided to abandon his appeal and had filled out Form 3 pursuant to Rule 39 of the Court of Appeal Rules. A copy was filed in Court.
9. As required pursuant to the Supreme Court decision in **Masirewa v State** [2010] FJSC 5 [CAV 0014 of 2008], the court were required to ascertain the following:
 - i) Appellant confirmed that he wanted to abandon his appeal against conviction;
 - ii) That he had filled Order 3 and filed it in the Court Registry. Copy was given in Court.
 - iii) Appellant confirmed that he made the decision to abandon on his free will.
 - iv) He confirms that he understood, what the court told him, that once his appeal against conviction is dismissed, he will not be able to reactivate it in the future.
 - v) He still wanted to abandon his appeal as earlier stated.
10. In light of the above, the court allowed the application to abandon the appeal against conviction and dismissed the appeal.

Morgan, JA

11. I have read the draft judgment of Mataitoga, RJA and agreed with the same.

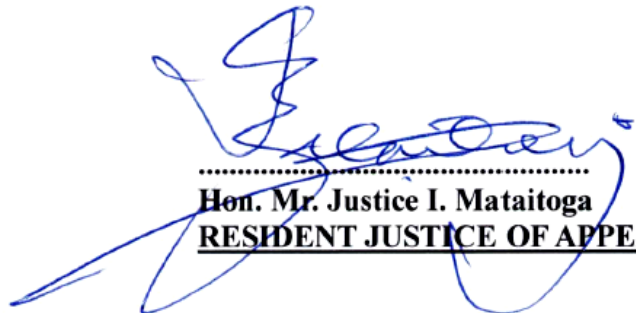
Dobson, JA

12. Agreed.

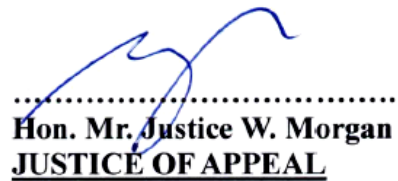
¹ *Caucu v State* [2018] FJCA 171 [AAU No: 0029 of 2016]; *Nasila v State* [2019] FJCA 84 [AAU No: 004 of 2011].

Orders of the Court:

1. Application by Appellant to abandon his appeal against conviction allowed
2. Appeal against conviction is dismissed.


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Hon. Mr. Justice I. Maitoga
RESIDENT JUSTICE OF APPEAL




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Hon. Mr. Justice W. Morgan
JUSTICE OF APPEAL


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Hon. Mr. Justice R. Dobson
JUSTICE OF APPEAL

Solicitors:

Appellant in person
Office of the Director of Public Prosecution for the Respondent