

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

CRIMINAL APPEAL NO. AAU 0156 of 2019
[In the High Court at Lautoka Case No. HAC 02 of 2019]

BETWEEN : **AMENONI NASILASILA**

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

Coram : **Prematilaka, RJA**
Mataitoga, RJA
Heath, JA

Counsel : **Mr. S. Waqainabete and Mr. M. Fesaitu for the Appellant**
Mr. L.J. Burney for the Respondent

Date of Hearing : **01 July 2024**

Date of Judgment : **26 July 2024**

JUDGMENT

Prematilaka, RJA

1. I agree with the order of dismissal of the appeal, following the appellant's application to abandon his appeal.

Mataitoga, RJA

2. The appellant was charged with one count of Rape, contrary to section 207 of the Crimes Act 2009. He was tried at the High Court in Lautoka before assessors. The appellant was represented by counsel at the trial.

3. The 3 assessors gave their opinion of not guilty, which was overruled by the trial judge. Following the trial, the appellant despite the unanimous opinion of the assessors, was found guilty and convicted on 20 September 2019. On 23 October 2019, he was sentenced to 8 years imprisonment with a non-parole period of 6 years.
4. The appellant appealed against his conviction and submitted 10 grounds of appeal in support thereof. At the Leave to Appeal hearing his leave application for conviction was unsuccessful.
5. With the assistance of the Legal Aid Commission, the appellant filed a renewed application dated 13 October 2021, under section 35(3) of the Court of Appeal Act, to the full court urging 1 ground of appeal, namely, incompetent counsel.
6. On 1 July 2023, the appellant's appeal was set for the hearing before the Court of Appeal. Counsel for Appellant at the start of the hearing, informed the court that the appellant would like to abandoned his appeal against conviction.
7. The Court mindful of the Supreme Court decision in *Masirewa v State*¹ confirmed from the appellant the following:
 - i) He confirmed that he wanted to abandoned his appeal against sentence;
 - ii) He made this decision without any pressure from anyone;
 - iii) He received legal advice from Legal Aid Commission [LAC] before he decided to abandon his appeal.
 - iv) He confirmed that once his application to abandon his appeal is allowed and the court dismisses it, he cannot in the future reactivate it.
8. The Appellant filled in Order Form 3 and submitted to the registry as record of his decision to abandon his appeal against conviction.
9. In light of the above, court dismissed the appellant's appeal against conviction.

¹ [2010] FJSC 5 [CAV 0014 of 2008]


Heath, JA

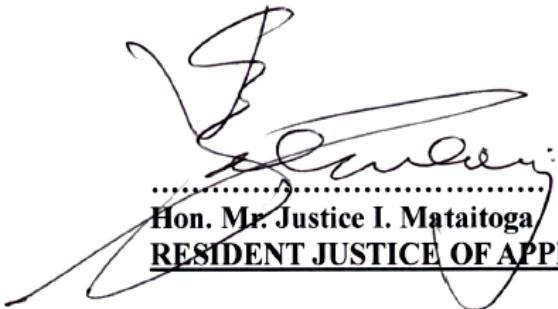
10. I agree with the reasons given by Mataitoga, RJA for allowing the appellant to abandon the conviction appeal, and with the consequential orders proposed.

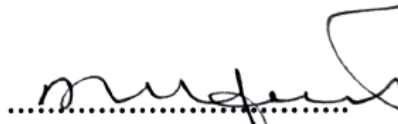
ORDERS OF THE COURT:

1. Application by the appellant to abandon his appeal against conviction is granted.
2. Appeal against Conviction is dismissed.




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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL


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


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Hon. Mr. Justice P. Heath
JUSTICE OF APPEAL

Solicitors:

Legal Aid Commission for the Appellant
Office of the Director of Public Prosecution for the Respondent