

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

CRIMINAL APPEAL NO. AAU 008 of 2022
[High Court Criminal Case No. HCADA 009 of 2021S]

BETWEEN : **ADI LITIA QIONIBARAVI**

Appellant

AND : **FIJI INDEPENDENT COMMISSION AGAINST
CORUPTION (FICAC)**

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. J. Karunaratne for the Appellant
Mr. D. Hicks for the Respondent**

Date of Hearing : **18 December 2023**

Date of Ruling : **15 January 2024**

RULING

[1] The appellant with others had been charged in the Magistrates' Court by the Fiji Independent Commission Against Corruption ("FICAC") with the following offences –

- (1) *Count 1: False Information to a Public Servant contrary to section 201(a) of the Crimes Act.*
- (2) *Count 2: Obtaining Financial Advantage contrary to section 326(1) of the Crimes Act.*

[2] By an application to the Anti-Corruption Division of the Magistrates' Court, FICAC had sought an order that the appellant's case in the Magistrates' Court be transferred to the High Court for trial.

- [3] Despite objections by the appellant, the learned Magistrate had ordered that the appellant's case in the Magistrates' Court be transferred to the High Court for trial.
- [4] The appellant being dissatisfied with the learned Magistrate's order to transfer her case to the High Court, had appealed against the said order to the High Court.
- [5] At the High Court, FICAC had taken up a preliminary objection against the appellant's appeal and contended that the High Court had no jurisdiction to entertain and hear the appellant's appeal.
- [6] The High Court, in a written Ruling¹, had decided that the High Court had no jurisdiction to entertain and hear the appellant's said appeal and dismissed the same.
- [7] The appellant has appealed to this court against the said High Court Ruling dated 04 February 2022.
- [8] In the meantime, FICAC had entered *nolle prosequi* in the High Court upon receiving an independent medical assessment by a panel of doctors that the appellant was unfit to stand trial and accordingly, the appellant had been discharged from all proceedings by the High Court on 09 June 2023.
- [9] Subsequently, the appellant's counsel informed this court that his client wished to withdraw her appeal but was unable to sign a Form 3 under Rule 39 of the Court of Appeal Rules due to her medical condition. In the circumstances, the appellant's counsel has filed a notice of abandonment seeking to abandon the appellant's appeal against the said High Court Ruling under Rule 39 of the Court of Appeal Rules on 01 November 2023 supported by an affidavit by the appellant's daughter confirming her mother's desire to abandon her appeal along with a medical report.

¹ *Matanitobua v Fiji Independent Commission Against Corruption (FICAC)* [2022] FJHC 34; HACDA009.2021S (4 February 2022)

[10] On the material available, I am satisfied that the appellant still wished to abandon her appeal, she was doing so voluntarily having received legal advice from her counsel and the reason for the abandonment is that there are no proceedings pending against her any longer in the High Court and the appeal has become futile and she has understood that the consequences of the abandonment would be that if the application is allowed her appeal would be deemed dismissed and she cannot once again canvass the said impugned Ruling of the High Court.

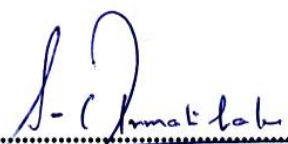
[11] I am also mindful that the appellant's appeal has in any event become frivolous in view of the *nolle prosequi* entered by FICAC in the High Court and is liable to be dismissed in terms of section 35(2) of the Court of Appeal Act.

[12] In the circumstances, the appellant's application to abandon her appeal should be allowed.

Orders of the Court:

- (i) Application to abandon the appeal is allowed.
- (ii) Appeal against the High Court Ruling dated 04 February 2022 shall be deemed to have been dismissed by the Court of Appeal in terms of Rule 39 of the Court of Appeal Rules.




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Hon. Mr Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Redwood Law for the Appellant
Fiji Independent Commission Against Corruption for the Respondent