

PENI MATAIRAVULA v STATE (AAU0032 of 2010S)

COURT OF APPEAL — APPELLATE JURISDICTION

5 FERNANDO JA

27 September 2012

10 **Courts and Judicial System — appeal — withdrawal of appeal — whether single judge of Court of Appeal has jurisdiction to decide on application to withdraw appeal — full court — Court of Appeal Rules r 39.**

15 The High Court refused to grant the appellant’s application to stay proceedings, and the appellant appealed to the Court of Appeal. Subsequently, the appellant moved to withdraw the appeal.

Held –

A single judge of the Court of Appeal has no jurisdiction to decide on an application to withdraw an appeal. In terms of r 39 of the Court of Appeal Rules, the single judge should direct the application for withdrawal to be made before the full court.

20 Case placed in list to be heard by full Court.

J. Savou for the Appellant.

P. Madanavosa for the Respondent.

25 **[1] Fernando JA.** The appellant made an application to stay proceedings in cases No 145/2006, 998/2006, 999/2006 and 1000/2006 filed in Magistrate’s Court of Nadi. The stay application was refused by Madigan J in the High Court Miscellaneous case No HAM 42/2006 by his ruling dated 21/05/2010.

[2] Appellant appealed the said ruling to the Court of Appeal.

30 **[3]** On 26/04/2012 when the case was called for mention in the Court of Appeal, Counsel for the appellant moved to withdraw the appeal on the instructions of the appellant. Appellant was present in Court. State Counsel did not object to the application for withdrawal.

35 **[4]** A single Judge of the Court of Appeal has no jurisdiction to decide on an application to withdraw an appeal. In terms of r 39 of the Court of Appeal rules, the single judge should direct the application for withdrawal to be made before the full court.

[5] Therefore I direct that this case be placed in the list to be heard by the full court.

40

Case placed in list to be heard by full court.

45

50