

IN THE COURT OF APPEAL, FIJI
On appeal from the High Court of Fiji

CRIMINAL APPEAL AAU 116 OF 2014
(High Court HAC 45 of 2013)

BETWEEN : TEVITA DUTABOTO

Appellant

AND : THE STATE

Respondent

Coram : Calanchini P
Guneratne JA
A. Fernando JA

Counsel : Appellant in person
Ms P Madanavosa for the Respondent

Date of Hearing : 16 September 2016

Date of Ruling : 30 September 2016

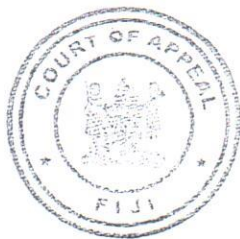
RULING


- [1] The Appellant was convicted on one count of murder contrary to section 45 and 237 of the Crimes Decree 2009 on his plea of guilty. On 12 September 2014 he was sentenced to the mandatory sentence of imprisonment for life with a minimum term of 11 years.

- [2] On 9 October 2014 the Appellant filed a notice of appeal against sentence with reference only to the fixing of the minimum term. On 15 July 2015 the Appellant filed an application for leave to abandon his appeal against sentence.
- [3] The mandatory sentence of imprisonment for life for murder is one fixed by law and as a result there is no right to appeal such a sentence under section 21(1) (c) of the Court of Appeal Act Cap 12. The challenge in the notice of appeal to the fixing of a non-parole term indicates that the learned trial Judge has applied the provisions of the Sentencing and Penalties Decree 2009 when sentencing the Appellant. However section 237 of the Crimes Decree specifies the sentence for murder and has the effect of excluding the application of the Sentencing Decree.
- [4] Consequently the application to abandon the appeal against sentence is granted and the appeal is dismissed.


Order

Appeal against sentence is dismissed.






Hon. Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL



Hon. Mr Justice Guneratne
JUSTICE OF APPEAL



Hon. Mr Justice A. Fernando
JUSTICE OF APPEAL