

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

Criminal Appeal No: AAU 0039 of 2015
(High Court Case No: HAC 0016 of 2015)

BETWEEN : **IMMANUEL SMITH**

Appellant

AND : **THE STATE**

Respondent

Coram : Calanchini, P
Gamalath, JA
Jayamanne, JA

Appearance : Appellant in person
Mr. M. D. Korovou for the Respondent

Date of Hearing : 26 May 2016

Date of Ruling : 3 June 2016

RULING

Calanchini, P

[1] I agree that the application should be allowed and that the appeal be dismissed

Gamalath, JA

[2] I agree that the application should be allowed and that the appeal be dismissed.

Jayamanne JA

- [3] The appellant seeks leave of Court to abandon his appeal.
- [2] The appellant was charged in the Magistrate's Court for committing an offence under Section 5(a) of the Illicit Drugs Control Act 2004. He was alleged to have possessed 415 grams of an illicit drug namely Indian Hemp. Following a trial, the accused was convicted on 23 August 2012. He was sentenced on 26 April 2013, to 3 years imprisonment with non parole period of 2 years.
- [3] He lodged an appeal to the High Court against the conviction and the sentence, and the High Court gave a judgment dismissing the appeal against the conviction on 24 March 2015. However, the sentence was varied to 30 months imprisonment with non parole period of 20 months.
- [4] On 8 April 2015, the appellant submitted notice of appeal to the Court of Appeal challenging the dismissal by the High Court. However, the Registry received the application only on 14 April 2015.
- [5] On 18 March 2016 the appellant filed a withdrawal application before this Court.
- [6] This case was called in Court on 26 May 2016 i.e today to consider the appellant's application and to determine whether the appeal should be deemed abandoned.
- [7] *“Where written or oral applications are made by an unrepresented petitioner seeking leave to withdraw an appeal, appellate courts should proceed with caution. It would be prudent for instance to ask the petitioner on the day the matter is listed for hearing, why the petition was to be withdrawn, whether any pressure had been*

brought to bear on the petitioner to do so, and whether the decision to abandon had been considered beforehand. This inquiry should be made of the petitioner personally and recorded even in cases where the petitioner is represented. The purpose of the inquiry is to establish that the decision to withdraw has been made deliberately, intentionally and without mistake. Ideally the decision should be informed also” (Jone Masirewa v The State (Supreme Court unreported appeal No. CAV 14 of 2008 (17 August 2010) Kelepi Serukalou v State (AAU 0061 of 2011) 2012 2 FLR 148 (emphasis added).

- [8] The appellant admitted to having sent an application to withdraw his appeal. The appellant stated that he had no pressure from anyone to withdraw the appeal. The appellant submitted that he had been in Maximum Correction Centre for 3 years. The appellant informed the court as he had already been in the Centre for more than 30 months which was the imprisonment ordered by the High Court, he wished to withdraw the appeal. The appellant was warned by Court that in the event of dismissal of this appeal that he would not be able to re-agitate this appeal.
- [9] Being satisfied that the appellant is moving to have his appeal withdrawn on his own volition without any interference I would allow this application for withdrawal and dismiss the appeal.

The Orders of the Court are:

1. *The application for abandonment of appeal is allowed.*
2. *The appeal is dismissed*

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



S. Gamalath
.....
Hon. Mr. Justice S. Gamalath
JUSTICE OF APPEAL

S. Jayamanne

.....
Hon. Mr. Justice S. Jayamanne
JUSTICE OF APPEAL