

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 71 OF 2014
(High Court No. HAC 201 Of 2012)

BETWEEN : AISAKE KIVI

Appellant

AND : THE STATE

Respondent

Coram : Prematilaka JA
A Fernando JA
Nawana JA

Counsel : Ms S Ratu for the Appellant
Ms S Kiran for the Respondent

Date of Hearing : 11 September 2019

Date of Judgment : 3 October 2019

JUDGMENT

Prematilaka JA

[1] I agree.

Fernando JA

- [2] The Appellant had been convicted of rape after trial and convicted on his plea of guilt on two counts of sexual assault and sentenced to a total term of 13 years imprisonment to run concurrently, with a non-parole term of 9 years on the 22nd of April 2014. He had appealed against his sentence.
- [3] At the commencement of the hearing of the appeal, following the judgment of the Court of Appeal in Christina Doreen Skipper v. Reginam (Cr. App. 70/1978) which was reiterated in Kumar v. The State [2005] FJCA 54; AAU 18J.2005 (29 July 2005) the Court drew the attention of the Appellant and to his Counsel to section 23(3) of the Court of Appeal Act which states:
- “On an appeal against sentence, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just.”*
- [4] The Court having thus drawn the attention of both the Appellant and to his Counsel to the said section afforded an opportunity for the Appellant to make submissions in that regard and asked the Appellant to consult with his Counsel.
- [5] Counsel for the Appellant then informed Court that the Appellant had informed him that he does not want to pursue the appeal and wanted to abandon his appeal.
- [6] The Appellant then presented to Court a duly completed and signed form under rule 39 of the Court of Appeal Rules informing Court that he does not intend to prosecute the appeal and that he had decided to abandon all further proceedings in regard to the appeal as from this date.

- [7] The Court then in accordance with the guidelines given in Masirewa v. State Criminal Appeal No. CAV 0014 of 2008S: 17 August 2010 [2010] FJSC 5 and several other decisions of the Court of Appeal, asked the following questions from the Appellant, through the Court Interpreter in order to satisfy itself, before making its order:

Q. Your Counsel has informed Court that you wished to abandon the appeal against sentence.

A. Yes

Q. You have just signed the Notice of Abandonment of Appeal

A. Yes

Q. Why do you want to abandon the appeal?

A. I have already served 5 years and accept the sentence imposed on me, and have decided to withdraw the appeal.

Q. Is the decision to abandon the appeal made voluntarily and out of your own free will?

A. Yes

Q. Has any pressure been brought on you to abandon the appeal?

A. No

Q. Do you understand the consequences of abandonment of an appeal? Do you appreciate that once you abandon the appeal, the appeal will be dismissed and you will not be able to prosecute the appeal against your sentence again?

A. Yes, I understand and agree to the consequences of abandonment of the appeal.

- [8] I am satisfied that the Appellant's application to abandon his appeal is a considered decision upon legal advice that had been taken and without any form of influence exerted on him and voluntarily and on his own free will. I am also satisfied that the Appellant fully understood and agreed to the consequences of the abandonment of his appeal.

- [9] In the circumstances, I allow the abandonment of the appeal and the appeal stands dismissed by this Court.

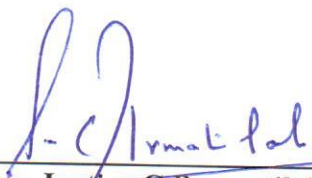
Nawana J.A.

[10] I agree.

The Orders of the Court:

- (i) *Abandonment of appeal allowed.*
- (ii) *Appeal against sentence dismissed.*






Hon. Justice C Prematilaka
JUSTICE OF APPEAL



Hon. Justice A Fernando
JUSTICE OF APPEAL



Hon. Justice P Nawana
JUSTICE OF APPEAL