

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT**

**CRIMINAL APPEAL AAU 64 of 2010**  
**(High Court HAC 91 of 2009)**

**BETWEEN** : **MAHENDRA SHARMA** *Appellant*

**AND** : **THE STATE** *Respondent*

**Coram** : **Calanchini AP**  
**Chandra JA**

**Counsel** : **Appellant in person.**  
**Ms. M. Fong for the Respondent.**

**Date of Hearing** : **17 May 2013**

**Date of Ruling** : **3 June 2013**

**RULING**

[1]. When the Appellant's application for leave to appeal against sentence came before a single Judge of the Court on 6 December 2012, the learned Judge was informed by the Appellant that he wanted to withdraw his appeal. The Appellant had expressed his intention to abandon his appeal earlier by notice in a letter dated 22 August 2011.

[2]. As a result the application was transmitted to the Court of Appeal for its consideration pursuant to Rule 39 of the Court of Appeal Rules (the Rules).

- [3]. Pursuant to the authority given under section 6(2) of the Court of Appeal Act Cap 12 the application was listed before two judges as a duly constituted Court for the hearing of the application.
- [4]. The Appellant was convicted and sentenced on 12 August 2010 to life imprisonment with a non parole period of 13 years on the count of murder.
- [5]. When the application was called before the Court of Appeal the Appellant confirmed that he was applying to withdraw his appeal. The procedure to be followed by the Court in the present application was outlined by the Supreme Court in **Jone Masirewa –v- The State** (unreported criminal appeal CAV 14 of 2008 delivered 17 August 2010) at paragraph 11:

*“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be prudent for instance to ask the (appellant), on the day the matter is listed for hearing, why the (appeal) was to be withdrawn, whether any pressure had been brought to bear on the (appellant) to do so, and whether the decision to abandon had been considered beforehand.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.”*

- [6]. Under Rule 39 the Court of Appeal is empowered to order that an appeal should be deemed dismissed presumably, upon it granting an application by an appellant to abandon or withdraw his appeal. In my view the fact that it is the Court of Appeal that deems the appeal to be dismissed indicates that the procedure is more than a routine administrative task capable of being performed by the Registry. The effect of the words used in Rule 39 when considered with the decision of the Supreme Court in **Masirewa –v- The State** (supra) is that the application must be placed before the Court of Appeal. The Court of Appeal is required to hear the application in accordance with the procedure set out by the Supreme Court. In the event that the Court of Appeal is satisfied that the Appellant’s application is bona fide, voluntary

and informed, the Court will grant the application and the appeal will be deemed to have been dismissed by the Court of Appeal.

[7]. The Appellant informed the Court that he wanted to withdraw his appeal. He confirmed that his decision was voluntary and had been made without coercion or pressure. He indicated that he understood the consequences of his decision.

[8]. As a result the Court is satisfied that the application made by the Appellant has been made voluntarily, in good faith and with full knowledge of its consequences. The application is granted and the appeal is dismissed.

**HON. JUSTICE W. D. CALANCHINI**  
**Acting President**

**HON. JUSTICE S. CHANDRA**  
**JUSTICE OF APPEAL**