

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE MAGISTRATES COURT
Exercising extended jurisdiction

CRIMINAL APPEAL NO. AAU 117 OF 2016
(Magistrates Court No: 1709 of 2010 at Suva)

BETWEEN : **JOSEFA TEMO AND**
MANASA TEMO

Appellants

AND : **THE STATE**

Respondent

Coram : **Calanchini P**
Chandra JA

Counsel : **Mr T Lee for the Appellants**
Mr M Vosawale for the Respondent

Date of Hearing : **22 November 2018**

Date of Ruling : **30 November 2018**

RULING

Calanchini P

- [1] Following a trial in the Magistrates Court at Suva exercising extended jurisdiction of the High Court the appellants were convicted on one count of attempted aggravated robbery

and one count of damaging property. On 1 August 2016 the appellants were each sentenced to 7 years 10 months imprisonment with a non-parole term of 5 years.

- [2] The Appellants jointly filed a timely notice of appeal against conviction and sentence. On 26 April 2018 the Appellants filed applications to abandon their appeals against sentence pursuant to Rule 39 of the Court of Appeal Rules.
- [3] In accordance with the decision of the Supreme Court in **Masirewa –v- The State** (CAV 14 of 2008; 17 August 2010) that application to abandon the appeal was listed for hearing before the Court of Appeal.
- [4] At the hearing the first appellant was not present to confirm whether he was pursuing his application to withdraw the sentence appeal. Since both appellants want to pursue their conviction appeals, the applications to abandon the sentence appeals should proceed with the conviction appeals before the Full Court.
- [5] Under the circumstances the applications to abandon the appeal against sentence are to proceed before the Full Court on a date to be fixed.

Chandra JA

- [6] I agree.

Orders:

- 1) *Applications to abandon the appeals against sentence are to be listed before the Full Court on a date to be fixed.*
- 2) *Appellants are to file and serve amended notice of appeal against conviction within 28 days from the date of the Ruling.*
- 3) *Appellants to file and serve submissions within 14 days thereafter.*

- 4) Respondent to file and serve submissions within 14 days thereafter.
- 5) Applications for leave to appeal convictions to be listed before a justice of appeal on a date to be fixed.



W. Calanchini

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

S Chandra

Hon Mr Justice S Chandra
JUSTICE OF APPEAL