

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

**CRIMINAL APPEAL NO. AAU 125 OF 2015**  
**(High Court HAC 221 of 2014)**

**BETWEEN** : **FABIANO DAKAI NADUVA** *Appellant*

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

**Coram** : **Calanchini P**  
**Chandra JA**

**Counsel** : **Ms S Nasedra for the Appellant**  
**Mr R Kumar for the Respondent**

**Date of Hearing** : **22 November 2018**

**Date of Ruling** : **30 November 2018**

**RULING**

**Calanchini P**

- [1] Following a trial in the High Court at Suva the appellant was convicted on one count of rape and on 22 September 2015 was sentenced to 12 years 11 months imprisonment with a non-parole term of 11 years.

- [2] The Appellant subsequently filed a timely notice of appeal against conviction and then an amended notice of appeal that included an appeal against sentence that was out of time by about 1 month. On 3 May 2018 the Appellant filed an application to abandon his appeal 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. At the hearing the appellant confirmed that his decision to abandon the appeal was made voluntarily. He confirmed that he had received legal advice and that he understood the consequences in the event that his application were granted.
- [4] His application for leave to appeal against conviction was refused in a written Ruling delivered on 23 October 2018. There is no indication in the file that the appellant has sought to renew his leave application before the Full Court under section 35(3) of the Court of Appeal Act 1949.
- [5] Under the circumstances the application to abandon the late appeal against sentence is granted and the appeal is dismissed.

**Chandra JA**

- [5] I agree.

Orders:

*Appeal against sentence is dismissed.*



*W. Calanchini*

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

*S Chandra*

Hon Mr Justice S Chandra  
**JUSTICE OF APPEAL**