

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU 009 of 2020**  
**[High Court at Suva Criminal Case No. HAC 317 of 2015]**

**BETWEEN** : **NOUSHEEN MEZBEEN HUSSAIN**

***Appellant***

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

***Respondent***

**Coram** : **Prematilaka, RJA**  
**Mataitoga, RJA**  
**Dobson, JA**

**Counsel** : **Mr. M. Yunus and Mr. R. Prasad for the Appellant**  
**Mr. R. Kumar for the Respondent**

**Date of Hearing** : **02 July 2024**

**Date of Judgment** : **26 July 2024**

**JUDGMENT**

**Prematilaka, RJA**

[1] The appellant had been charged in the High Court at Suva on one count of theft contrary to section 291 of the Crimes Act No. 44 of 2009, one count of obtaining property by deception contrary to section 317 of the Crimes Act No. 44 of 2009 and one count of money laundering contrary to section 69(2)(a) and (3)(b) of the Proceeds of Crime Act, 1997 committed in 2012 at Suva in the Central Division.

- [2] After the summing-up, the assessors had expressed a unanimous opinion of guilty against the appellant on all counts. The learned High Court judge in the judgment had agreed with the assessors and convicted the appellant accordingly. She was sentenced on 31 January 2020 to 18 months of imprisonment on the first count, 02 years of imprisonment on the second count and 03 years of imprisonment on the third count; all sentences to run concurrently. The trial judge refrained from imposing a non-parole period. In addition, the appellant was also ordered to pay a fine of \$1000 with a default term of imprisonment of 03 months.
- [3] Upon consideration of the appeal against conviction and sentence, a judge of this court allowed leave to appeal for the conviction appeal.<sup>1</sup> The appellant had already filed a Form 3 dated 15 March 2021 in terms of Rule 39 of the Court of Appeal Act to abandon the sentence appeal.
- [4] When the appeal was taken up for hearing into the conviction appeal before the Full Court on 02 July 2024, Mr. Yunus, the appellant's counsel indicated to court that his client no longer wished to prosecute the conviction appeal. She tendered a Form 3 dated 02 July 2024 in terms of Rule 39 of the Court of Appeal Act to abandon the conviction appeal and the court was further informed by Mr. Yunus that his client had already served her sentence and as per her earlier abandonment notice wished to abandon the sentence appeal as well.
- [5] The court made relevant inquiries from the appellant in keeping with *Masirewa* guidelines **Masirewa v State** [2010] FJSC 5; CAV 14 of 2008 (17 August 2010) and the outcome of the inquiry could be summarised as follows:
1. The appellant reiterated her wish to abandon the conviction and sentence appeals.
  2. The court found the application to abandon the conviction and sentence appeals voluntary and no pressure had been brought to bear upon the appellant to do so.

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<sup>1</sup> **Hussain v State** [2021] FJCA 254; AAU0009.2020 (29 December 2021)

3. The court was informed that the decision to abandon had been considered beforehand and the appellant had received legal advice from Mr. Yunus, her counsel regarding her decision to withdraw both appeals.
4. The appellant informed the court that the reason for the withdrawal of the sentence appeal is that she had already served the sentence and the reason for withdrawing the conviction appeal is that because the DPP had already withdrawn its sentence appeal, her conviction appeal would not make any difference to her.
5. The court was informed that the appellant had fully understood the consequences of the withdrawal of the appeals *i.e.* if and when her applications to abandon the appeals are allowed, the court will dismiss them and she cannot again pursue her appeals before this court.

[6] Having been satisfied that the decision to withdraw the appeals had been made deliberately, intentionally and without mistake, this court decided to allow the abandonment of the sentence and conviction appeals. Accordingly, the court informed the appellant that her sentence and conviction appeals would stand dismissed.

[7] This judgment seeks to formalise the said decision of the court.

**Mataitoga, RJA**

[8] I concur.

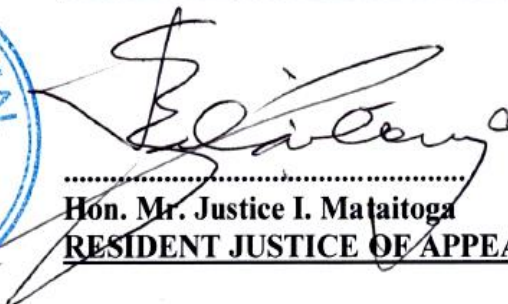
**Dobson, JA**


[9] I agree with the orders as made.

**Orders of the Court:**

1. The applications to abandon the sentence and conviction appeals are allowed.
2. Appeal against sentence and conviction is dismissed.

  
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**Hon. Mr. Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**

  
  
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**Hon. Mr. Justice I. Mataitoga**  
**RESIDENT JUSTICE OF APPEAL**

  
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**Hon. Mr. Justice R. Dobson**  
**JUSTICE OF APPEAL**

**Solicitors:**

M Y Lawyers for the Appellant  
Office of the Director of Public Prosecution for the Respondent