

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

Criminal Appeal No: AAU 0088 of 2015
(High Court Case No: HAC 0016 of 2015)

BETWEEN : **ATONIO EPI**

Appellant

AND : **THE STATE**

Respondent

Coram : **Basnayake JA**
A. Fernando JA
Jayamanne JA

Counsel : **Mr. Waqainabete for the Appellant**
Mr. M. D. Korovou for the Respondent

Date of Hearing : **11 February 2016**

Date of Judgment : **26 February 2016**

JUDGMENT

Basnayake JA

[1] This is a withdrawal application filed by the appellant on 22 December 2015.

[2] The appellant together with two others were charged in the Magistrate Court of Sigatoka for aggravated robbery contrary to section 311 (1) (a) of the Crimes Decree No. 44 of 2009. This was under the extended jurisdiction pursuant to section 4 (2) of the Criminal Procedure Decree 2009.

- [3] According to the facts the appellant with two others robbed the complainant on 11 April 2014 in a sum of \$295.00 and a Nokia mobile phone valued at \$423, totalling \$718.00. On 14 April 2014 the appellant pleaded guilty to the charge. He was convicted and sentenced to 2 years imprisonment with a non-parole period of 18 months. On 21 July 2015 the appellant together with others filed a leave to appeal application.
- [4] On 22 December 2015 the appellant sent an application to the Registrar of the Court of Appeal in pursuant to r 39 of the Court of Appeal Rules to withdraw his appeal and was, as a result, treated as an application to abandon the appeal.
- [5] This case was called in court on 11 February 2016 to consider the appellant's application and to determine whether the appeal should be deemed abandoned. The appellant was present in court. He was represented by counsel.
- [6] *“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be prudent for instance to ask the petitioner on the day the matter is listed for hearing, why the petition was to be withdrawn, whether any pressure had been brought to bear on the petitioner to do so, and whether the decision to abandon had been considered beforehand.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”* (Jone Masirewa v The State (Supreme Court unreported appeal No. CAV 14 of 2008 (17 August 2010) Kelepi Serukalou v State (AAU 0061 of 2011) 2012 2 FLR 148 (emphasis added).
- [7] Learned Counsel submitted that the appellant wishes to withdraw his appeal on his own volition. The appellant too on being questioned by court admitted to having sent an application to withdraw his appeal. The appellant stated that he had no pressure from anyone to withdraw the appeal. The period that he has to spend in prison will be over very soon which inspired him not to pursue the appeal. The appellant was warned by

court that in the event of dismissal of this appeal that he would not be able to re-agitate this appeal.

[8] Being satisfied that the appellant is moving to have his appeal withdrawn on his own volition without any interference I would allow this application for withdrawal and dismiss the appeal.

A. Fernando JA

[9] I agree that the appeal be dismissed.

Jayamanne JA

[10] I too agree that the appeal be dismissed

The Orders of the Court are:

1. *The application for abandonment of appeal is allowed.*
2. *The appeal is dismissed*



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Hon. Mr. Justice E. Basnayake
JUSTICE OF APPEAL

Handwritten signature of A. Fernando in blue ink.

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Hon. Mr. Justice A. Fernando
JUSTICE OF APPEAL

Handwritten signature of S. Jayamanne in black ink.

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Hon. Mr. Justice S. Jayamanne
JUSTICE OF APPEAL