

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

CRIMINAL APPEAL NO. AAU 0043 OF 2011
[High Court Case No. HAC 062 of 2010]

BETWEEN : **JOSATEKI LULU**

Applicant/Appellant

AND : **THE STATE**

Respondent

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

Counsel : **Mr. S. 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

I agree with the judgment of A. Fernando JA.

A.F. T. Fernando JA

[1] This was an application by the Appellant in Criminal Appeal No. AAU 0043 of 2011, for Abandonment of the appeal filed against his conviction by the High Court of Fiji on the 13th of April 2011 for the offence of rape and the sentence of 9 years and 10 months imprisonment with a non-parole period of 8 years imposed on him. The Appellant had sought leave to appeal against his conviction and had been granted leave on the 13th of May 2013.

- [2] On being questioned by Court the Applicant stated that he signed the Notice of Abandonment of Appeal because he had been told by the prison authorities at the Minimum Correction Centre that if he does not withdraw his appeal he will not be sent to work in the sugar cane plantation, where he could earn some money. He therefore stated that the application to withdraw and abandon the appeal was made in view of this and was thus not out of his own free will. His Counsel confirmed this and informed Court that the Applicant had told the same thing to him when he met him to get instructions. Counsel for the State submitted that he was surprised as to why the Applicant had sought to abandon his appeal in view of the long term of imprisonment imposed on him on his conviction.
- [3] The Applicant informed Court that he now wants to withdraw the application he made to Court to abandon his appeal and was desirous of pursuing his appeal. His Counsel confirmed this position.
- [4] I am of the view that if what the Applicant is saying is true it is a serious allegation against the prison authorities and amounts to a promise, threat or inducement that has been made to the Applicant to abandon his appeal.
- [5] I am satisfied that the application to abandon the appeal by the Applicant has not been made by him out of his own free will.
- [6] I would therefore allow the application made in Court by the Applicant to withdraw his Notice of Abandonment of Appeal.

S. Jayamanne JA

- [7] I agree with the reason and conclusion of A. Fernando JA.

The Orders of the Court are:

1. *Application to abandon the appeal is dismissed.*
2. *The Appeal will be listed for hearing in due course.*



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Hon. Justice E. Basnayake
JUSTICE OF APPEAL



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Hon. Justice A. Fernando
JUSTICE OF APPEAL



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Hon. Justice S. Jayamanne
JUSTICE OF APPEAL