

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

CRIMINAL APPEAL AAU 0053 OF 2013
(High Court HAC0012 OF 2012(Labasa))

BETWEEN : MELI SESARA ROKOBIU

Appellant

AND : THE STATE

Respondent

Coram : Prematilaka JA
A. Fernando JA
Temo JA

Counsel : Mr S. Waqainabete for the Appellant
Mr L. Fotofili for the Respondent

Date of Hearing : 9 May 2017

Date of Judgment : 26 May 2017

JUDGMENT

Prematilaka JA

[1] I agree with the reasons and conclusions arrived at by Fernando JA.

Fernando JA

[2] In this case the Appellant had appealed against his sentence of 7 years imprisonment (without a non-parole period) imposed on him by the High Court sitting at Labasa; upon his conviction on his own plea of guilt; for the offence of Aggravated Robbery, contrary to section 311(1)(a) of the Crimes Act 2009.

[3] The Learned Sentencing Judge had recorded the facts of the case at paragraph 2 of his Sentence as follows:

“The facts are that on 30 January 2012 at around 2.30 am, a group of armed men forced their way into the victim’s home in Wainikoro, Labasa. The intruders threatened the victim, his wife and daughter, and made their way out with cash and jewellery to a total value of \$ 31,000.00. The intruders were masked and carried knives and rods. When the victim tried to scare off the intruders by firing a shot using his gun, the intruders placed a knife to his daughter’s neck to get him to surrender the gun. When the victim surrendered his weapon the intruders gagged and left him on the floor. Tevita Bulumakau and Meli Rokobiu (Appellant) were among the intruders that robbed the victim. Both offenders confessed to the robbery after they were arrested and interviewed under caution. The stolen properties were recovered.” (verbatim)

[4] **Section 23(3) of the Court of Appeal Act 1949** states:

“On an appeal against sentence, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution therefore as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just.” (emphasis added by me)

[5] Having gone through the Court of Appeal brief and the facts pertaining to this case in detail, all three Justices of Appeal were of the view that the Appellant had been dealt with leniently by the Sentencing Judge and this was a case which called for a higher sentence. We were therefore of the view that it was appropriate to bring to the attention of the

Appellant's Counsel of the powers of the Court under section 23(3) of the Court of Appeal Act.

[6] Counsel for the Appellant Mr. S. Waqainabete, informed Court that he was of the same view and had already discussed the matter with the Appellant. He readily agreed and sought our permission to discuss the matter with the Appellant again. Having discussed the matter with the Appellant Counsel informed Court that it was the Appellant's wish to abandon the appeal.

[7] The Appellant then informed Court in his own words that he wanted to abandon his appeal. The Appellant was then questioned by Court. He informed Court that he was conversant in the English language. On being asked as to why he wants now to abandon his appeal, the Appellant said he had given due consideration to the matter, considered what his Counsel had told him and understood the implications of pursuing the appeal. He informed Court that he was making the application for the abandonment of his appeal out of his own free will and not as a result of being persuaded by the observations made by the Court or what his Counsel had told him.

[8] Court informed the Appellant of the consequences of abandoning his appeal by stating that once the Court makes a decision to allow the Appellant's application it will be a final decision of the Court and he will not be able to retract the abandonment and re-agitate the matter again. The Appellant informed Court that he understood the consequences of abandoning the appeal and was certain about his decision.

[9] I am satisfied that the Appellant's decision to abandon his appeal has been made by him out of his own free will and with a proper understanding of the consequences of such abandonment. In the circumstances of this case I find that the Appellant's application for the abandonment of his appeal is a sensible one.

[10] I would therefore allow the application for abandonment of appeal and dismiss the appeal.

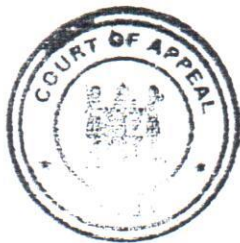
Temo JA

[11] I agree with the reasons and conclusions by Fernando JA.

Orders of the Court:

(1) *Application to abandon the appeal is allowed.*

(2) *The Appeal is dismissed.*



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Hon Mr Justice C. Prematilaka
JUSTICE OF APPEAL

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Hon Mr Justice A. Fernando
JUSTICE OF APPEAL

A handwritten signature in black ink, appearing to read "S. Temo", written over a horizontal line.

Hon Mr Justice S. Temo
JUSTICE OF APPEAL