

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 293 OF 2011S

STATE

VS

- 1. JOSESE CAGINALIWALALA**
- 2. SUNIA MALEWA**
- 3. MOSESE TAUNA**
- 4. SANAILA NAIVANA**

Counsels : **Mr. T. Qalinauci and Ms. M. Khan for State**
Mr. E. Koroi for Accused No. 1
Mr. S. Waqainabete for Accused No. 2
Mr. M. Raza for Accused No. 3
Mr. A. Vakaloloma for Accused No. 4

Hearings : **19 to 23 and 27 May, 2014**

Summing Up : **27 May, 2014**

Judgment : **27 May, 2014**

Sentencing : **29 May, 2014**

SENTENCE

1. On 19 May 2014, all the accuseds, appeared in court, on the following information:

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to section 313 (1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JOSESE CAGINALIWALALA, SUNIA MALEWA, MOSESE TAUNA and SANAILA NAIVANA between the 21st of January 2011 and the 27th of June 2011 in Suva in the Central Division entered into Reservoir Road depot storeroom the property of Water Authority of Fiji as a trespasser with intent to commit theft.

SECOND COUNT

Statement of Offence

THEFT: Contrary to section 291(1)(a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JOSESE CAGINALIWALALA, SUNIA MALEWA, MOSESE TAUNA and SANAILA NAIVANA between the 21st day of January 2011 and the 27th day of June 2011 in Suva in the Central Division stole 619 new water meters valued at \$106,369.64.

2. All the accuseds were represented by counsels. The information was read and explained to each accused. They said, they understood the same. Accused No. 1, 2 and 3 pleaded guilty to both counts, while Accused No. 4 pleaded not guilty to both counts.

- 3 The prosecution read the summary of facts to court. Briefly they were as follows. All three accuseds were employed by Water Authority of Fiji (WAF) as water fitters. They worked around the Suva area doing water repairs and connections for WAF. The WAF had a storeroom at their Reservoir Road depot, where the accuseds kept their work tools. Also in the storeroom were new water meters totaling 619, valued at \$106,369.64. Between 21 January and 27 June 2011, the three accuseds systematically trespassed into the storeroom, stole the above water meters, and sold them to scrap metal dealers. They later shared the proceeds of their crime.
- 4 Through their lawyers, accused no. 1, 2 and 3 admitted the summary of facts, including the particulars of the offences, in counts no. 1 and 2. As a result, the court found them guilty as charged, on both counts, and convicted them accordingly. Accused No. 4's case went to trial, and in a judgment delivered on 27 May 2014, he was found guilty as charged on both counts, and convicted accordingly.
- 5 On 27 May 2014, each accused, through their lawyers, submitted their plea in mitigation, including their sentence submissions. I have carefully read and considered all the papers submitted by the parties.
- 6 In **State v Peni Vulisoko & Manasa Koroivere**, Criminal Case No. HAC 118 of 2013S, High Court, Suva, on the two counts, I said the following:

“...”Aggravated burglary” carried a maximum sentence of 17 years imprisonment (section 313 (1) of the Crimes Decree 2009). In the repealed Penal Code, Chapter 17, “burglary” carried a maximum sentence of life imprisonment (section 299 of Penal Code). In **Viliame Gukisuva v The State**, Criminal Appeal No. HAA 117 of 2007, High Court, Suva, Her Ladyship Madam Justice N. Shameem, held that the tariff for burglary was a sentence between 2 to 3 years imprisonment.

“Theft” carried a maximum sentence of 10 years imprisonment [section 291 (1) of Crimes Decree 2009]. In the repealed Penal Code, Chapter 17, “simple theft” carried a maximum penalty of 5 years imprisonment; however, if the person had been previously convicted of a felony, the maximum penalty was 10 years imprisonment (section 259 (1) and 262 of the Penal Code). In **Navitalai Seru vs The State**, Criminal Appeal No. HAA 84 and 85 of 2002S, Her Ladyship Madam Justice Shameem said as follows:

“...the maximum sentence for simple larceny is (on a second conviction) 10 years imprisonment. The tariff, on a first conviction under section 259 and 262 of the Penal Code, is two months to nine months imprisonment (Paula Bale vs The State, Criminal Appeal No. 27 of 1998, Pauliasi Nadali vs The State, Criminal Appeal No. 29 of 1998, lowane Wainiqolo vs The State, Criminal Appeal No. 44, 45 of 1998, Ronald Vikash Singh Criminal Appeal No. HAA 035 of 2002). It is logical, that on a second conviction the tariff is doubled to four months to 18 months imprisonment, because the statutory maximum increases from five to ten years. I accept this as a tariff in cases of second convictions for larceny...”

In **State vs Jona Saukilagi**, Criminal Case No. HAC 21 of 2004S, Her Ladyship further said as follows:

“...Stealing from the bank is a serious matter. The tariff for simple larceny on first conviction is 2 – 9 months (Ronald Vikash vs State, HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (Isoa Codrokadroka vs State Criminal Appeal No. 67 of 2002) and 3 years imprisonment have been upheld by the High Court (Sevanaia Via Koroi vs The State, Criminal Appeal No. HAA 031 of 2001S). Much depends on the value of the

money stolen, and the nature of the relationship between victim and defendant. The method of stealing is also relevant...”

One could see from the above authorities that the accepted tariff for “theft” is a sentence between 2 months to 3 years, depending on the circumstances and facts of the case. However, the actual sentence in the case will depend on the aggravating and mitigating factors...”

7 In this case, the mitigating factors, were as follows:

(A) Josese Caginaliwalala:

- (i) At the age of 40 years, you have not offended in the last 10 years. You are married, with two children, attending school;
- (ii) Although you pleaded guilty to the charge 2 years 7 months after first call, you saved the courts time, to some extent;
- (iii) You were remanded in custody for approximately 1 month;
- (iv) You are remorseful.

(B) Sunia Malewa:

- (i) At the age of 53 years, this is your first offence;
- (ii) You are married with three children, and the sole bread winner;
- (iii) You pleaded guilty 2 years 7 months after the first call, but nevertheless saved the court's time;
- (iv) You have been remanded in custody for approximately 1 month, and you co-operated with police.

(C) Mosese Tauna:

- (i) At the age of 44 years, you have not offended in the last 10 years;
- (ii) You are married with 3 children, and the sole bread winner in the family;
- (iii) You worked for 23 years for the Water Authority of Fiji, you co-operated with the police and pleaded guilty to the charge;
- (iv) You were remanded in custody for approximately 1 month.

(D) Sanaila Naivana:

- (i) At the age of 54 years, this is your first offence;
- (ii) You are married with 7 children, and you are the sole bread winner in the family;
- (iii) You are remorseful, and you have been remanded in custody for approximately 1 month.

8 Because you acted as a group in offending against WAF, I will treat you as one, when considering the aggravating factors. The aggravating factors, were as follows:

- (i) Breach of Trust. WAF was your employer and you were WAF employees. As such, your employment contract required you to be true and loyal to WAF. They paid you to connect water supplies and repair broken pipes. They did not pay you to steal from them. Yet, you all turned around and stole from your employer. In other words, you deliberately bit the hand that fed you. You broke the trust WAF had for you.
- (ii) Your offending was well planned and executed. Accused No. 1, you started the offending by breaking into the cases that held the water meters, packing the same in bags, and calling for Accused No. 2 and 3, to assist you load the same into the vehicle Accused No. 4 was driving. The stolen meters were then driven to the scrap metal dealer by Accused No. 4. Accused No. 1, you acted as the ring-leader by selling the water meters, obtaining the money and sharing the same with the others.
- (iii) By committing the offences, you have shown utter disregard to WAF's property rights. You have disregarded the cost of these new water meters to WAF. Altogether, WAF lost \$106,369.64 worth of property. The lost of these water meters must have surely affected their services to the public.

9 For each of you, on count no. 1, I start with a sentence of 2 years imprisonment. I add 2 years for the aggravating factors, making a total of 4 years imprisonment. I deduct 1 year for the mitigating factors, leaving a balance of 3 years imprisonment.

10 On count no. 2, for each of you, I repeat the above process and sentence for count no. 2.

11 In summary, your sentences are as follows:

(i) Count No. 1 : Aggravated Burglary : Accused No. 1 : 3 years imprisonment.
Accused No. 2 : 3 years imprisonment
Accused No. 3 : 3 years imprisonment
Accused No. 4 : 3 years imprisonment

(ii) Count No. 2 : Theft : Accused No. 1 : 3 years imprisonment
Accused No. 2 : 3 years imprisonment
Accused No. 3 : 3 years imprisonment
Accused No. 4 : 3 years imprisonment.

12. Because of the totality principle of sentencing, for each of you, I direct that all the above sentences be made concurrent to each other, that is, a total final sentence of 3 years imprisonment, for each of you.

13. I sentence each of you to 3 years imprisonment, with a non-parole period of 2 years, effective forthwith.

14. This case is a warning to those who are employed by State-owned companies and Authorities, not to steal from their employers, while being employed by them. These State-owned enterprises perform important functions and services to the public, and those who steal from them must expect a custodial sentence, if caught. A suspended prison sentence will not be a good deterrence.



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JUDGE

Solicitor for State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for Accused No.1 : **Koroi Law, Barristers & Solicitors, Suva.**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva.**
Solicitor for Accused No. 3 : **Mehboob Raza & Associates, Suva.**
Solicitor for Accused No. 4 : **Vakaloloma & Associates, Suva.**