

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 298 of 2016

[CRIMINAL JURISDICTION]

STATE

V

MOSESE ULUICICIA

**Counsel** : Ms. U. Tamanikaiyaroi with Mr. E. Samisoni for State  
Ms. S. Hazelman for Accused

**Hearing on** : 25<sup>th</sup> October – 02<sup>nd</sup> November 2017

**Summing up on** : 06<sup>th</sup> November 2017

**Judgment on** : 07<sup>th</sup> November 2017

**Sentence on** : 09<sup>th</sup> November 2017

SENTENCE

1. Mosese Uluicicia, you stand convicted of one count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009 (“Crimes Act”) after trial.
2. The evidence revealed that you with another committed the offence of aggravated robbery at the first prosecution witness’ residence on 06<sup>th</sup> August 2016 where force was used on the said witness who was an elderly gentleman having a hearing impairment. The value of the items stolen was \$49,150. The aforementioned victim was punched and his hands were tied at the back before the items were stolen. You had your face covered at the time of the robbery. You said in your evidence that you are 23 years old.

3. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. The tariff for this offence is an imprisonment term between 8 to 16 years. [*Wallace Wise v The State*, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]
4. I take 8 years imprisonment as the starting point of your sentence.
5. In the aforementioned case, Gates CJ outlined the following circumstances as examples of aggravating factors relevant to the offence of aggravated robbery;
  - (i) *offence committed during a home invasion.*
  - (ii) *in the middle of the night when victims might be at home asleep.*
  - (iii) *carried out with premeditation, or some planning.*
  - (iv) *committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.*
  - (v) *the weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.*
  - (vi) *injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.*
  - (vii) *the victims frightened were elderly or vulnerable persons such as small children.*
6. I consider the following as aggravating factors in this case;
  - a) The victim was an elderly gentleman with a disability;
  - b) The offence was committed in the middle of the night and was a home invasion;
  - c) Your face was covered when you committed the offence; and
  - d) The victim was physically assaulted and he sustained injuries due to that assault.
7. In considering the injuries caused to the victim as an aggravating factor, I am mindful that the violence used in this case as revealed by the evidence was not

at a higher level. Accordingly, given the above aggravating factors, I increase your sentence by 04 years. Now your sentence is 12 years imprisonment.

8. According to your previous convictions report you have been convicted for aggravated burglary and theft on 16/05/13. Therefore, you are not a first offender. Your counsel had submitted that you are a young offender and that you have financially supported your family by cutting grass before you were remanded. These factors do not mitigate your offending. It is to be noted however that according to your mother's evidence, you usually stay at home because you had nothing to do and your father and the brother were employed.
9. All in all, I am of the view that there are no mitigating factors in your favour that would warrant a reduction of your sentence.
10. Accordingly, I sentence you to an imprisonment term of 12 years. I order that you are not eligible to be released on parole until you serve 10 years of your sentence pursuant to the provisions of section 18 of the Sentencing and Penalties Act.
11. Section 24 of the Sentencing and the Penalties Act reads thus;  
*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*
12. It is submitted that you have spent 01 year, 02 months and 27 days in custody in relation to this case. The period you were in custody shall be regarded as a period of imprisonment already served by you in view of the provisions of section 24 of the Sentencing and Penalties Act. I hold that the period that should be regarded as served is 01 year and 03 months.

13. In the result, you are sentenced to 12 years imprisonment with a non-parole period of 10 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence - 10 years and 09 months

Non-parole period - 08 years and 09 months

14. 30 days to appeal to the Court of Appeal.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitors for the Accused : Legal Aid Commission, Suva.