

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NOS. HAC 017, 22, 26, 70/18**  
**[Criminal Case Numbers 42, 43, 44, 57/18]**

**BETWEEN** : **THE STATE**

**AND** : **KITIONE LUI**

**Counsel** : **Ms S Lodhia for the State**  
**Accused in Person**

**Date of Hearing** : **26 March, 14 May, 18 May 2018**

**Date of Sentence** : **20 July 2018**

**SENTENCE**

[1] Kitione Lui, you are appearing today for sentence after freely and voluntarily pleading guilty to charges in four separate files.

[2] In Case No HAC 17 of 2018, you are convicted of attempted aggravated burglary contrary to sections 44 and 313(1)(a) of the Crimes Act. The facts are that on 31 December 2017, you attempted to break into the shop of a 57-year old victim at Chadwick Road, Nakasi. The incident occurred in the early hours of the morning when the victim was asleep in his home situated next to his shop. The complainant saw two intruders on the roof of his shop trying to gain entry by cutting the roofing iron. The victim alerted the police.

When the police arrived, the intruders fled the scene. In your caution interview, you admitted the offence. You admitted to be one of the intruders trying to gain entry into the shop to steal. You admitted planning the offence with your friends. One of your friends accompanied you on the roof top while one remained on the ground to act as a guard.

- [3] In Case No HAC 22 of 2018, you are convicted of aggravated burglary contrary to section 313(1)(a) of the Crimes Act and theft contrary to section 291(1) of the Crimes Act. The facts are that on 30 December 2017, you in the company of another broke into the home of a 49-year old victim when he was away visiting his relatives in Sigatoka. The entry to the house was made from the living room by removing the louver blades. You stole an Adidas brand canvas valued at \$150.00 and a t-shirt valued at \$20.00. Under caution, you admitted the offences. The canvas was recovered from your home.
- [4] In Case No HAC 26 of 2018, you are convicted of aggravated burglary contrary to section 313(1)(b) of the Crimes Act and theft contrary to section 291(1) of the Crimes Act. The facts are that on 2 December 2017, you broke into a canteen owned by a 44-year old victim at Davuilevu Housing using a pinch bar and stole cigarettes and groceries to a total value of \$927.80. The victim discovered the break-in and theft the following morning when he opened the canteen that was annexed to his home. Under caution, you admitted the offences.
- [5] In Case No HAC 70 of 2018, you are convicted of aggravated burglary contrary to section 313(1)(a) of the Crimes Act and theft contrary to section 291(1) of the Crimes Act. On 27 December 2017, you in the company of others entered the home of a 31-year old victim at Muanikoso. The entry was made through the kitchen window by removing the louver blades. You

stole a Sony brand television valued at \$300.00. The television was recovered. You made full admissions in your Record of Interview.

- [6] In assessing the objective seriousness of your offending, I take into account the maximum penalty prescribed for aggravated burglary and theft. The same maximum penalty is prescribed for attempt and aggravated burglary. It is 17 years imprisonment. Theft is punishable by 10 years imprisonment.
- [7] The old tariff for domestic burglary under the Penal Code is 18 months to 3 years imprisonment (*Turuvesi v State* [2002] FJHC 190; HAA0086J.2002S (23 December 2002)). There is some uncertainty as to whether the old tariff under the Penal Code should apply or whether the tariff should be increased to reflect the maximum penalty of 17 years imprisonment prescribed for aggravated burglary under the Crimes Act, arising from the decision of Perera J in *State v Naulu* - Sentence [2018] FJHC 548 (25 June 2018).
- [8] Regardless of the uncertainty in the tariff for burglary, the courts are obliged to treat burglary committed in the company of another or using an offensive weapon seriously. Burglary of homes is one of the most prevalent offences in Fiji. The need for deterrence and protection of the community will outweigh the need to rehabilitate the offender when the offence is prevalent. As this Court said in *State v Takalaibau* - Sentence [2018] FJHC 505; HAC154.2018 (15 June 2018) at [10]:

Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others.

- [9] In assessing the seriousness of your actual conduct, I take into account that you targeted homes and shops at night when the owners were either away or asleep. The value of the stolen items may not be high, but the intrusion of homes and shops should never be condoned. Home intrusions are serious violation of the owners' privacy and security.
- [10] The multicity of offence is an aggravating factor. It also shows planning, organisation and execution.
- [11] Apart from these four cases, you pleaded guilty in three others cases of burglary and theft in the Magistrates' Court at Nasinu. In all three cases, you broke into domestic dwellings at night while the occupants were asleep and stole items. On 15 June 2018, you were sentenced to a total term of 3 years' imprisonment in those three cases (Criminal Case Nos. 51, 52 and 53 of 2018).
- [12] I now consider your subjective circumstances. You were raised by your grandparents after your parents had separated. You dropped out of school after Form 4. You never had a stable employment. You are now 27 years old and have a child from a de-facto relationship. I take into account your disadvantaged background, but I cannot excuse your crimes because you are poor.
- [13] You have done little to help yourself to become a decent member of the community. In 2015, you were sentenced to 2 years' imprisonment for similar offences (burglary and theft) but that sentence did not deter you from re-offending. After you were released from prison, you went on a crime spree by breaking into homes of people.

[14] Sections 10 and 11 of the Sentencing and Penalties Act give this Court power to determine a person to be a habitual offender for the purposes of sentencing. After having considered your convictions for offences of a like nature in 2015 and before the Magistrates' Court in June this year, I declare you as a habitual offender who poses a threat to the community.

[15] Section 12 of the Sentencing and Penalties Act states:

Where any court is proposing to impose a sentence of imprisonment on a person who has been determined to be a habitual offender under section 11 for an offence of a nature stated in section 10, the court, in determining the length of the sentence —

(a) shall regard the protection of the community from the offender as the principal purpose for which the sentence is imposed; and

(b) may, in order to achieve that purpose, impose a sentence longer than that which is proportionate to the gravity of the offence.

[16] Section 13 of the Sentencing and Penalties Act states:

Every term of imprisonment imposed by a court on a person determined to be a habitual offender under section 11 for an offence of a nature stated in section 10 shall, unless otherwise ordered by the court, be served consecutively on any uncompleted sentences or any other sentence imposed on the offender.

[17] The only meaningful mitigating factor is your early guilty pleas. The guilty pleas are consistent with your confessions to police. There is some degree of remorse. Some stolen properties were recovered with your cooperation. Court time and resources have been saved. For all these factors, I give you a reduction of three years.

[18] You were arrested on 3 January 2018. You have been in custody on remand since that date. On 15 June 2018, you became a serving prisoner. I make a downward adjustment of 5 months to your sentence to reflect your remand period.

[19] I have decided to impose a head sentence for aggravated burglary and theft because both offences were committed as part of one transaction. Taking all these factors into account, I sentence you as follows:

**HAC 17 of 2018**

Attempted aggravated burglary – 3 years' imprisonment.

**HAC 22 of 2018**

Aggravated burglary and theft – head sentence of 3 years' imprisonment.

**HAC 26 of 2018**

Aggravated burglary and theft – head sentence of 3 years' imprisonment.

**HAC 70 of 2018**

Aggravated burglary and theft – head sentence of 3 years' imprisonment.

[20] Separate crimes justify separate sentences, but I am mindful that making all four terms consecutive will result in an excessive sentence. All four terms are made concurrent. The total effective sentence is 3 years' imprisonment.

[21] However, the Court must have regard to the overall criminality involved, that is, the offender has committed a spate of offences and has been declared a habitual offender. For these reasons, I direct that the total term of 3 years' imprisonment be served consecutively with your pre-existing sentence of 3 years' imprisonment imposed in the Magistrates' Court on 15 June 2018.

Now your total effective sentence is 6 years imprisonment for seven offences of burglary and theft. I am satisfied that the total term of 6 years' imprisonment reflects your overall criminality for a spate of domestic burglary offences. I fix a non-parole period of 4 years.

[22] All recovered stolen properties are ordered to be returned to their respective owners.



A handwritten signature in black ink, appearing to read "Daniel Goundar", with a horizontal line extending to the right.

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Accused in Person  
Office of the Director of Public Prosecutions for the State