

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 291 OF 2016S

STATE

vs

1. LUKE SENICEVA
2. VILIAME MOTOKAINAVA

Counsels : Ms. M. Chowdhury for State  
Ms. N. Mishra for Accused No. 1  
Ms. S. Daunivesi for Accused No. 2

Hearings : 20, 21, 22, 25, 26 February, 4 and 5 March, 2019

Summing Up : 6 March 2019

Judgment : 7 March, 2019

Sentence : 7 March, 2019

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## SENTENCE

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1. In a judgment delivered this morning, the court found you two guilty and convicted you two on the following information:

*COUNT 1*

*Statement of Offence*

**AGGRAVATED BURGLARY:** *Contrary to section 313 (1) (a) of the Crimes Act 2009.*

*Particulars of Offence*

*LUKE SENICEVA and VILIAME MOTOKAINAVA in company of each other, between the 1<sup>st</sup> to the 4<sup>th</sup> July, 2016 at Nasinu in the Central Division, broke*

*and entered into the Tamavua Primary School as trespassers with intent to commit theft.*

**COUNT 2**

**Statement of Offence**

***THEFT: Contrary to section 291 (1) Crimes Act 2009.***

**Particulars of Offence**

***LUKE SENICEVA and VILIAME MOTOKAINAVA between the 1<sup>st</sup> to the 4<sup>th</sup> July, 2016 at Nasinu in the Central Division, dishonestly appropriated (stole) assorted ice-cream valued at \$39, bottles of ice pops valued at \$45, hard drive valued at \$150, USB valued at \$20, Nokia mobile phone valued at \$10, 2 x digital cameras valued at \$690, 1 x 42 inch Phillip TV valued at \$2000, VIDO notepad valued at \$199, 1 x HP laptop valued at \$1,200, 5 x ukulele valued at \$400, 3 x Proscan tablet valued at \$2,700, safe valued at \$150 and cash of \$1575 all to the total value of \$9178, the properties of Tamavua Primary School with the intention of depriving Tamavua Primary School.***

2. The brief facts of the case were as follows. Mr. Luke Seniceva (Accused No. 1), you were 23 years at the time of the incident. You were living with your parents and siblings at Tacirua Village. You reached Form 5 level education and was working as a bouncer at the time. Mr. Viliame Motokainava (Accused No. 2), you were 19 years at the time of the incident. You were living with your defacto wife and two month old son at Tacirua Village. You reached Form 6 level education and was unemployed at the time.
3. Between the 1<sup>st</sup> and 4<sup>th</sup> July 2016, you two and in the company of others, broke into and entered Tamavua Primary School. The school was near to your village. You two and the others, went into the school, as trespassers, with an intention to commit theft. Once in the school compound, you two and others broke into the school canteen, the tool room, and the school offices. You two and your friends then stole the properties itemized in count no. 2. You two and your friends later fled the crime scene.
4. The matter was reported to police. An investigation was carried out. You two were arrested by police and caution interviewed at Valelevu Police Station in July 2016. You both admitted the offences to police. You were brought before the Nasinu Magistrate



Court. You were later tried and convicted of the counts mentioned in paragraph 1 hereof in the High Court.

5. "Aggravated burglary" is an indictable offence, and viewed seriously by the Parliament of Fiji. It carried a maximum penalty of 17 years imprisonment (section 313 (1) (a) of Crimes Act 2009). In **State v Jone Vonu & Others**, Criminal Case No. HAC 148 of 2017S, High Court, Suva, I had observed that the previous tariff of 2 to 3 years for aggravated burglary was not working. I had provided reasons thereof for departing from the previous 2 to 3 years tariff. I was persuaded to follow His Lordship Mr. Justice Vinsent Perera's decision in **State v Shavneel Prasad**, Criminal Case No. HAC 254 of 2016, High Court, Suva, where His Lordship said:

**"...In view of the tariff of 2 years to 7 years for the offence of robbery which carries a maximum penalty of 15 years, in my view the tariff for burglary which carries a maximum penalty of 13 years should be an imprisonment term within the range of 20 months to 6 years. Further, based on the tariff establish by the Supreme Court for the offence of aggravated robbery, the tariff for the offence of aggravated burglary which carries a maximum sentence of 17 years should be an imprisonment term within the range of 6 years to 14 years..."**

I agree with His Lordship's above comments, but the final sentence will depend on the aggravating and mitigating factors.

6. The maximum penalty for "theft", contrary to section 291(1) of the Crimes Act 2009 is 10 years imprisonment.
7. The aggravating factors, in this case, were as follows:
  - (i) **Attacking Children's School.** Tamavua Primary School provided primary education for children in the Tamavua area. Education is obviously important for children in Tamavua, and of course, in this country. By burgling and stealing from the school, you two had seriously undermined the education of the children in the area. You had breached the trust these children had that their school would not be attacked unnecessarily.

- (ii) By offending against Tamavua Primary School, you had no regards to the children's right to education, no regards to their welfare and no regard to their rights as human beings.
  - (iii) By offending against the school, you had no regards to their property rights.
8. The mitigating factors were as follows:
- (i) You are both first offenders;
  - (ii) Accused No. 1, you had been remanded in custody awaiting trial for 1 year 9 months; whereas Accused No. 2, you had been remanded in custody awaiting trial for 1 year 1 month. The above figures were obtained after checking the court files.
  - (iii) The safe and a laptop was recovered by police.
9. On count no. 1 (aggravated burglary), I start with a sentence of 6 years imprisonment. For the aggravating factors, I add 2 years, making a total of 8 years imprisonment. For being first offenders, I deduct 4 years, leaving a balance of 4 years imprisonment. Accused No. 1, I deduct 1 year 9 months for time already served while remanded in custody, leaving a balance of 2 years 3 months. Accused No. 2, I deduct 1 year 1 month for time already served while remanded in custody, leaving a balance of 2 years 11 months. I deduct a further 3 months for some property being recovered, leaving a balance of 2 years imprisonment for Accused No. 1, and 2 years 8 months imprisonment for Accused No. 2.
10. For count no. 2 (theft), I sentence each of you to 12 months imprisonment.
11. The summary of your sentences are as follows:
- |                                   |   |
|-----------------------------------|---|
| Count No. 1: Aggravated Burglary: | Accused No. 1 – 2 years imprisonment          |
|                                   | Accused No. 2 – 2 years 8 months imprisonment |
| Count No. 2: Theft:               | Accused No. 1 –12 months imprisonment         |
|                                   | Accused No. 2 –12 months imprisonment         |

12. Because of the totality principle of sentencing, I direct the above sentence to be concurrent to each other. For Accused No. 1, the total sentence is 2 years imprisonment. For Accused No. 2, the total sentence is 2 years 8 months imprisonment.

13. Mr. Luke Seniceva (Accused No. 1) and Mr. Viliame Motokainava (Accused No. 2), for offending against Tamavua Primary School, between 1 and 4 July 2016, at Nasinu in the Central Division, I sentence Accused No. 1 to 2 years imprisonment, and Accused No. 2 to 2 years 8 months imprisonment, effective forthwith. I will not fix a non-parole term.

14. You each have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for Accused No. 1** : **Legal Aid Commission, Suva**  
**Solicitor for Accused No. 2** : **Legal Aid Commission, Suva**