

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 33 OF 2019**

STATE

-v-

TIKIKO DELAI

**Counsel:** M. R. Kumar for Prosecution

Ms. K. Chang for Defence

**Date of Sentence :** 4 June 2019

**SENTENCE**

1. **Tikiko Delai**, you were charged with one count of Aggravated Burglary and one count of Theft. The information upon which you were charged is as follows:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**TIKIKO DELAI** in the company of others on the 20<sup>th</sup> day of December 2018, at Wainadoi, Navua in the Central Division, entered into the dwelling house of **LIMIVA MARAMA** as trespasser, with intent to commit theft.

**COUNT 2**

*Statement of Offence*

**THEFT:** Contrary to Section 291(1) of the Crimes Act 2009.

*Particulars of Offence*

**TIKIKO DELAI** in the company of others on the on the 20<sup>th</sup> day of December 2018, at Wainadoi, Navua in the Central Division, dishonestly appropriated 1xPremer brand Rice Cooker, 1x Smart Energy brand electric kettle, 1x electrical Iron, the, the property of **LIMIVIA MARAMA** with intention of permanently depriving the said **LIMIVIA MARAMA** of the said properties.

2. You have freely and voluntarily pleaded guilty to each count when you were represented by a counsel. You understood the consequence of the guilty plea and the sentencing tariffs for offences you have committed. I am satisfied that your guilty pleas are informed and unequivocal and entered freely and voluntarily.
  
3. You agreed the following summary of facts when it was read to you in court. The facts agreed satisfy all the elements of each offence you are charged with. You are found guilty and convicted on each count as charged.

4. The facts you agreed are that:

1. *The accused in this matter is Tikiko Delai (DOB 28/02/00), 19 year old student of Wainadoi, Navua, Central Division.*
2. *The victim in this matter is Limivia Marama, a 46 year old hair dresser of Wainadoi, Navua, Central Division.*

*Count 1 (Aggravated Burglary, Section 313(1)(a) Crimes Act 2009)*

3. *Limivia Marama had been residing at her home in Wainadoi, Navua for about 20 years up until 20 December 2018 and according to her, her home had never before been burgled.*
4. *At about 0700 hours on 20 December 2018 Limivia Marama left her said home and had gone to work. At about 2100 on 20 December 2018 Limivia Marama was returning to her home. Upon reaching her home Limivia Marama discovered her front door to be open and when she entered her home, she noticed some electrical appliances belonging to her were missing and she reported the matter to the Navua Police.*
5. *As a result of Police investigations, the accused was arrested and interviewed under caution on 18 January 2019. The accused admitted that at about 1300 hours on 20 December 2018 he, together with 02 others, were inside Limivia Marama's home. The accused admitted that prior to being inside Limivia Marama's home he was going to collect firewood with another when they met a third person near the*

*bridge at Wainadoi Village. The said third person told the accused and another to join him in breaking into Limivia Marama's home. The accused with 02 others had then gone to Limivia Marama's home at about 1100 hours on foot and had entered into her home by climbing through the window after removing 03 louver blades from the said window. The accused admitted that after entering into Limivia Marama's home, he and 02 others then collected items from inside her home (Q&A 33-47, Record of interview of Tikiko Delai dated 18/01/19 is attached).*

*Count 2 (Theft, Section 291(1) Crimes Act 2009)*



- 6. The following said items, belonging to Limivia Marama, were noted as being missing by her: a rice cooker worth FJ\$55.00, a frying fan worth FJ\$120.00, an extension cord worth FJ\$50.00, an electric kettle worth FJ\$49.00 and an electric iron worth FJ\$79.00.*
  
- 7. Under caution, the accused admitted that he and 02 others took a rice cooker, frying pan, extension cord, electric kettle, electric iron, DVD player, some screws and a copper wire from inside Limivia Marama's home, which they subsequently put into a sack and took away from her home through the kitchen door and then hid the items (Q&A 48-54, Record of interview of Tikiko Delai dated 18/01/19 is attached.)*
  
- 8. As a result of the police investigations and the accused's cooperation, all stolen items belonging to Limivia Marama were recovered. The*

*accused was charged with aggravated burglary and theft and he has nil previous conviction.*

5. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) is an imprisonment term of 17 years and the maximum punishment for Theft is an imprisonment term of 10 years.
6. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: *State v. Mikaele Buliruarua*[2010] FJHC 384; HAC 157.2010 (6 September 2010); *State v. Nasara*[2011] FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu*[2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa*[2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru*[2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose*[2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi & Another* [2018] FJHC 364; HAC 101.2018 (7 May 2018) and most recently in *State v Tukele* - [2018] FJHC 558; HAC179.2018 (28 June 2018).
7. For the offence of Theft, the tariff was discussed in *Waga v State* [HAA 17 of 2015. Accordingly, the tariff for the offence of Theft should be 4 months to 3 years imprisonment.
8. In assessing the objective seriousness of your offending, I examined the degree of culpability in your offending and the loss or harm caused to the complainant. I also took into consideration the fact that this offence is one of the most prevalent offences in Fiji. Having considered all these factors, I would pick a starting point of 18 months.
9. There are no aggravating features in your offending.

10. In mitigation, your counsel has informed the court that you have entered an early guilty and that you have been extremely remorseful of your actions. You are a first and young offender. You were 18 years old at the time of the offence. You earn a living as a labourer in a private company. You have promised not to reoffend and you beg for a second chance to rehabilitate yourself. You have cooperated with police and helped them to fully recover the stolen items. You seek mercy of this court. I consider your early guilty as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charge at a very early stage of the proceedings.
11. In terms of section 17 of the Sentencing and Penalties Act, I would impose an aggregate sentence for both counts in view that you were convicted based on the same facts arising out of a single transaction.
12. You were in remand for 17 days. The time spent in remand is will be discounted separately. You have been given a one third discount for the early guilty plea separately in coming to your final sentence.
13. For mitigating factors and remand period, I would give you a discount of 12 months to arrive at a sentence of 6 months' imprisonment.
14. The courts have a duty to denounce and deter this kind of anti-social behaviour. At the same time, rehabilitation of young and first offenders should be promoted. You are a young and first offender having a good rehabilitation prospect. Correction centers do not always correct young offenders. The primary purpose of this punishment should be rehabilitation. I have taken into consideration your potential for rehabilitation in view of your youth and clean record.

15. I sentence you to 6 months' imprisonment.
  
16. Taking into consideration your early guilty plea, cooperation extended to police to recover the stolen items, genuine remorse, youth and clear record, I am inclined to suspend your sentence for a period of 2 years.
  
17. **Tikiko Delai**, you are sentenced to 6 months' imprisonment to be suspended for a period of 2 years. If you are convicted of any other offence during the next two years, the suspended sentence may be activated.

Aruna Aluthge  
Judge

AT Suva

On 4<sup>th</sup> June, 2019

**Counsel:**      **Office of the Director of Public Prosecution for Prosecution**  
                     **Office of the Legal Aid Commission for Accused**