

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 270 of 2020

STATE

V

1. SEFANAIA KOROI

2. IFEREIMI BUASERAU CAMAISALA

Counsel : Mr. Sahil Shiraz for the State
Mr. Jalesi Korotini for the 1st Accused
Ms. Lavinia David for the 2nd Accused

Sentence Hearing : 3 December 2020

Sentence : 10 December 2020

SENTENCE

[1] Sefanaia Koroi and Ifereimi Buaserau Camaisala, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

SEFANAIA KOROI and **IFEREIMI BUASERAU CAMAISALA**, in the company of each other, on the 5th day of September 2020, at Nabukavesi Village, Navua, in the Central Division, entered the house of **FRANSESCO MATAKIBAU** as trespassers, with the intention to commit theft from that property.

COUNT 2

Statement of Offence

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

Particulars of Offence

SEFANAIA KOROI and **IFEREIMI BUASERAU CAMAISALA**, on the 5th day of September 2020, at Nabukavesi Village, Navua, in the Central Division, dishonestly appropriated 1 x 40 inch TCL brand TV and 1 x Digital Video Recorder, the property of **FRANSESCO MATAKIBAU** with the intention of permanently depriving **FRANSESCO MATAKIBAU** of the said property.

- [2] On 12 October 2020, the DPP filed the Information and Disclosures relevant to the case, and the matter was adjourned for plea.
- [3] Sefanaia and Ifereimi, on 4 November 2020, you were ready to take your plea. On that day you pleaded guilty to the two counts against you in the Information. This Court was satisfied that you both pleaded guilty on your own free will and free from any influence. Court found that you both fully understood the nature of the charges against you and the consequences of your guilty pleas.
- [4] Thereafter, the State filed the Summary of Facts. On 19 November 2020, the Summary of Facts were read out and explained to you and you both understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the respective counts in the Information, and found the two counts proved on the Summary of Facts agreed by you. Accordingly, I found you both guilty on your own pleas and I convicted you of the two charges.
- [5] I now proceed to pass sentence on the two of you.
- [6] The Summary of Facts filed by the State was as follows:

1. ***The first accused*** is Sefanaia Koroi, (DOB 12/08/1997) a 23 year old farmer of Nabukavesi Village, Navua.
2. ***The second accused*** is Ifereimi Buaserau Camaisala, (DOB 2/09/1999), a 21 year old farmer of Nabukavesi Village, Navua.
3. ***The complainant*** is Fransesco Matakibau, 30 years of age, farmer of Nabukavesi Village, Navua.

Count 1 – Aggravated Burglary

4. ***On 5 September 2020, at around 7.00 a.m., Accused 1 and Accused 2 planned to steal 1 x 40 inch TCL Brand TV and 1 x Digital Video Recorder from the***

complainant's house located in Nabukavesi Village, Navua. (Accused 1 Q & A 20 – 23) (Accused 2 Q & A 25).

5. *With this plan, Accused 1 and Accused 2 had entered the complainant's house through the back door which they had opened and stole 1 x 40 inch TCL brand TV and 1 x Digital Video Recorder. (Accused 1 Q & A 22) (Accused 2 Q & A 26).*
6. *The complainant had locked the doors and went out to collect credit from the villagers and upon his return; he noticed that the back door of his house was open.*
7. *The complainant then entered into his house and discovered that 1 x 40 inch TCL brand TV and 1 x Digital Video Recorder was missing.*
8. *Later, on 6 September 2020, Accused 1 and Accused 2 had returned 1 x 40 inch TCL brand TV and 1 x Digital Video Recorder to the Complainant at his house. (Accused 1 Q & A 39) (Accused 2 Q & A 46).*

Count 2 – Theft

9. *Accused 1 and Accused 2 both had entered into the complainant's house from the back door on 5 September 2020 at around 7.00 a.m. (Accused 1 Q & A 20 – 23) (Accused 2 Q & A 25).*
10. *Both the accused after entering into the complainant's property, stole 1 x 40 inch TCL brand TV and 1 x Digital Video Recorder and took it with them.*
11. *Accused 1 and Accused 2 had the intention to steal the 1 x 40 inch TCL Brand TV and 1 x Digital Video Recorder from the Complainant's property and then sell it at a pawn shop. (Accused 1 Q & A 38) (Accused 2 Q & A 45).*
12. *Accused 1 has admitted to the offence in his caution interview from Q & A 20 – 42. (Marked as Annexure "1" is the copy of Record of Interview for Accused 1).*
13. *Accused 2 has admitted to the offence in his caution interview from Q & A 35 – 48. (Marked as Annexure "2" is the copy of Record of Interview for Accused 2).*
14. *Both the accused persons were subsequently charged with one count each of Aggravated Burglary and Theft. Accused 1 and Accused 2 have nil previous convictions (Marked as Annexure "3" is the Criminal Record History by the Criminal Records & Fingerprint Office).*

- [7] Sefanaia and Ifereimi, you have admitted to the above Summary of Facts and taken full responsibility for your actions.

- [8] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) The only purposes for which sentencing may be imposed by a court are —

(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.

- [9] I have duly considered the above factors in determining the sentence to be imposed on you.

- [10] In terms of Section 313 (1) of the Crimes Act, “A person commits an indictable offence (of Aggravated Burglary) if he or she-

(a) Commits a burglary in company with one or more other persons; or

(b)”

The offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act as follows: “A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building”.

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

- [11] 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).

[12] The Court of Appeal in *Legavuni v. State* [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary is between 18 months to 3 years.

[13] This Court has been consistently following the tariff of 18 months to 3 years imprisonment for Aggravated Burglary: Vide *State v. (Venasio) Cawi & 2 others* [2018] FJHC 444; HAC 155.2018 (1 June 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 536; HAC 92.2018 (20 June 2018); *State v. Pita Tukele & 2 others* [2018] FJHC 558; HAC 179.2018 (28 June 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 995; HAC 92.2018 (17 October 2018); *State v. (Maika) Raisilisili* [2018] FJHC 1190; HAC 355.2018 (13 December 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 1209; HAC 92.2018 (18 December 2018); *State v. Michael Bhan* [2019] FJHC 661; HAC 44.2019 (4 July 2019); *State v. Etika Toka* HAC 138.2019 (1 November 2019); *State v. Vakacavuti* HAC337.2018 (7 November 2019); *State v. Vakacavuti* [2019] FJHC 1088; HAC338.2018 (7 November 2019); *State v. Peniasi Ciri and Another* [2020] FJHC 63; HAC14.2019 (6 February 2020); *State v. Maikeli Turagakula and Another* [2020] FJHC 101; HAC416.2018 (19 February 2020); *State v. (Sachindra Sumeet) Lal & Another* [2020] FJHC 147; HAC71.2019 (26 February 2020); *State v. (Rupeni) Lilo* [2020] FJHC 401; HAC225.2018 (9 June 2020); *State v. (Taniela) Tabuakula* [2020] FJHC 464; HAC106.2020 (23 June 2020); *State v. (Eric Male) Robarobalevu* [2020] FJHC 630; HAC102.2020 (6 August 2020); *State v. (Usaia) Delai* [2020] FJHC 631; HAC7.2020 (6 August 2020); *State v Vakawaletabua* [2020] FJHC 645; HAC441.2018 (11 August 2020); *State v. (Sakeasi) Seru and Another* [2020] FJHC 770; HAC136.2020 (18 September 2020); *State v. (Kunal Edwin) Prasad* [2020] FJHC 785; HAC115.2020 (23 September 2020); *State v. (Emosi) Tabuasei* [2020] FJHC 994; HAC131.2020 (27 November 2020); *State v. LR and Others* [2020] FJHC 993; HAC133.2020 (27 November 2020); and *State v. Lal and Another* [2020] FJHC 1024; HAC337.2019 (3 December 2020).

[14] In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[15] In *Ratusili v. State* [2012] FJHC 1249; HAA011.2012 (1 August 2012); His Lordship Justice Madigan proposed the following tariff for the offence of Theft:

“(i) For a first offence of simple theft the sentencing range should be between 2 and 9 months.

“(ii) Any subsequent offence should attract a penalty of at least 9 months.

- (iii) *Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*
- (iv) *Regard should be had to the nature of the relationship between offender and victim.*
- (v) *Planned thefts will attract greater sentences than opportunistic thefts."*

[16] Since the theft in this case involved property of high value, and was consequent to the two of you entering the residential premises of the complainant as trespassers, this cannot be considered as theft simpliciter. Therefore, it is my opinion that the appropriate tariff in this case should be in the range of 2 months to 3 years imprisonment for the offence of Theft.

[17] In determining the starting point within a tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."

[18] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Sefanaia and Ifereimi, I commence your sentences at 18 months imprisonment for the first count of Aggravated Burglary.

[19] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Sefanaia and Ifereimi, I commence your sentences at 6 months imprisonment for the second count of Theft.

[20] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) The two of you were said to be working on the complainant's farm on the day of the offending. Therefore, there has been a breach of trust.
- (iii) The two of you trespassed into the residential premises of the complainant thereby paying scant regard to the privacy of the complainant.

- (iv) I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences.
- (v) You both are now convicted of multiple offending.

[21] In mitigation you both have submitted as follows:

- (i) That you are a first offenders and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions and assured Court that you will not re-offend.
- (iv) It is submitted that you are apologizing and seeking forgiveness from the complainant for your actions and that you are also seeking forgiveness from this Court. You both say you are willing to reform.
- (v) All of the stolen property had been recovered. In fact, you both had returned the stolen property to the complainant the next day.
- (vi) That you both entered guilty pleas at the first given opportunity.

[22] Considering the aforementioned aggravating factors, Sefanaia and Ifereimi I increase your sentences by a further 5 years. Now your sentence for count one would be 6 years and 6 months imprisonment. Your sentences for count two would be 5 years and 6 months imprisonment.

[23] Sefanaia and Ifereimi, I accept that you both are a persons of previous good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and the fact that you are seeking forgiveness from the complainant. I also accept the fact that all of the stolen property was recovered. Accordingly, considering these mitigating factors, I deduct 3 years and 6 months from your sentences. Now your sentences for count one would be 3 years imprisonment. Your sentences for count two would be 2 years imprisonment.

[24] Sefanaia and Ifereimi, I accept that you entered a guilty at the first given opportunity during the course of these proceedings. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 12 months for count one. Since I propose to make your sentences concurrent I do not deem it necessary to grant you any further discount for count two in lieu of this factor.

[25] In the circumstances, Sefanaia and Ifereimi your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 2 years imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –2 years imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your final total term will be 2 years imprisonment.

[26] The next issue for consideration is whether your sentences should be suspended.

[27] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

(2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence, —

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[28] Sefanala you are now 23 years of age [Date of birth 12 August 1997]. You are said to be married with no children. You had studied up to Form 4 at Lami High School. You are now said to be engaged in subsistence farming.

[29] You have submitted that on the date of offence you were in need of some cash. Thus you took the opportunity and committed the offence. You have admitted that you made the wrong decision in entering the complainant's property and stealing therefrom. You have submitted that you now regret your actions.

[30] Sefanaia you were arrested for this case on 13 September 2020 and have been remanded in custody since that day. That is a period of nearly 3 months.

[31] Ifereimi you are now 21 years of age [Date of birth 2 September 1999]. You are said to be residing at Nabukavesi, Namosi, with your family. You had studied up to Form 4 at Lami High School. You too are now said to be engaged in subsistence farming.

[32] You have submitted that you committed this offence as you were upset that the complainant was not paying the wages due to you. However, you have now realised that

you cannot take the law into your own hands. You have further submitted that you committed these offences without full appreciation of its gravity. You have submitted that you now regret your actions.

[33] Ifereimi you were arrested for this case on 14 September 2020 and have been remanded in custody since that day. That is a period of nearly 3 months.

[34] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence."

[35] In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:

"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."

[36] I have considered the following circumstances:

- You are both young offenders;
- You have been of previous good character;
- You have fully cooperated with the Police in this matter;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from the complainant and from this Court;
- You have assured Court that you will not re-offend and are willing to reform;
- All of the stolen property was recovered;
- You entered a guilty plea at the first given opportunity during these proceedings;
- You have already spent nearly 3 months in remand custody for this case.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentences.

[37] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentences for a period of 7 years.

[38] In the result, your final sentence of 2 years imprisonment, is suspended for a period of 7 years. You are advised of the effect of breaching a suspended sentence.

[39] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 10th Day of December 2020

Solicitors for the State:

Office of the Director of Public Prosecutions, Suva.

Solicitors for the 1st and 2nd Accused: Office of the Legal Aid Commission, Suva.