

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CRIMINAL CASE NO: HAC. 169 of 2019

BETWEEN : **STATE**

AND : **1. ETUATE KAULOTU**
2. EMOSI JALAVA DOIDOI

Counsel : *Ms. L. Bogitini for State*
: *Ms. E Radrole for the 1st Accused*
: *Ms. V. Narara for the 2nd Accused*

Hearing on : *18th March 2020*

Sentence : *11th June 2020*

SENTENCE

1. Mr. Etuate Kaulotu and Mr. Emosi Jalava Doidoi, both of you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the very first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally, having understood the consequences of such a plea.
2. You were charged as follows;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to section 313(1) (a) of the Crimes Act 2009.

Particulars of Offence

Etuate Kaulotu and Emosi Jalava Doidoi, in the company of each other, on the 28th day of August 2019, at Sigatoka in the Western Division, entered into the property of Deep Sea Nightclub as trespassers, with intent to commit theft.

COUNT 2

Statement of Offence

Theft: contrary to section 291(1) of the Crimes Act 2009.

Particulars of Offence

Etuate Kaulotu and Emosi Jalava Doidoi, in the company of each other, on the 28th day of August 2019, at Sigatoka in the Western Division, dishonestly appropriated 80 cans of Woodstock valued at \$720.00, 17 cans of Joskies valued at \$153.00 and 1 Amplifier valued at \$1,500.00 all to the total value of \$2,373.00, the property of Deep Sea Nightclub, with the intention to permanently deprive Deep Sea Nightclub of the said property.

3. The summary of facts filed by the state and admitted by you state that;

Background

- Emosi Doidoi, 18 years of Lawaqa, Sigatoka. Hereinafter referred to as “the juvenile.”
- Etuate Kaulotu, 20 years of Olosara, Sigatoka. Hereinafter referred to as “the accused”. He is also known as Eddie.
- Kuini Marama, 43 years of Deep Sea Riverview Hotel, Sigatoka. Her husband is Alifereti Turagarua. She is the manager of the The Deep Sea Nightclub in Sigatoka, hereinafter referred to as “the nightclub.”

Incident

- i. On the 27th of August, 2019 at about 6pm, Kuni Marama went to open the nightclub and then went in to sell liquor. After 1.30am, when the club closed, Kuni Marama did her stock take. After the stock take, she went

with her husband to their room at about 1.45am. When she left, the two cleaners namely Kavekini Tomu and Nacanieli Wavu were at the club-cleaning and moping.

- ii. On the 28th of August, 2019 at about 6am, Alifereti Turagarua went to the club to turn off the lights. He then called her to inform her that the night club was broken into. She went and discovered that the fridge which was locked was broken into and the drinks inside had been stolen.
- iii. When she checked the inside of the club she found that the following items were missing:
 - 17 cans of Joskies valued at \$153.00;
 - 80 cans of Woodstock valued at \$720.00;
 - 1 Amplifier valued at \$1,500.00;All to the total value of \$2,373.00.
- iv. Alifereti Turagarua noticed a metal pipe on the bar and also saw that the window at the washroom had been damaged.
- v. The cleaner of the Deep Sea Night Club, Nacanieli Rayale, stated that at about 2am they began their cleaning of the club and they ended their cleaning at about 3am. After the cleaning, they closed the club and then went straight to Riverview hotel. He noticed an itaukei youth roaming around the front of the hotel who was of slim and average height wearing short pants and a round neck. He did not notice anything else.
- vi. At about 6am on the 28th of August, 2019, the accused had approached Mohammed Riyasat Ali. Mr. Ali was drinking grog with one Davend Chand. The accused had a blue puma bag with him, which was filled with can of Woodstock. He then sold 12 cans of Woodstock to Davend Chand for \$45.00. This was later recovered by the police and was found to be the same drinks stolen from the nightclub.
- vii. On the 29th of August, 2019 at about 4.30pm, Mohammed Tareed was in his shop in Lautoka, which is Fazz IT Solutions when the juvenile and another went to his shop and sold a Bringer Mixer for \$30.00. They sold it

stating that it belonged to their church and they needed the money to be used for church. This was recovered by the police and was found to be the same mixer stolen from the nightclub.

- viii. Following a report, the matter was investigated by the police.
- ix. The record of interview of the juvenile was conducted at Sigatoka Police Station on 12th of September, 2019 by DC 4644 Alifereti Naulumatua.
- x. Upon having the allegations put to him, the juvenile admitted that on the 28th of August, 2019 between 2am and 6am, he and his accomplice went to the Deep Sea Night club where his accomplice climbed first into the toilet window of the club and pulled him up. The juvenile and another then went into the bar where the drinks are kept inside the locked freezer. The accomplice then broke the locker and they took out cans of joskies and Woodstock alcohol. They then used an empty Woodstock carton and the accused's bag to help them carry the drinks out of the club. They then carried the drinks across to the FDB building and then to the other stand of the old mini bus stand and then took the drinks to Senivalati at the bridge side where they boarded a taxi and went to Senivalati's house in Lawaqa where they drank some of the liquor. The juvenile and another sold the mixer in Lautoka for \$30.00.
- xi. The record of interview of the accused was conducted at Sigatoka Police Station on 28th of August 2019 by WDC 5533 Loraini.
- xii. Upon having the allegations put to him, the accused admitted that on the 28th of August, 2019 he and his accomplice broke into the Deep Sea Night club through the back of the club at the toilet window. He gave his accomplice a hammer to break into the fridge which was locked. He then took out the amplifier and helped his accomplice in removing the drinks [Woodstock and Joskies] which was then placed inside a knapsack. They then went in a vehicle to Senivalati's house. The accused then went to sell some drinks to Davend Chand and Mr Ali.

4. I find the alleged two counts proved by the said summary of facts, as both of you have unequivocally admitted the above Summary of Facts. Accordingly, I convict both of you of the two offences of Aggravated Burglary and Theft.
5. Though the state refers to the 2nd accused as a juvenile, I find that he was born on the 24/02 2001, hence was not a juvenile at the time of the committal of the offence.
6. Section 4 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. I have duly considered these factors in determining the sentence to be imposed on you.
7. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years’ imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.
8. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best. As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).
9. The two offences that both of you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

17. *“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of*

imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."

9. The aggravating factors present in common are that this was a pre-planned invasion during the early hours of the morning and the fact that there is much prevalence of this type of offences in the society. This type of offences has increased due to the leniency they are dealt with and the society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.
10. The mitigating factors submitted are that they are very young offenders and also are remorseful. In addition they seek an opportunity to rehabilitate themselves. The 2nd accused has no previous convictions or pending cases. The 1st accused is sentenced by a Magistrate's Court for another offence, subsequent to this alleged incident.
11. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 30 months for the mitigating factors inclusive of the shown remorse and the co-operation with police. Now each of your sentence is an imprisonment term of 4 1/2 years. I will award an additional discount of 6 months to the 2nd accused for his clean record of having no other matters.
12. You have pleaded guilty at the first available opportunity and I will award the maximum possible discount of 1/3 for that. Therefore your final sentences are;

Etuate Kaulotu-	3 Years of Imprisonment with a non-parole period of 2 years and 2 months.
Emosi Jalava Doidoi-	2 Years and 8 months of Imprisonment with a non-parole period of 1 year and 10 months.
13. 1st accused has been in remand since 28th of August 2019. He was sentenced in another matter and was serving since mid-November 2019. The 2nd accused was in remand since 11th of September 2019 and was granted bail on the 10th of February 2020. That is about 2 months and 2 weeks for the 1st accused and about 5 months for the 2nd accused. I deduct that period from your final sentences of which the remainder, you'd have to serve will be;

- 1st accused- 2 years 9 months and 2 weeks, with a non-parole period of 1 year 11 months and 2 weeks, and
2nd accused- 2 years 3 months, with a non-parole period of 1 year and 5 months.

14. Taking into consideration the section 26 of the Sentencing and Penalties Act, I think it is appropriate to suspend the 27 months of your imprisonment for a period of 3 years. Therefore the 1st accused is to serve the remainder of 6 months and 2 weeks of imprisonment immediately. The consequences of a suspended term will be explained to you by the Court Clerks.
15. You have 30 days to appeal to the Court of Appeal if you so desire.



Chamath S. Morais
JUDGE

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