

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 178 of 2020

[CRIMINAL JURISDICTION]

STATE

V

1. LESI SERU
2. TANIELA VULIMAINADAVE TAGA
3. TANIELA TURAGABECI

Counsel : Mr. E. Samisoni for the State
Ms. N. Mishra for 1st, 2nd & 3rd Accused

Date of Sentence : 04th September, 2020

SENTENCE

1. Lesi Seru, Taniela Vulimainadave Taga and Taniela Turagabeci you have pleaded guilty to the charges produced below and were convicted as charged on 10/08/20 accordingly;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

LESI SERU, TANIELA VULIMAINADAVE TAGA and TANIELA TURAGABECI, between the 11th day of April, 2020 to the 12th day of April, 2020 at Wailada, Lami in the Central Division, in the company of each other, entered as trespassers into **FOODS PACIFIC LIMITED**, with the intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

LESI SERU, TANIELA VULIMAINADAVE TAGA and TANIELA TURAGABECI, between the 11th day of April, 2020 to the 12th day of April, 2020 at Wailada, Lami in the Central Division, in the company of each other, dishonestly appropriated of **FOODS PACIFIC LIMITED** with the intention of permanently depriving **FOODS PACIFIC LIMITED** of the said property.

2. You have admitted the following summary of facts;

Complainant (PW1): *Mun Sami, 60 years old, chief security officer for Foods Pacific Limited at Wailada, Lami.*

(PW2): *Timoci Raluve, 56 years old, security officer for Foods Pacific Limited at Wailada, Lami.*

Accuseds:

(A1): *Lesi Seru, 41 years old, restaurant manager of Valenicina settlement, Lami.*

(A2): *Taniela Vulimainadave Taga, 34 years old, baker of Valenicina settlement, Lami.*

(A3): *Taniela Turagabeci, 25 years old, farmer of Valenicina settlement, Lami.*

1. *On 12/04/20, PW1 was at home when he received a phone call from one of his workmates who told him that he had found a bucket containing cans of corned beef outside the fibre glass factory. When PW1 returned to the Foods Pacific Limited factory on 17/04/20 after the nationwide lockdown, he noticed that someone had come through the fibre glass factory, forced open a corrugated iron portion and entered through the factory door. This was the entry point into the Foods Pacific Limited factory. PW1 confirmed that six cartons of 200 grams of corned beef were stolen amounting of \$580.0. PW2 was informed that there had been a break-in at the factory earlier on. PW2 was called in on 17/4/20 by PW1 to take a look at some CCTV footage regarding the break-in at the factor. PW2 was able to identify A1 and A3, both of Valenicina settlement in the said CCTV footage.*

2. *After investigations were completed, A1, A2 and A3 were arrested on 7/6/20 and interviewed under caution on the same day at the Lami Police Station. All three accused persons made full admissions in their respective Records of Interview.*

3. *A1 made admissions in his Record of Interview from Q&A 18 – 36 where he stated that he had been previously employed at the Foods Pacific Limited factory at Wailada, Lami and was well versed with the layout of the factor. A1 further state that he had heard rumours of people breaking into the factory and stealing corned beef and when he heard this he knew exactly how they were doing this. A1 then told A2 and A3 that he knew how to break into the Foods Pacific Limited factory to steal corned beef. A1 stated that he entered the factory with A2 and A3 through the adjacent fibre glass boat company during the nationwide lockdown. A1, A2 and A3 then went straight to where the corned beef was kept and they stole two (2) cartons of corned beef each – six (6) cartons in total. After they had stolen the corned beef, they went and hid the cartons at their farm. At Q&A 40 – 45, A1 participated in a scene reconstruction.*

4. *A2 mad admissions in his Record of Interview from Q&A 23 – 35 where he admitted that he along with his cousin A1 and A3, broke into Foods Pacific Limited factor ad stole corned beef. A2 stated that he and A3 were approached by A1, as they were returning from training that day and A1 had informed them of his plan to break into the Foods Pacific Limited. Factory to steal the corned beef. A2 admitted to stealing two (2) boxes of corned beef from the said factory together with A1 and A3. A2 stated that afterwards, he took the corned beef home and ate the same. A2 also participated in a scene reconstruction during his interview.*

5. *A3 also made admissions in his Record of Interview from Q&A 36 – 41 where he admitted that he, A1 and A2 entered the factory and stole corned beef. A3 was shown the CCTV footage during his interview and admitted that he was one of the men shown in the footage entering the Foods Pacific Limited factory.*

A3 also confirmed that A1 and A2 were also shown in the CCTV footage entering the factory with him as well. A3 admitted to stealing two (2) cartons of corned beef. A3 also participated in a scene reconstruction.

6. *The Records of Interview for A1, A2 and A3 are attached as PE1, PE2 and PE3 respectively.*
 7. *None of the cartons of corned beef were recovered.*
 8. *On 6 August, 2020, A1, A2 and A3 pleaded guilty to both counts as charged in the presence of their respective counsels.*
3. In the case of **State v Chand** [2018] FJHC 830; HAC44.2018 (6 September 2018), Morais J observed thus;

12. 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. As Lord Bingham CJ in **Brewster** 1998 1 Cr App R 220 observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value.

Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism."

4. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
5. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
6. The offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.
7. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") reads thus;

"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."
8. Lesi Seru, you are 37 years old. Before you were arrested for this matter, you were employed as a manager of a restaurant. You are married with five children.

9. Taniela Vulimainadave Taga, you are 34 years old. You were employed as a baker, before you were arrested for this matter. You are a widower with a five year old son.
10. Taniela Turagabeci, you are 25 years old and single. You are a farmer.
11. According to the summary of facts there was preplanning and these offences were committed during the nationwide lockdown due to the COVID 19 Pandemic. These will be considered as aggravating factors common to all three of you. Lesi Seru, you were a former employee of the complainant company and you had worked at the relevant factory from which the items were stolen. You instigated this crime. This will be considered as an additional aggravating factor relevant to you.
12. In addition to the fact that you have entered an early guilty plea, I would consider the following as your mitigating factors;
 - a) All three of you are first offenders;
 - b) You are remorseful;
 - c) There is full restitution as each one of you have paid \$193.20 to the complainant company; and
 - d) You have cooperated with the police.
13. I would select 06 years as the starting point of your aggregate sentence. I would add 02 years in view of the aforementioned common aggravating factors and I would deduct 04 years in view of the above mitigating factors. Now your sentence is an imprisonment term of 04 years.
14. In view of your early guilty plea, I would grant each one of you, a discount of one-third. Accordingly, the final sentence imposed against each one of you would be an imprisonment term of 02 years and 08 months.


15. I would fix your non-parole period at 18 months in terms of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered the circumstances of the offending and your personal circumstances in determining the non-parole period.
16. It is submitted that the three of you were arrested on 07/06/20. Accordingly, each of you have spent almost 03 months in custody. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I hold that the period to be considered as served should be 03 months.
17. In the result, each of you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole period of 18 months. Given the period you have spent in custody, the time remaining to be served is as follows;

Head sentence - 02 years and 05 months
Non-parole period -15 months
18. Taking into account the fact that the three of you are first offenders, considering the importance of promoting your rehabilitation, and especially taking into account the fact that there is full restitution, I have decided to suspend the remaining period of the sentence imposed on each one of you, for a period of 03 years.
19. The court clerk will explain you the effects of a suspended sentence.
20. Lesi Seru, given the fact that you were the instigator and that you used the knowledge you acquired being an employee of the complainant company to commit the crime, I consider it necessary to impose a fine against you as a further punishment. Accordingly, I would impose a fine of \$100 against you. You should pay this fine within 02 months from today. That is, on or before 04/11/20. The failure to pay this fine in full by the said date would result in you having to serve a

period of 10 days imprisonment in terms of section 37 read with section 56(1) of the Sentencing and Penalties Act 2009.

21. Accordingly, you will be released today. You are hereby thoroughly warned and advised to hereafter abide by the laws of this country and to lead a good life.
22. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

**Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused**