

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC. 110 OF 2019**

**BETWEEN** : **STATE**

**AND** : **1. SAWANI LABADAI BOLADRAU**  
**2. WAISEA TIKO NAWASONI**

*Counsel* : *Ms. Naibe S. for State*  
: *Ms. Vulimainadave K. for the Accused*

*Hearing on* : *25<sup>th</sup> August 2020*  
*Sentence* : *15<sup>th</sup> September 2020*

**SENTENCE**  
**(of the 02<sup>nd</sup> Accused)**

1. Mr. Waisea Tiko Nawasoni, you stand convicted of the offence of Attempted Aggravated Robbery contrary to section 44 (1) and 311 (1) (a) of the Crimes Act 2009 after an early plea of guilt. Your charge read thus;

***Statement of Offence***

**ATTEMPTED AGGRAVATED ROBBERY: contrary to section 44 (1) and 311 (1) (a) of the Crimes Act 2009.**

***Particulars of Offence***

Sawani Labadai Boladrau & Waisea Tiko Nawasoni with others on the 22<sup>nd</sup> day of June 2019 at Lautoka in the Western Division, attempted to rob one Yaswant

Kumar of a taxi registration number LT 8997 valued at \$10,000.00 the property of the said Yaswant Kumar and during the time of such attempt used personal violence.

2. You pleaded guilty to the charge at the first opportunity, whereas your co-accused decided to plead not guilty and to proceed with the trial.
3. The State filed the Summary of facts and having read over to you, you admitted them to be correct and true, taking the full responsibility of your actions. The consequences of such plea was explained to you by your counsel too. Therefore, being convinced of it, I accept your plea to be unequivocal.
4. The said Summary of Facts read as;

*The complainant in this matter is Yaswant kumar (PW1), 40 years old, Pastor at the International Church of God of Prophecy, residing at Saweni, Lautoka. PW1 is a taxi driver and drives taxi registration number LT 8997 based at Tukani Street, in front of BSP, Lautoka.*

*The accused person is Waisea Tiko Nawasoni (Accused 2) 24 years old, Carpenter of 48, Sangola lane, Natokowaqa, Lautoka.*

*On the 22<sup>nd</sup> of June 2019 at about 11.15pm, PW1 was driving along Narara Parade when a boy stopped him and got into the front seat while the 2<sup>nd</sup> accused got into the backseat. PW1 then asked them where they wanted to go, the boy told him to take them to Tagimoucia Road. PW1 asked the accused where this road was located and the boy told him to drive and he will show him where the road is. PW1 drove the car towards Drasa Avenue and as they were passing FSC Junction, the boy told him to turn left onto Maravu Street and go towards the ground. As they were going into Maravu Street and for him to drive further inside. They reached the other side of the ground and the boy told him to stop the car. PW1 could not see anything and he switched on the light inside the car but the accused turned it off. The accused and the boy sitting in front got off and were talking to each other. Then they both got into the taxi again and all of a sudden the boy sitting in front shouted in I-Taukei language "vesuka" meaning "Hold Him!"*

*The accused then locked both his hands around PW1 to prevent him from moving and the other boy repeatedly punched PW1 on the face. PW1 managed to free his hands; he pulled the gear and then pressed the speed which caused them to crash. PW1 stated that he knew that the accused wanted to steal from him.*

*After the matter was reported to the police, investigations were carried out and the police managed to arrest the accused. The accused was then interviewed under caution and stated that he met a friend in town and they were looking for transport to go home. They boarded a taxi and he sat behind the driver's seat. They then went through Maravu Street towards Lautoka Methodist School ground. At the school ground, the taxi stopped and his friend told him to hold the driver's hand. He admitted that he held the driver's hand and his friend punched the driver on the face. He could not hold onto the driver's hand and the driver then pressed the speed and they crashed into the drain. He jumped out of the car and ran to his home.*

*The accused was then charged for 1 count of Attempted Robbery contrary to section 44 (1) and 311 (1) (a) of the Crimes Act 2009 and he sought forgiveness from PW1. In his charge statement.*

5. The above Summary of Facts, supports and fulfills all the elements of the alleged offence of Attempted Aggravated Robbery. Though the said summary of facts state at the final paragraph that the charged offence is Attempted Robbery, the given section and the admitted events support the offence of attempted Aggravated Robbery and there is no prejudice or misleading caused to the accused by that. Therefore, I convict the 2<sup>nd</sup> accused, Mr. Waisea Tiko Nawasoni of Attempted Aggravated Robbery contrary to section 44 (1) and 311 (1) (a) of the Crimes Act 2009.
6. The maximum sentence for the offence of aggravated robbery contrary to section 311(1) of the Crimes Act is 20 years imprisonment. As for section 44 (1) of the Crimes Act, the same that is prescribed for the offense if committed will apply for an attempt.
7. The tariff for this offence is an imprisonment term between 8 to 16 years. [Wallace Wise v The State, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)]

In determining the starting point within the said 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."*

8. In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 08 years of imprisonment for the count of Attempted Aggravated Robbery.
9. The victim was 40 years old and was punched while held from the behind. This robbery has been attempted at a public place, in the middle of the night. It shows your lack of fear to the law. Further, this has become much prevalent offence in this society, and presently demands a stern judicial approach in order to curtail.
10. Due to the said aggravating factors I enhance your sentence by further two (2) years, and now your sentence is 10 years of imprisonment.
11. In mitigation, it is submitted on your behalf that you are a first time offender and you are young. Considering the said facts and the rest of the submission by your counsel, I deduct three (3) years from the above and your sentence stands at 7 years of imprisonment.
12. You have pleaded guilty at the first available opportunity. You have sought forgiveness from the PW1. Therefore, in consideration of the remorse shown, I will award you the maximum possible discount of 1/3. Therefore your final sentence would be 4 years and 8 months. In consideration of all the available material before me, I will set the non-parole period at 3 years and 6 months.

13. You have been arrested on 23<sup>rd</sup> of June 2019. Then granted bail on the 16<sup>th</sup> of August 2019. Thereafter your bail was cancelled on the 18<sup>th</sup> of February 2020 and in remand since then. In lieu of that I order that 9 months to be deducted from your final sentence as served and the remainder to be served would be 3 years and 11 months and your non-parole period would be 2 years and 9 months.
14. You will be given thirty (30) days to appeal to the Court of Appeal if you so desire.



  
**Chamath S. Morais**  
**JUDGE**

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