

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 191 of 2020

STATE

V

1. ERONI LUTUNAMARAVU

2. APETE LIGOLIGODI KAVIKACA

3. TUKAI MANU BIAU

Counsel : Ms. Nimisha Shankar for the State
Ms. Lice Manulevu for the 1st Accused
Ms. Ruci Nabainivalu for the 2nd Accused
Ms. Talei Kean for the 3rd Accused

Sentence Hearing : 1 March 2021

Sentence : 23 March 2021

SENTENCE

[1] Eroni Lutunamaravu, Apete Ligoligodi Kavikaca & Tukai Manu Biau, as per the Consolidated 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

ERONI LUTUNAMARAVU, APETE LIGOLIGODI KAVIKACA & TUKAI MANU BIAU, on the 22nd day of June 2020, at Nabua, in the Central Division, in the company of each other, entered into the premises of **ASHNA PRASAD**, as trespassers, with the intent to commit theft.

[COUNT 2]

Statement of Offence

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

Particulars of Offence

ERONI LUTUNAMARAVU, APETE LIGOLIGODI KAVIKACA & TUKAI MANU BIAU, on the 22nd day of June 2020, at Nabua, in the Central Division, in the company of each other, dishonestly appropriated (stole) 1 x HP Black Laptop, 1 x Headphones, 1 x Burner Stove, 1 x Gas Cylinder & \$100.00 in cash, the property of **ASHNA PRASAD** with the intention of permanently depriving **ASHNA PRASAD** of the said properties.

- [2] On 17 August 2020, the DPP filed the Consolidated Information against the three of you, while the Consolidated Disclosures relevant to the case were filed on 28 August 2020.
- [3] Eroni, Apete and Tukai, on 17 September 2020, you were ready to take your pleas. Accordingly, you pleaded guilty to the two counts against you in the Consolidated Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your guilty pleas.
- [4] Thereafter, the State prepared the Summary of Facts. However, since the three of you were disputing the contents of the Summary of Facts, on 8 December 2020, Court permitted your pleas of guilt to be vacated.
- [5] However, on 4 February 2021, this Court was informed that Eroni and Apete wish to take a progressive approach in the matter. Accordingly, your plea was taken once again. Eroni and Apete you pleaded guilty to the two counts against you in the Consolidated Information. This Court was satisfied that you 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. Tukai you pleaded not guilty to the charges.
- [6] Eroni and Apete, on 12 February 2021, 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 Consolidated Information, and found the respective counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own pleas and convicted you of the two counts as charged. The matter was then fixed for 18 February 2021 for sentence hearing.

- [7] On 18 February 2021, this Court was informed that the 3rd accused, Tukai also wishes to take a progressive approach in the matter. Accordingly, Tukai your plea was taken once again. You pleaded guilty to the two counts against you in the Consolidated Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence, Court found that you fully understood the nature of the charges against you and the consequences of your guilty plea.
- [8] On 1 March 2021, the Summary of Facts in respect of Tukai was filed in Court. The said Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the respective counts in the Consolidated Information, and found the respective counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and convicted you of the two counts as charged.
- [9] The sentence hearing in respect of all three accused was held on the same day.
- [10] Eroni, Apete and Tukai, I now proceed to pass sentence on the three of you.
- [11] The Summary of Facts filed by the State in respect of Eroni and Apate were as follows:

"The Complainant is Ashna Prasad ("PW1") 22 years, Staff Nurse of Lot 37 Yarawa Road, Nabua.

The Accused are:-

- 1) Eroni Lutunamaravu ("A1") 24 years, unemployed, of Lagilagi Housing, Raiwai;*
- 2) Apete Ligoligodi Kavikaca ("A2") 27 years old, unemployed, of Jittu Estate; and*

On 22/06/2020, PW1 left for work as she was doing morning shift i.e. from 7 am to 7 pm. Before leaving, PW1 had securely locked her flat. At around 5pm, she received a call, informing her that there was a break in at her flat.

PW1 quickly relieved herself from work and headed straight for her flat. When she reached the flat, she noticed 3 louver blades had been removed from her back windows but the window grills were still intact. She noticed both her doors were still securely locked too. PW1 entered the flat and noticed all her clothes scattered all over the floor. Upon closer look, PW1 realized that the burglars had entered through her door by putting their hand

through the window to open the tower bolt and thereafter had gained access to the whole flat.

The matter was reported to the Police and PW1 later found out that the following items had been stolen from her flat:-

- ❖ 1 x HP Black Laptop valued at \$800.00;
- ❖ 1 x pair of Headphones valued at \$200.00;
- ❖ 1 x burner stove and 1 gas cylinder valued at \$110.00; and
- ❖ \$100.00 in cash.

Investigations were conducted and both A1 and A2 with their accomplice were arrested. They were then cautioned interviewed where both A1 and A2 admitted to their involvement in the commissioning of the offence with their accomplice. (**"A1 and A2's respective Caution Interviews are attached herewith"**).

According to A1;-

- ❖ He had brought a gas cylinder and a stove from the house (Q/A 16-19);
- ❖ He had entered the house with 2 others (Q/A 20);
- ❖ The gas cylinder and the stove were taken to his home (Q/A 23);
- ❖ They had plans to break into the house (Q/A 31);
- ❖ They went in through the back gate and then through the back door where they entered the house (Q/A 35-40);
- ❖ When they entered into the house, he took the gas cylinder which was empty and a burner and then went outside (Q/A 41 & 42);
- ❖ The house was empty (Q/A 45);
- ❖ He then took the items home and left them there (Q/A 51 & 52).

According to A2;-

- ❖ He followed A1, entered into the house and as he was inside, A1 gave him a laptop with a charger and a black headset (Q/A 40 & 44);
- ❖ A1 had removed the louver blades from the back door before they entered into the house (Q/A 45);
- ❖ A1 had taken the gas cylinder and the stove while he gave the black headset and the laptop to his accomplice (Q/A 47);
- ❖ He in fact had not received anything (Q/A 48).

Consequently, both A1 and A2 with their accomplice were charged with 1 count of Aggravated Burglary and 1 count of Theft.

Items were only recovered from A2 which included 1 x Headphones, 1 x Gas Cylinder and 1 Burner Stove (Copy of Search list attached).

A1 is known but has NIL previous convictions and is a first offender, A2 is known and has two previous convictions, whilst A3 has NIL previous convictions and is also a first time offender. (Copies of previous convictions attached)".

[12] The Summary of Facts filed by the State in respect of Tukai was as follows:

The Complainant is Ashna Prasad ("PW1") 22 years, Staff Nurse of Lot 37 Yarawa Road, Nabua.

The Accused are:-

- 1) Eroni Lutunamaravu ("A1") 24 years, unemployed, of Lagilagi Housing, Raiwai;*
- 2) Apete Ligoligodi Kavikaca ("A2") 27 years old, unemployed, of Jittu Estate; and*
- 3) Tukai Manu Biau ("A3") 20 years old, unemployed, of 296 Lagilagi Settlement, Raiwaqa.*

On 22/06/2020, PW1 left for work as she was doing morning shift i.e. from 7 am to 7 pm. Before leaving, PW1 had securely locked her flat. At around 5pm, she received a call, informing her that there was a break in at her flat.

PW1 quickly relieved herself from work and headed straight for her flat. When she reached the flat, she noticed 3 louver blades had been removed from her back windows but the window grills were still intact. She noticed both her doors were still securely locked too. PW1 entered the flat and noticed all her clothes scattered all over the floor. Upon closer look, PW1 realized that the burglars had entered through her door by putting their hand through the window to open the tower bolt and thereafter had gained access to the whole flat.

The matter was reported to the Police and PW1 later found out that the following items had been stolen from her flat:-

- ❖ 1 x HP Black Laptop valued at \$800.00;*
- ❖ 1 x pair of Headphones valued at \$200.00;*
- ❖ 1 x burner stove and 1 gas cylinder valued at \$110.00; and*
- ❖ \$100.00 in cash.*

Investigations were conducted and all three accused persons were arrested. They were then cautioned interviewed where they all admitted to their involvement in the commissioning of the offence. ("All respective Caution Interviews are attached herewith").

According to A3:-

- ❖ He met up with A1 and A2 and they planned to break into a vacant house (Q/A 30-34);*

- ❖ *The house was one that belonged to an Indian family because they would see two Indian girls coming in and out of the said house (Q/A 35 & 36);*
- ❖ *Both A1 and A2 broke in through the back gate and went inside the compound (Q/A 45);*
- ❖ *He does not know how they actually broke into the house as he was standing on the road as the other two entered into the house (Q/A 51);*
- ❖ *They took about half an hour whilst stealing from inside the house (Q/A 52);*
- ❖ *He then assisted A1 and A2 in carrying the stolen items, which included 1 x Gas cylinder, 1 x 2 Burner, 1 x Laptop, 1 x Headphone, 1 x Blue towel and 1 x Music box (Q/A 54 & 55);*
- ❖ *All items were carried by them and taken home by foot (Q/A 56 & 57).*

Consequently, all three accused persons were charged with 1 count of Aggravated Burglary and 1 count of Theft.

Items were only recovered from A1 which included 1 x Headphones, 1 x Gas Cylinder and 1 x Burner Stove (Copy of Search list attached).

A1 is known but has NIL previous convictions and is a first offender, A2 is known and has two previous convictions, whilst A3 has NIL previous convictions and is also a first time offender. (Copies of previous convictions attached).

- [13] Eroni, Apete and Tukai, you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [14] 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.*

[15] I have duly considered the above factors in determining the sentences to be imposed on you.

[16] In terms of Section 313 (1) of the Crimes Act No. 44 of 2009 (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.

[17] 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).

[18] The Court of Appeal in *Leqavuni 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.

[19] 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); *State v. Lal and Another* [2020] FJHC 1024; HAC337.2019 (3 December 2020); *State v. Koroitawamudu and Another* [2020] FJHC 1055; HAC127.2020 (8 December 2020); *State v. Koroii and Another* [2020] FJHC 1065; HAC270.2020 (10 December 2020); and *State v. (Joji) Kotobalavu* [2021] FJHC 101; HAC234.2020 (17 February 2021).

[20] 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.

[21] 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.”

[22] Since the theft in this case involved property of a reasonable high value, and was consequent to the three 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.

[23] 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."

[24] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, Eroni, Apete and Tukai, I commence your sentences at 18 months imprisonment for the first count of Aggravated Burglary.

[25] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offences, Eroni, Apete and Tukai, I commence your sentence at 6 months imprisonment for the second count of Theft.

[26] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) The three of you trespassed into the residential premises of the complainant thereby paying complete disregard to the privacy and property rights of the said complainant and have thereby disturbed the peace of the community.
- (iii) I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences.
- (iv) You are now convicted of multiple offending.

[27] In mitigation you have submitted as follows:

- (i) Eroni and Tukai you are first offenders and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you. However, Apete you have two previous convictions recorded against your name.
- (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 and that you are willing to reform.
- (iv) Part of the stolen items have been recovered.

(v) That you entered a guilty plea during the course of these proceedings.

- [28] Considering the aforementioned aggravating factors, Eroni, Apete and Tukai, I increase your sentences by a further 4 years. Now your sentences for count one would be 5 years and 6 months imprisonment. Your sentences for count two would be 4 years and 6 months imprisonment.
- [29] Eroni and Tukai, I accept that you 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 assurance you have given Court not to re-offend in the future and that you are willing to reform. I also have considered the fact that some of the stolen items were recovered. Accordingly, considering these mitigating factors, I deduct 2 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.
- [30] Apete you are currently serving a sentence imposed by the High Court for Aggravated Burglary and Theft. The said sentence had been imposed on you on 23 December 2020. Therefore, I am not in a position to give you any discount in lieu of previous good character.
- [31] However, Apete, I agree that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and the assurance you have given Court not to re-offend in the future and that you are willing to reform. I also have considered the fact that some of the stolen items were recovered. Accordingly, considering these mitigating factors, I deduct 2 years from your sentences. Now your sentence for count one would be 3 years and 6 months imprisonment. Your sentence for count two would be 2 years and 6 months imprisonment.
- [32] Eroni, Apete and Tukai, I accept that you entered a guilty plea during the course of these proceedings. The three of you first entered a guilty plea on 17 September 2020. However, that guilty plea was vacated. Thereafter, Eroni and Apete, you entered a guilty plea on 4 February 2021; while Tukai you did so two weeks later. In doing so, you have saved precious time and resources of this Court. For your early guilty plea I grant you each 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.
- [33] In the circumstances, Eroni and Tukai 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.

[34] In the circumstances, Apete your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act-2 years and 6 months imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –2 years and 6 months imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your final total term will be 2 years and 6 months imprisonment.

[35] Eroni and Tukai, the next issue for consideration is whether your sentences should be suspended. Unfortunately, Apete, since you are already serving a prison term for a similar property offence, this Court cannot consider suspending any part of your sentence.

[36] 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.

[37] Eroni you have just turned 25 years of age [Date of birth 7 March 1996]. You are said to be married with two children. You were residing at Lagilagi Housing, Raiwai, with your family. You were said to be employed as a labourer for Design Creative Building Solutions prior to being remanded into custody for this case. You are the sole bread-winner of the family.

[38] Tukai you have just turned 21 years of age [Date of birth 14 March 2000]. You are said to be usually residing at Jittu Estate, with your grandmother. Prior to being remanded

for this case you were raised by your grandparents, after your parents had separated, when you were still a child. Your grandfather is said to have passed away in 2014. You are said to have reached Form 4 at Cathedral Secondary School.

- [39] Tukai it is said that you level of culpability for the offending is less since you were only on watch, whilst the other two accused had entered the premises of the complainant.
- [40] Eroni and Tukai, you have taken full responsibility for your actions. You have submitted that you committed the offences without comprehending the gravity of your actions.
- [41] Eroni you were arrested for this case on 27 June 2020 and you have been in remand custody since that date. Accordingly, you have been in remand custody for this case for a period of nearly 9 months.
- [42] Tukai you were arrested for this case on 7 July 2020 and you have been in remand custody since that date. Accordingly, you have been in remand custody for this case for a period of nearly 8 ½ months.
- [43] 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."

- [44] 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."

- [45] Eroni and Tukai, I have considered the following circumstances:

- You are relatively young offenders;
- You both have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions;
- You have assured Court that you will not re-offend and that you are willing to reform;
- Part of the stolen property had been recovered;

- You entered a guilty plea during the course of these proceedings;
- Eroni you have already spent a period of nearly 9 months in remand custody for this case. Tukai you have already spent a period of nearly 8 ½ 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.

- [46] 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 sentence for a period of 7 years.
- [47] In the result, Eroni and Tukai, your final sentence of 2 year's imprisonment, is suspended for a period of 7 years. You are advised of the effect of breaching a suspended sentence.
- [48] Apete you are 27 years of age [Date of birth 7 July 1993]. You are said to be single, and residing at Gaji Road, Samabula, with your father and siblings. You were said to be employed as a labourer/carpenter prior to being remanded into custody for this case.
- [49] Apete, as stated before, I impose on you a sentence of 2 years and 6 months imprisonment, with a non-parole period of 1 year and 6 months imprisonment.
- [50] Section 24 of the Sentencing and Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

- [51] Apete you were arrested for this case on 7 July 2020 and you have been in remand custody until 23 December 2020, the day on which you were convicted and sentenced by the Suva High Court (Suva High Court Case Number HAC 203 of 2020). Accordingly, I consider that you had been in remand custody for this case for a period of nearly 6 months, prior to your conviction and sentence for the aforesaid matter. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that the period of 6 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.
- [52] In the result, Apete your final sentence is as follows:

Head Sentence	-	2 years and 6 months imprisonment.
Non-parole period	-	1 year and 6 months imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

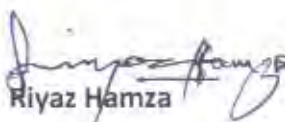
Head Sentence - 2 years imprisonment.

Non-parole period - 1 year imprisonment.

[53] The said 2 year term of imprisonment and the non-parole period will be concurrent to the term of imprisonment you are already serving for Suva High Court Case Number HAC 203 of 2020. For the avoidance of any doubt, your term of 2 years imprisonment, with a non-parole period of 1 year, imposed for this case, would commence from today.

[54] 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 23rd Day of March 2021

Solicitors for the State:
Solicitors for the Accused:

Office of the Director of Public Prosecutions, Suva.
Office of the Legal Aid Commission, Suva.