

**IN THE HIGH COURT OF FIJI AT SUVA**

**CASE NO: HAC. 320 of 2020**

**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**1. PITA BROWN QALIKAONO**

**2. DANIEL KOROIVUKI**

**3. SEMISI SAKIUSA**

**Counsel** : Ms. N. Shankar for the State  
Ms. S. Hazelman for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Accused

**Date of Sentence** : 01 April 2021

**SENTENCE**

1. Pita Brown Qalikaono, Daniel Koroivuki and Semisi Sakiusa you have pleaded guilty to the charges produced below and were convicted as charged accordingly on 23/03/21;

**FIRST COUNT**

*Statement of Offence*

**Aggravated Burglary:** Contrary to Section 313 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**PITA BROWN QALIKAONO, DANIEL KOROIVUKI and SEMISI SAKIUSA** in the company of each other, on the 23<sup>rd</sup> day of October, 2020 at Suva in the Central Division, entered into **ROOM 202 of ANNANDALE APARTMENT** as trespassers with intent to commit theft

from that property.

## **SECOND COUNT**

### *Statement of Offence*

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

### *Particulars of Offence*

**PITA BROWN QALIKAONO, DANIEL KOROIVUKI and SEMISI SAKIUSA** on the 23<sup>rd</sup> day of October, 2020 at Suva in the Central Division dishonestly appropriated 1x 32" Philips brand TV, the property of **ANNANDALE APARTMENT** with the intention of permanently depriving **ANNANDALE APARTMENT** of the said property.

## **THIRD COUNT**

### *Statement of Offence*

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

### *Particulars of Offence*

**PITA BROWN QALIKAONO, DANIEL KOROIVUKI and SEMISI SAKIUSA** on the 23<sup>rd</sup> day of October, 2020 at Suva in the Central Division dishonestly appropriated 1x ¾ shorts, 2x round neck t-shirt, 2x Axe deodorant, 1x Chiadin hair gel, 1x Taft gel and 1x Light Blue HP Laptop bag, the property of **RAVUAMA TUVANUA** with the intention of permanently depriving **RAVUAMA TUVANUA** of the said property.

2. You have admitted the following summary of facts;

### **The Complainants:**

- a. *The First Complainant in this matter is Patricia Reshika Chandra (PW1), 33 years old, Manager at Annandale Apartment, of 19 Bukshi Street, Suva.*
- b. *The Second Complainant in this matter is Ravuama Tuvanua (PW2), employee of Ministry of Commerce, 38 years old, of Navua.*

### **The Accused (s):**

- a. *The First Accused (A1) in this matter is Pita Brown Qalikaono, 23 years old, Farmer, of Lot 17 Rewa Street.*
- b. *The Second Accused (A2) in this matter is Daniel Koroivouki, 19 years old, Student, of Rewa Street, Suva.*
- c. *The Third Accused (A3) in this matter is Semisi Sakiusa, 25 years old, of Lot 34 Lakeba Street, Samabula, Suva.*

## COUNT 1 – AGGRAVATED BURGLARY

1. On 24<sup>th</sup> day of October, 2020 at about 1:28am, PW1 received a call from one Emily Thomas informing PW1 that she saw three boys standing near room 202 of Annandale Apartment. Emily Thomas had further informed PW1 that she saw two boys help the boy wearing a black vest climb up to room 202 of Annandale Apartment.
2. Few minutes after, Emily saw that a boy wearing the basketball vest came out of the room upstairs and passed the flat screen to the two boys standing downstairs. A1 then carried the flat screen inside room 303 of Annandale Apartment whilst A3 followed him.
3. Having been informed about this, PW1 reported the matter to Police and investigations were conducted. During the investigation, Police had uplifted the CCTV Footage of Annandale Apartment regarding the alleged offence that transpired on the night of 23<sup>rd</sup> October, 2020.
4. The CCTV Footage of Annandale Apartment shows that on 23<sup>rd</sup> day of October, 2020 at about 11:45pm, A1 and A2 had climbed up to the rear window of room 202 of Annandale Apartment. After climbing up to room 202, A1 and A2 had then broken and entered into room 202 as trespassers whilst A3 was downstairs as a lookout as they all had intended to steal from inside room 202 of Annandale Apartment.
5. On the abovementioned time and date, both A1 and A2 removed the louver blades from the rear window of room 202 of Annandale Apartment and both A1 and A2 had climbed through the window and entered room 202.
6. After gaining access into room 202 of Annandale Apartment both A1 and A2 stole items from the room and went out. A1 had went out through the same rear window he had gained access to room 202 carrying the 32" Philips TV whilst A2 went out the front door of room 202 carrying assorted items belonging to PW2.
7. A1 whilst carrying the 32" Philips TV made his way out the rear window of room 202 and passed it onto A3 who was standing downstairs. Thereafter, A1 took the TV and went towards room 303 whilst A3 followed him. A2 on the other hand had exited room 202 from the front door whilst carrying a bag and made his way down the stairs. All the items stolen by both A1 and A2 were taken to room 303 of Annandale Apartment.
8. Shortly after, A1, A2 and A3 made their way to the rear gate whilst in possession of the 32" Philips TV and attempted to climb over the fence of Annandale Apartment and attempted to escape the premises.
9. Investigations were conducted where all three accused persons were arrested on the 27<sup>th</sup> day of October, 2020. A1 was interviewed under caution of 24<sup>th</sup> day of October, 2020 at Totogo Police Station whilst A2 was interviewed on 27<sup>th</sup> day of October, 2020 and A3 was interviewed on 26<sup>th</sup> day of October, 2020 at Totogo Police Station.

10. A1 during his caution interview remained silent but admitted that he had assisted during the commission of the offence at Q&A 62 during his record of interview. A2 during his video caution interview made no admissions. Whilst A3 during his caution interview admitted at Q&A 36 – 42 and 50 – 62 that at the material time of offending he saw A1 lifting the 32" Philips TV out of room 202 of Annandale Apartment. A3 participated in scene reconstruction as part of his caution interview (Q&A 43 – 53).

### **COUNT 2 AND 3 – THEFT**

11. On 24<sup>th</sup> day of October, 2020, after becoming aware of the said breaking in, PW1 discovered that 1x 32" Philips TV had been stolen from inside room 202 of Annandale Apartment. Whilst PW2 was informed by the Police on 23<sup>rd</sup> day of October, 2020 that the room (room 202) he had booked was broken into and that some of his items were believed to be stolen.
  12. PW2 then returned to Annandale Apartment on 26<sup>th</sup> day of October, 2020 and he was refunded only his clothes and the money that he had paid for his room. Whilst his other items namely 1x ¾ shorts, 2x round neck t-shirt, 2x Axe deodorant, 1x Chiadin hair gel, 1x Taft gel and 1x Light Blue HP Laptop bag had been stolen from inside room 202.
  13. The said 32" Philips TV was found by one Mafi Dakai and later taken to Annandale Apartment where PW1 had positively identified the TV to be the Apartment's property. Whilst 1x blue round neck t-shirt (New York Lover) was recovered from A1 during a search conducted on 25<sup>th</sup> day of October, 2020. Police had recovered other items belonging to PW2 and on 28<sup>th</sup> day of October, 2020, PW2 went to Totogo Police Station where he had positively identified 1x Blue HP Laptop bag, 2x Axe deodorant, 1x Taft Gel and 1x Chiadin Gel to be his belongings.
  14. All three accused persons are willing to retribute a sum of \$30.00 for PW2's other stolen items that were not recovered after the commission of the offence. However, the same is yet to be done.
  15. All three accused persons were subsequently charged with 1 count of Aggravated Burglary and 2 counts of Theft.
  16. All three accused persons had voluntarily pleaded Guilty to all 3 counts on 18<sup>th</sup> February, 2021.
  17. A1 and A2 have NIL Previous Convictions and are first time offenders, whilst A3 is known and has one Previous Conviction.
3. 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), *State v Naulu* [2018] FJHC 548 (25 June 2018) and *State v Nanovu* [2020] FJHC 985; HAC121.2020 (25 November 2020)]

4. However, the learned State Counsel has insisted that the sentencing tariff that should be applied in this case should be a range between 18 months to 03 years imprisonment.
5. I am conscious of the fact that sentencing is a matter for the court and not for the prosecution. Nevertheless, this submission made by the prosecution in relation to the sentencing range serves as a plea to be lenient in sentencing the accused. Taking everything into consideration, especially the fact that this assertion in fact works in favour of the accused, I have decided to regard the said assertion as a concession made by the prosecution in this case. I am mindful of the fact that this sentencing range advocated by the learned State Counsel does not facilitate the achieving of the purposes of sentencing stipulated under sections 4(1)(a), 4(1)(b), 4(1)(c) and 4(1)(e) of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"). Applying the said sentencing range also requires the maximum penalty prescribed by the Crimes Act for the offence to be overlooked when sentencing the accused.
6. 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.
7. The three 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 on the three offences.
8. The value of the items that were stolen, the extent of damage caused to the property (if any) in committing the offence and the number of offenders who

participated in committing the crime would generally serve as aggravating factors when it comes to the offence of burglary. The learned prosecutor has not taken steps to highlight any facts in connection to the above. At least the value of the stolen items is not reflected either in the particulars of offence of the theft charges or in the summary of facts. The learned prosecutor has also in the written submissions filed provides a purported advise to court on how 'not to fall into error' and in the process urges this court to consider pre-planning and 'utter disregard to property rights' as aggravating factors in this case.

9. Complicity clearly forms part of one of the elements of the offence of aggravated burglary. That is, burglary should be committed in company with at least one other person. Therefore, a sentencing court should be careful in considering pre-planning as an aggravating factor when it comes to this particular offence and should not come into the conclusion that preplanning should be considered as an aggravating factor simply based on the fact that more than one person was involved in committing the offence. In that regard, there should be clear evidence that there was considerable premeditation that would justify same to be considered as a separate aggravating factor. For example, the use of sophisticated tools which are not readily available to break into the property or to steal the items may justify pre-planning to be considered as an aggravating factor. In this case, the learned prosecutor has not highlighted any evidence to establish that there was preplanning to an extent that considering same as an aggravating factor would be justified. Instead, the learned prosecutor advises this court to assume that there was pre-planning because the offence of aggravated burglary could take place spontaneously as well and because the three accused persons committed this crime together, reassuring that the court would not fall into error in doing so.
10. Furthermore, it is manifestly clear to anyone that the offence of burglary is in fact designed to protect the property rights of the members of the community. It follows that, if a sentencing court is to further enhance the sentence for the

offence of burglary for the reason that the accused had demonstrated utter disregard to the property rights of others by committing this offence, that particular court clearly falls into error.

11. These two factors alluded to by the learned prosecutor are in fact attributes of the offence of aggravated burglary that reflects the objective seriousness of the offence and these should be properly reflected in the lower end of the tariff.
12. All in all, the only factor that would be safe to be regarded as an aggravating factor, given the facts presented in this case is the participation of three persons to commit the offence whereas the minimum number of persons required to constitute the offence of aggravated burglary is two.
13. It was submitted to court that all the items except certain items to the total value of \$30 were recovered and the three accused have taken steps to pay \$30 to the complainant on account of the said unrecovered items.

*Sentence of Pita Brown Qalikaono and Daniel Koroivuki*

14. Pita Brown Qalikaono, you are 23 years old and prior to your arrest in view of this matter you were following a trade certificate course conducted by a university.
15. Daniel Koroivuki, you are 20 years old and prior to your arrest in view of this matter you were a student at a technical college.
16. In addition to the fact that you have entered a guilty plea, the other factors that could be regarded as mitigating factors are;
  - a) you are first offenders; and
  - b) there is partial recovery and full restitution for the unrecovered items.
17. I would select 18 months imprisonment as the starting point of your aggregate sentence.

18. I would deduct 09 months from the sentence in view of the above mitigating factors (except for the guilty plea). Now the sentence is 09 months imprisonment. In view of the early guilty plea, I would grant you a discount of one-third. Accordingly, the final sentence is a term of 06 months imprisonment (after deducting 03 months).
19. It is submitted that you were arrested on 27/10/20 for this matter and were granted bail by the Magistrates Court on 29/10/20, the first day you were produced in court. Subsequently, you were remanded again on 04/02/21 and you are in remand since then. Accordingly, each one of you have spent a period of 02 months in custody in view of this matter. The period you have been in custody shall be regarded as time already served by you in terms of section 24 of the Sentencing and Penalties Act.
20. In the result, you are sentenced to a term of 06 months imprisonment. Given the time spent in custody, the time remaining to be served is 04 months.

*Sentence of Semisi Sakiusa*

21. Semisi Sakiusa, you are 25 years old. It is submitted that you were running a business before you were remanded in view of this matter.
22. In addition to the fact that you have entered a guilty plea, the other factors that could be regarded as mitigating factors are;
  - a) there is partial recovery and full restitution for the unrecovered items;  
and
  - b) you have cooperated with the police.
23. You have one previous conviction for the offence of act with intent to cause grievous harm in 2018 and had served a custodial sentence in relation to that offence. Therefore, you are not a first offender.



24. I would select 18 months imprisonment as the starting point of your aggregate sentence for the three offences.
25. I would deduct 06 months from the sentence in view of the above mitigating factors (except for the guilty plea). Now the sentence is 12 months imprisonment. In view of the guilty plea which was not entered at the earliest opportunity, I would grant you, a discount of one-fourth. Accordingly, the final aggregate sentence is a term of 09 months imprisonment (after deducting 03 months).
26. You have also been in custody for a period of 2 months. The said period you have been in custody shall be regarded as time already served by you in terms of section 24 of the Sentencing and Penalties Act.
27. In the result, you are sentenced to a term of 09 months imprisonment. In view of the time spent in custody, time remaining to be served is 07 months.

### *Conclusion*

28. In the result, the final aggregate sentences are as follows;  

Pita Brown Qalikaono and Daniel Koroivuki

  - a term of 06 months imprisonment. Time remaining to be served is 04 months.


Semisi Sakiusa

  - a term of 09 months imprisonment. Time remaining to be served is 07 months.
29. It is pertinent to note that the final sentence should fall below the lower end of the relevant sentencing range when the mitigating factors outweigh the aggravating factors in a particular offending as in this case.
30. On the other hand, in relation to the offence of aggravated burglary, in view of the fact that aggravated burglary is a prevalent offence if not the most prevalent offence in Fiji and the apprehension of fear this offence has instilled in the minds of the members of the public, on the face of it, the final terms of

imprisonment arrived at in this case do not reflect the denunciation this offending deserves and would not serve as a deterrent to those who with similar impulses to commit this prevalent offence. However, this is the outcome of granting the concession as pleaded by the prosecution.

31. Now the question is whether the above final sentences should be partially suspended. In this case, the complainant has been restituted in full. The first and the second accused are first offenders. The third accused is not a first offender, but the previous conviction is not relating to an offence against property. Therefore, though the third accused was not entitled to a discount on previous good character, the said previous conviction should not necessarily be a bar for his sentence to be partially suspended. The length of the final sentences are relatively short. Two months of those sentences are deemed to have been already served by each accused and two months would constitute a substantial portion of the respective short final sentences. Given these circumstances, partially suspending the relevant final sentences would not be inappropriate. Hence, I would suspend the remaining term of your respective sentences for a period of 03 years.
32. The court clerk will explain you the effects of a suspended sentence.
33. Accordingly, the three of you shall be released today. You are thoroughly warned and advised to hereinafter abide by the laws of this country and to lead a good life.
34. 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 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Accused