

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 88 of 2022

BETWEEN: STATE

PROSECUTION

A N D: ILISONI VONOMATAIRATU VUNIWAI

ACCUSED PERSON

Counsel : Ms. M. Naidu for the State
Ms. T. Kean for Accused

Date of Sentence : 09th May 2022

SENTENCE

1. Mr. Ilisoni Vonomatairatu Vuniwai, you pleaded guilty to one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen years imprisonment, and one count of Theft, contrary to Section 291 (1) of the Crimes Act, which has a maximum sentence of ten years imprisonment. The particular of the offences are that:

FIRST COUNT

Statement of Offence

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

Particulars of Offence

*ILISONI VONOMATAIRATU VUNIWAI and another between the 1st of December, 2020 to 9th February, 2021 at Waisali Estate in Koro Island, in the Eastern Division, in the company of each other brother into the dwelling house of **ROBERT CLENCY** as trespassers with intent to commit theft.*

SECOND COUNT

Statement of Offence

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

Particulars of Offence

*ILISONI VONOMATAIRATU VUNIWAI and another between the 1st of December, 2020 to 9th February, 2021 at Waisali Estate in Koro Island, in the Eastern Division in the company of each other dishonestly appropriated 2 x Generators, 1 x brush cutter, 1 x drop saw, 1 x flat screen TV, 1 x cordless circular saw, 1 x drill sanders, 1 x black transformer, 1 x grinder, 1 x power bank, 1 x solar speaker, 1 x guitar, 1 x Ukalele, 1 x play station, 2 x binoculars, Diving gears (4 x sets of fins and snorkels), Wood planner, 3 x sanders, 1 x razor, 1 x swinging chair, 1 x fishing reel and rod, the properties belonging to **ROBERT CLENCY** with intent to permanently deprive **ROBERT CLENCY**.*

2. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you of these offences of Aggravated Burglary and Theft.
3. According to the summary of facts, which you admitted in open Court, you had entered the house of Mr. Robert Clency, while he and the caretaker of the house were away with another accomplice and stole the items as stated in the Information. You have entered the house by removing the shutters and then opening the windows.

4. This is a breaking of a dwelling residence and stealing therein. You broke into this house in the night while the owner and the caretaker were away. The crimes of this nature, which are targeting the dwelling houses, undoubtedly affect the entire community. You have instilled fear and insecurity among the people by committing this crime. I, accordingly find this is a severe offence.
5. Having considered the serious nature of these offences, I now proceed to determine an appropriate sentence for you in line with general principles, objectives, and purposes of sentencing as stated under sections 4 (1) and 4 (2) and 15 of the Sentencing and Penalties Act.
6. These two offences are founded on the same series of offending. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
7. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years. The tariff for the offence of Theft has been stipulated in **Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)**, where Justice Madigan held that:
 - 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.*

8. Considering the nature of the items, you have stolen and the manner that you have entered into the premises, I find the level of culpability and the harm is high in this offending.
9. You are 40 years old and a first offender. You pleaded guilty to these offences at the first available opportunity. Moreover, you had admitted your responsibilities of committing these offences in your caution interview. In doing that, you have expressed and shown your remorse and repent of committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty.
10. Considering the reasons discussed above, I sentence you to 24 months imprisonment as an aggregated sentence for these two counts as charged. Your sentence is partially suspended, where you shall serve 12 months of your sentence instantly, and the remaining period of 12 months is suspended for three years. Considering the time spent in custody (nearly two months), I consider that two (02) months as a period of imprisonment that you have already served. Accordingly, the actual period you have to serve in custody is ten (10) months imprisonment.
11. If you commit any crime during that period of three (3) years and are found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.
12. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "R.D.R.T. Rajasinghe", written over a dotted line.

Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

09th May 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.