

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 165 of 2022

BETWEEN: STATE

PROSECUTION

A N D: TOMASI MULA WAQAVESI

ACCUSED PERSON

Counsel : Ms. A. Vavadakua for the State
Ms. T. Kean for Accused

Date of Sentence : 22nd June 2022

SENTENCE

1. Mr. Tomasi Mula Waqavesi, you pleaded guilty to one count of Arson, contrary to Section 362 (a) of the Crimes Act which carries a maximum sentence of life imprisonment. The particulars of the offence are that:

COUNT 1

Statement of Offence

ARSON: *Contrary to Section 362 (a) of the Crimes Act 2009.*

Particulars of Offence

TOMASI MULA WAQAVESI on the 7th day of May 2022, at Wainitadro Settlement, in Nananu, in Tailevu in the Eastern Division, willfully and unlawfully, set fire to the dwelling house of **SITIVENI BALEISOMOSOMO**.

2. Satisfied that you have fully comprehended the legal effect of your plea and that your plea was voluntary and free from influence, I now convict you of this offence of Arson as charged in the Information.
3. According to the summary of facts you admitted in open Court, you had gone to the victim's house, which was at Wainitadro Settlement in Nananu, Tailevu, with some clothes and pre-mixed fuel to burn the victim's house while the victim and his family were away in Suva. You had used the pre-mixed fuel and clothes to set fire to the victim's home. All the personal and household belongings of the victim were inside the house and destroyed in the fire.
4. Arson is a serious offence which carries a maximum penalty of life imprisonment. Burning any dwelling house could adversely affect the occupants or the owner of such properties. It is not just burning down a dwelling house but also intentionally making the occupants homeless, forcing them to depend on others.
5. The Fiji Court of Appeal in **Damodar Naidu and Others (1978 FLR 93)** has imposed sentences of seven (7) and ten (10) years for burning down a number of shops.
6. Justice Shameem in **Lagi v The State [2004] FJHC 69; HAA0004J.2004S (12 March 2004)** found that the tariff for the offence of Arson is between 2 - 4 years, where her Ladyship held that:

“In this case the Respondent appears to have ensured that the house was empty when he lit the fire. However the fact that he accompanied a group of men who threatened the occupants, the fact that the arson was motivated by

revenge and the serious consequences of the arson on the victims who were forced to leave the village they called home, called for a sentence within the 2-4 year range. With a starting point of 3 years imprisonment, reduction for the previous good character and other mitigation, and increase for the aggravating factors I have outlined, I see nothing wrong in principle, with a 3 year term. Arson is a most serious offence with a maximum sentence of life imprisonment. A family's home and belongings were destroyed in the fire. The children of the family may never recover for the trauma of what they saw on the night of the 19th of January 1999."

7. The Fiji Court of Appeal in Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014) held that:

"Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty, as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment."

8. Justice Temo in State v Raralevu -[2015] FJHC 374; HAC026.2013S (22 May 2015) has sentenced the accused for a period of four (4) years for burning down the house of his wife, where his Lordship observed that:

"Arson", as an offence, is viewed seriously by the law makers of this country. It carried a maximum penalty of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment (see Kelemedi Lagi & Others v State, Criminal Appeal Case No. HAA 0004 of 2004S, High Court, Suva, which was endorsed by the Fiji Court of Appeal in Niko Lesu and Sunia Vosataki v State, Criminal Appeal No. AAU 058 of 2011). However, the Fiji Court of Appeal, in Damodar Naidu & Another v Reginam, Fiji Law Report, Vol 24, 1978, pages 93 to 106, approved a sentence of 7 years imprisonment for accused no. 1 and 10 years imprisonment for accused no. 2, for burning

down a number of shops in Rakiraki Town, in May 1977. Of course, the final sentence will depend on the mitigation and aggravating factors.”

9. Justice Madigan in State v Seru [2016] FJHC 841; HAC32.2015 (21 September 2016) found that:

“There is no predetermined tariff for the crime of attempted arson but the accepted sentences for arson itself range from 2 years to 10 years. Two years has been held to be appropriate where there is no danger to human life and 4 years where there is such a danger. These are sentences passed for a crime with the maximum penalty of life imprisonment, and there is no reason why a tariff for attempted arson should be more.”

10. The Fiji Court of Appeal in Nakato v State [2018] FJCA 129; AAU74.2014 (24 August 2018) found that the applicable tariff for a conviction after the trial is 5 to 12 years. Perera JA held that:

“Having considered the views expressed by the courts in the decisions cited above and the aforementioned tariffs, it is my considered view that the tariff for the offence of arson under section 362(a) of the Crimes Decree should be an imprisonment term between 5 to 12 years. In selecting the lower end of 5 years imprisonment, I have taken into account inter alia the nature of the offence under section 362(a) which is unlawfully setting fire to a building or a structure, the natural implications of that offence and the maximum penalty which is life imprisonment. Further, this tariff should be regarded as the range of the sentence on conviction after trial. A sentencer may inevitably arrive at a final sentence which is below 5 years imprisonment in applying the two-tier approach unless the aggravating circumstances are quite substantial. If the final sentence reached is one that is below 3 years imprisonment, then it would be at the discretion of the sentencer to opt for any sentencing option as provided under the Sentencing and Penalties Act.”

11. According to the Victim Impact Report, the Victim had spent several months and his earnings building this house, but you had burnt it down to the ground within a few hours, destroying all the belongings of the Victim and his family. The Victim and his family have no place to stay and money to build another house. Accordingly, I find the level of harm in this matter is exceedingly high.
12. You committed this offence because you did not like what the Victim was teaching your nephew. You went to the Victim's place prepared at a time when they were not at home. It appears that was a pre-planned act, which you had executed at the most appropriate time. Hence, I find the level of culpability in committing this crime is significantly high.
13. You are a first offender. Therefore, you are entitled to a discount for your previous character pursuant to Section 4 (2) (i) of the Sentencing and Penalties Act. You pleaded guilty to this offence at the first available opportunity, demonstrating your remorse and repentance for committing this crime. Hence, I give you a substantive discount for your early plea of guilty and remorse.
14. Considering the above-discussed factors, I sentence you to three (3) years imprisonment for this offence as charged.
15. In view of the seriousness of this offence, I do not find any appropriate reasons to suspend your sentence.
16. Having considered your age, family circumstances and opportunities for rehabilitation, I find a non-parole period of one (1) year would serve the purpose of this sentence.
17. Accordingly, I sentence you to three (3) years imprisonment for this offence of Arson, contrary to Section 362 (a) of the Crimes Act. You are not eligible for any parole for a period of one (1) year pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of Sentence

18. You have been in remand custody for this case for nearly two months as the Court did not grant you bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider the period of two months (2) as the period of imprisonment you have already served.
19. Accordingly, your actual sentencing period is **two (2) years and ten (10) months** of imprisonment with ten (10) months of non-parole period.
20. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

At Suva

22nd June 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.