

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 343 OF 2019S

STATE

VS

- 1. KILIONI VATUTAQIRI**
- 2. LEMEKI BALEITAVUA**

Counsels : **Ms. M. Konrote and Ms. M. Ramoala for State**
Ms. L. David for Accused No. 1
Ms. L. Ratidara for Accused No. 2

Hearings : **15, 16, 17, 20, 21 and 22 June 2022 [Voir Dire Hearings],**
22, 27 and 28 June 2022 [Trial Proper].

Judgment : **8 July, 2022.**

Sentence : **15 July, 2022.**

SENTENCE

1. In a judgment delivered on 8 July 2022, the court found you two guilty of the following information:

“Statement of Offence

AGGRAVATED ROBBERY: *Contrary to section 311 (1) (a) of the Crimes Act 2009.*

Particulars of Offence

KILIONI VATUTAQIRI, LEMEKI BALEITAVUA and ANOTHER
between the 6th day of September, 2019 and the 7th day of September

*2019 at Pacific Harbour, in the Central Division, in the company of each other, stole 1x gold chain; 1x gold earring; 1x white J2 Samsung mobile phone; 2x bottles of whiskey; assorted keys; NZD\$25.00 and FJD\$500.00 from **CORRINE GWENDA ANGUS** and **GRAHAM ERNEST ANGUS** and immediately before stealing from **CORRINE GWENDA ANGUS** and **GRAHAM ERNEST ANGUS**, used force on them”.*

2. The court now formally convicts you two on the above information.
3. The brief facts of the case were as follows. Accused No. 1, at the time of incident, that is, between 6 and 7 September 2019, you lived at Wailea Settlement at Vatuwaqa, Suva. You were 34 years old, and had been living in the settlement for 26 years. You lived with your defacto wife and an 11 year old child. At the time, you were working as a delivery boy at Tappoos, earning about \$180 per week. Accused No. 2, you were 32 years old at the time, living at Raiwaqa with your defacto wife and your daughter, who was in class 3. You reached Form 6 level education at Ratu Sukuna Memorial School and worked as a plumber, earning between \$280 to \$300 per week.
4. On the 6th September 2019 (Friday), you two met a friend at Suva and planned to travel down to Pacific Harbour to rob the complainants. It was about 10 pm, and the three of you caught the last bus to Pacific Harbour. You three got off at the Uprising Beach Resort and travelled towards the complainants’ villa at Pacific Harbour on foot. You came to the complainants’ villa, saw the gate was open and went into their compound. As a group, you three broke into the complainants’ house. Accused No. 1, you armed yourself with a kitchen knife. The three of you jointly threatened the elderly complainants with the knife. The complainants were a couple aged 78 and 65 years. You assaulted them and tied them up. You ransacked their house and stole their properties, as itemized in the information.

You later fled the house. You had been tried and convicted of aggravated robbery in the High Court. The couple suffered multiple bruises to their bodies.

5. “Aggravated Robbery”, as a criminal offence, is viewed seriously by the law-makers of this country, and it carried a maximum sentence of 20 years imprisonment. For a spate of robberies, the tariff is a sentence between 10 to 16 years imprisonment: see **Livai Nawalu v The State**, Criminal Appeal No. CAV 0012 of 2012, Supreme Court of Fiji. With a single case of aggravated robbery, the tariff is now a sentence between 8 to 16 years imprisonment: see **Wallace Wise v The State**, Criminal Appeal No. CAV 0004 of 2015, Supreme Court of Fiji. The actual sentence will depend on the aggravating and mitigating factors.

6. In **Wallace Wise v The State** (supra), the Supreme Court of Fiji had this to say on sentencing:

“[26] Sentences will be enhanced where additional aggravating factors are also present. Examples would be:

(i) offence committed during a home invasion.

(ii) in the middle of the night when victims might be at home asleep.

(iii) carried out with premeditation, or some planning.

(iv) committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.

(v) the weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.

(vi) injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.

(vii) the victims frightened were elderly or vulnerable persons such as small children.

[27] It is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilized and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders.”

7. The aggravating factors in this case were as follows:
- (i) **Home Invasion.** A person's home is a person's castle, where he or she seeks refuge and safety. For a person to violate a person's right to safety and security in his or her home or apartment, shows utter disrespect to a citizen's right. The violator must be taught to respect other people's right by the passing of a heavy prison sentence. This is even more so, when the complainants were attacked at their house when they were asleep in the early morning.
 - (ii) **Offence carried out with premeditation and pre-planning.** Obviously, the two of you and your friend planned the attack on the elderly couple. You met at Suva, planned the attack, went down to Pacific Harbour by catching the last bus, identified their house, broke into the house, attacked the couple, tied and gagged them up, ransacked their house, stole their properties and later fled the crime scene. You will have to be punished with a heavy prison sentence, as mandated by law.
 - (iii) **Offence was committed in frightening circumstances.** The 65 and 78 year old elderly couple were attacked early morning of 7 September 2019 (Saturday) while they were asleep in their own house. You two and your friend jointly assaulted them, threatened them with a kitchen knife, tied and gagged them up, ransacked their house, stole their properties and fled their house.
 - (iv) By offending against the couple, you had violated their rights as human beings, you had caused them untold miseries and you had ruined their right to a happy and peaceful life. You will have to be punished by a custodial sentence.
8. The mitigating factors were as follows:
- (i) You had been remanded in custody for approximately 2 years 3 months.

9. For each of you, I start with a sentence of 8 years imprisonment. For the aggravating factors, I add 7 years, making a total of 15 years imprisonment. I deduct 2 years 6 months, for time already served while remanded in custody, leaving a balance of 12 years 6 months imprisonment.

10. Mr. Kiloni Vatutaqiri and Mr. Lemeki Baleitavua, for committing aggravated robbery against the 65 and 78 year old married couple, at Pacific Harbour in the Central Division, between 6 and 7 September 2019, I sentence each of you to 12 ½ years imprisonment each, with a non-parole period of 11 years imprisonment, to take effect as follows:
 - (i) For Mr. Kiloni Vatutaqiri, with effect forthwith;
 - (ii) For Mr. Lemeki Baleitavua, with effect from the day he is arrested by police.

11. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you two in a manner which is just in all the circumstances, to protect the community from people like you, to deter would-be offenders and to signify that the court and the community denounce what you two did to the elderly couple between 6 and 7 September 2019, at Pacific Harbour in the Central Division.

12. You two have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva
Solicitor for Accused No. 1 : Legal Aid Commission, Suva.
Solicitor for Accused No. 2 : Legal Aid Commission, Suva