

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 179 of 2022

BETWEEN : **THE STATE**

AND : **MAKIPANI GONELEVU and**
SAMUELA TURAGANIWACA NAWAITABU

Counsel : Ms. Devi, A. for the State
: Ms. David, L. for the Accused persons

Sentence : 12 August 2022

SENTENCE

1. Both accused persons have pleaded guilty to a count each of aggravated burglary and theft. The aggravation in the burglary charge is that they had committed burglary in the company of each other.
2. The facts are that they broke into the dwelling house of the complainant as trespassers with intent to commit theft, and stole a Modyl brand twin tub washing machine valued at \$600. Entry was gained through the laundry area where the machine was. The incident happened during the day while the owner and occupants of the home were away at work. A neighbour saw the accused carrying the washing machine away and alerted the owner. After making off with the washing machine, the accused persons then sold it for \$100.
3. The accused were interviewed under caution and admitted the offence. The washing machine was recovered.

4. They pleaded guilty early and expressed agreement with the facts read by the State. Both said their pleas were voluntary and of their own accord. Their counsel confirmed the pleas were consistent with instructions received from the accused.
5. The facts support the charges. I am satisfied the pleas are unequivocal. I find both accused persons guilty and convict them as charged.
6. Aggravated burglary is a serious offence. The maximum sentence is 17 years imprisonment. The tariff is 18 months – 3 years imprisonment. (*Leqavuni v State* [2016] FJCA 31; AAU0106.2014 (26 February 2016) at [10]; also *Kumar v State* [2018] FJCA 148; AAU165.2017 (4 October 2018) at [10] and [14].
7. The maximum penalty for theft is 10 years imprisonment. The tariff for a first theft offending which this is, is 2-9 months imprisonment. (*Ratusili v State* Criminal Appeal No. HAA 011 of 2012, decision of 1 August 2012)
8. Accused 1 is 24 years old. He is the eldest of 8 children. Prior to being remanded in this case, he was working as a labourer, earning \$180 a week.
9. Accused 2 is 20 years old. He says he wants to return to school.
10. Both are young first time offenders who had cooperated with the Police during investigations, admitted the offences when interviewed, and pleaded guilty early in Court. The cooperation with the Police and early guilty pleas have saved the time and resources of the Court and State. They are indicative also of remorse and are strong mitigating factors. The washing machine was recovered. This too is in their favour.
11. Apart from the aggravation of acting with and in the company of each other, the only aggravating feature for the purposes of sentencing is the damage to the door of the laundry area in the course of the break in.
12. The accused acted in concert with each other and are equally culpable in the commission of these offences. The facts agreed point to an opportunistic crime.

13. The circumstances of the offenders and their offending are similar. I sentence them together.
14. I take an aggregate term of 18 months imprisonment as a starting point, increase it by 2 months for the sole aggravating feature, and deduct 9 months for the mitigating factors.
15. Both of them have been in remand for almost 3 months. Section 24 of the Sentencing and Penalties Act requires that this period in custody prior to trial be regarded by the Court as a period of imprisonment already served.
16. For their young age and previous good character, I give priority to the principles of deterrence and rehabilitation. The remaining period of 8 months imprisonment is suspended for 2 years.
17. Suspended sentence explained.
18. The recovered stolen item is to be returned to the owner.




Siainiu F. Bull
ACTING PUISNE JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused persons