

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 152 of 2019**

**STATE**

**V**

**RAFAELE TUIBUCABUCA**

**Counsel:** Ms. Prenika Lata for the State  
Ms. Karen Boseiwaqa with Ms. Esiteri Radrole for the Accused

**Sentence Hearing:** 3 August and 10 August 2022

**Sentence:** 26 August 2022

## **SENTENCE**

**[1]** Rafaele Tuibucabuca, as per the Consolidated Information filed by the Director of Public Prosecutions (DPP), you were charged, with the following offences:

### **COUNT 1**

#### ***Statement of Offence***

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

#### ***Particulars of Offence***

**RAFAELE TUIBUCABUCA** with others, on the 28<sup>th</sup> day of May 2019, at Nadi, in the Western Division, entered into **CDP (Courier, Document & Parcel) Office**, as a trespasser, with intent to commit theft.

## **COUNT 2**

### ***Statement of Offence***

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

### ***Particulars of Offence***

**RAFAELE TUIBUCABUCA** with others, on the 28<sup>th</sup> day of May 2019, at Nadi, in the Western Division, dishonestly appropriated (stole) 2 x Samsung Galaxy J2 mobile phones, 1 x Nokia phone and 7 Bale Yaqona, all to the approximate total value of \$39,317.00 the property of **CDP (Courier, Document & Parcel) Office**, with the intention of permanently depriving **CDP (Courier, Document & Parcel) Office** of the said properties.

## **COUNT 3**

### ***Statement of Offence***

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

### ***Particulars of Offence***

**RAFAELE TUIBUCABUCA** with others, on the 31<sup>st</sup> day of May 2019, at Nadi, in the Western Division, entered into **CDP (Courier, Document & Parcel) Office**, as a trespasser, with intent to commit theft.

## **COUNT 4**

### ***Statement of Offence***

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

### ***Particulars of Offence***

**RAFAELE TUIBUCABUCA** with others, on the 31<sup>st</sup> day of May 2019, at Nadi, in the Western Division, dishonestly appropriated (stole) 2 x carton "In Fashion" assorted clothes, 8 x Pharmacy cartons, 3 x large cartons of pounded Yaqona, 1 x Nokia mobile phone and 3 x Bale Yaqona, all to the approximate total value of \$35,283.00, the property of **CDP (Courier, Document & Parcel) Office**, with the intention of permanently depriving **CDP (Courier, Document & Parcel) Office** of the said properties.

- [2] On 6 November 2019, the DPP filed Consolidated Information in the matter, while the Consolidated Disclosures relevant to the case was filed in Court on 20 November 2019.

As per the Consolidated Information there was a 2<sup>nd</sup> Accused in the case, namely Vovilio Tebeka. He was charged with one count of Theft, Contrary to Section 291 (1) of the Crimes Act No. 44 of 2009 (Crimes Act).

- [3] Rafaele, on 5 February 2020, you were ready to take your plea. On that day, you pleaded not guilty to the four counts against you in the Consolidated Information.
- [4] Vovilio Tebeka, pleaded guilty to Count 5 in the Consolidated Information. He was found guilty on his own plea, convicted and sentenced by this Court on 24 February 2021.
- [5] When this matter was called before me on 5 July 2022, you wanted to take your plea once again. Accordingly, on that day you pleaded guilty to the four counts against you in the Consolidated Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your guilty plea.
- [6] Thereafter, the State filed the Summary of Facts. On 20 July 2022, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the respective counts in the Consolidated Information, and found the four counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the four charges.
- [7] I now proceed to pass sentence on you.
- [8] The Summary of Facts filed by the State was as follows:
1. *The complainant is Muni Avinesh (hereafter PW1) 39 years, Manager of Mulomulo, Nadi.*
  2. *The accused is Rafaele Tuibucabuca (hereafter Accused) 28 years, Driver of Votualevu, Nadi.*
  3. *On the 28<sup>th</sup> of May 2019, at about 5.30 a.m., PW1 along with his staff noticed that the CDP front office door was open. PW1 noticed that the locks for the doors were forcefully removed and the following items were stolen:*
    - i. *2 x brand new Samsung Galaxy J2 mobile phone valued at \$299.99 each*
    - ii. *1 x Nokia mobile phone valued at \$79.00*
    - iii. *7 x bale of yaqona valued at \$5,520.00 each*
  4. *On the 31<sup>st</sup> of May 2019, PW 1 again discovered that the CDP office was broken into for the second time. This time the items stolen were:*
    - i. *3 x bale of yaqona valued at \$5,520.00 each*
    - ii. *2 x In Fashion assorted clothes carton valued at \$6,400.00*

- iii. 3 x cartons of pounded waka valued at \$3,500.00
- iv. 1 x Nokia mobile phone valued at \$79.00

5. The matter was reported to Police. The Police came and searched the nearby sugarcane fields whereby they found 1 x carton In Fashion carton valued at \$800.00.
6. The Accused was arrested and interviewed under caution and was subsequently charged for the offence. The Accused has made admissions in both the caution interview and charge statement.
7. The Accused admits that on the 28/05/2019 he with others took out 7 bale of yaqona from CDP's office which was sold by his accomplice. [Q & A 77-89 of Caution Interview and Q & A 10 of Charge Statement].
8. He further admits that he took part in the second break in on the 31<sup>st</sup> of May 2019 at CDP office whereby 3 bale of yaqona was stolen. The Accused had sold one bale of yaqona at a shop in Nasau for \$500.00 and had used all the money for drinking liquor [Q & A 93-109 of Caution Interview and Q & A 10 of Charge Statement].
9. During re-construction the Accused voluntarily pointed out to where he had parked the car at CDP's office, Nadi. He voluntarily showed where he had sold the bale of yaqona.  
  
*[A copy of the Record of Interview is attached at Tab 8 and a copy of the Charge Statement is attached at Tab 9].*
10. The Accused was charged with 2 counts of Aggravated Burglary contrary to Section 313 (1) (a) and 2 counts of Theft contrary to Section 291 (1) of the Crimes Act 2009.
11. The Accused pleaded guilty on the 5<sup>th</sup> of July 2022 on his own free will for the above charges.

**[9]** Rafaele, you have admitted to the above Summary of Facts and taken full responsibility for your actions.

**[10]** Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

[11] I have duly considered the above factors in determining the sentence to be imposed on you.

[12] In terms of Section 313 (1) of the Crimes Act, “A person commits an indictable offence (of Aggravated Burglary) if he or she-

*(a) Commits a burglary in company with one or more other persons; or*

*(b) .....”*

The offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act as follows: “A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building”.

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

[13] The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: ***State v. Mikaele Buliruarua*** [2010] FJHC 384; HAC 157.2010 (6 September 2010); ***State v. Nasara*** [2011] FJHC 677; HAC 143.2010 (31 October 2011); ***State v. Tavualevu*** [2013] FJHC 246; HAC 43.2013 (16 May 2013); ***State v. Seninawanawa*** [2015] FJHC 261; HAC 138.2012 (22 April 2015); ***State v. Seru*** [2015] FJHC 528; HAC 426.2012 (6 July 2015); ***State v. Drose*** [2017] FJHC 205; HAC 325.2015 (28 February 2017); and ***State v. Rasegadi & Another*** [2018] FJHC 364; HAC 101.2018 (7 May 2018).

[14] The Court of Appeal in ***Leqavuni v. State*** [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary is between 18 months to 3 years.

[15] This Court has been consistently following the tariff of 18 months to 3 years imprisonment for Aggravated Burglary: Vide *State v. (Venasio) Cawi & 2 others* [2018] FJHC 444; HAC 155.2018 (1 June 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 536; HAC 92.2018 (20 June 2018); *State v. Pita Tukele & 2 others* [2018] FJHC 558; HAC 179.2018 (28 June 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 995; HAC 92.2018 (17 October 2018); *State v. (Maika) Raisilisili* [2018] FJHC 1190; HAC 355.2018 (13 December 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 1209; HAC 92.2018 (18 December 2018); *State v. Michael Bhan* [2019] FJHC 661; HAC 44.2019 (4 July 2019); *State v. Etika Toka* HAC 138.2019 (1 November 2019); *State v. Vakacavuti* HAC337.2018 (7 November 2019); *State v. Vakacavuti* [2019] FJHC 1088; HAC338.2018 (7 November 2019); *State v. Peniasi Ciri and Another* [2020] FJHC 63; HAC14.2019 (6 February 2020); *State v. Maikeli Turagakula and Another* [2020] FJHC 101; HAC416.2018 (19 February 2020); *State v. (Sachindra Sumeet) Lal & Another* [2020] FJHC 147; HAC71.2019 (26 February 2020); *State v. (Rupeni) Lilo* [2020] FJHC 401; HAC225.2018 (9 June 2020); *State v. (Taniela) Tabuakula* [2020] FJHC 464; HAC106.2020 (23 June 2020); *State v. (Eric Male) Robarobalevu* [2020] FJHC 630; HAC102.2020 (6 August 2020); *State v. (Usaia) Delai* [2020] FJHC 631; HAC7.2020 (6 August 2020); *State v Vakawaletabua* [2020] FJHC 645; HAC441.2018 (11 August 2020); *State v. (Sakeasi) Seru and Another* [2020] FJHC 770; HAC136.2020 (18 September 2020); *State v. (Kunal Edwin) Prasad* [2020] FJHC 785; HAC115.2020 (23 September 2020); *State v. (Emosi) Tabuasei* [2020] FJHC 994; HAC131.2020 (27 November 2020); *State v. LR and Others* [2020] FJHC 993; HAC133.2020 (27 November 2020); *State v. Lal and Another* [2020] FJHC 1024; HAC337.2019 (3 December 2020); *State v. Koroitawamudu and Another* [2020] FJHC 1055; HAC127.2020 (8 December 2020); *State v. Koroi and Another* [2020] FJHC 1065; HAC270.2020 (10 December 2020); *State v. (Joji) Kotobalavu* [2021] FJHC 101; HAC234.2020 (17 February 2021); *State v. Nabou Junior* [2021] FJHC 172; HAC277.2020 (22 March 2021); *State v. Nabou Junior* [2021] FJHC 173; HAC277.2020 (22 March 2021); *State v. Lutunamaravu & Others* [2021] FJHC 191; HAC192.2020 (23 March 2021); *State v. (Aminiasi) Vakalala & Another* [2021] FJHC 195; HAC325.2020 (25 March 2021); *State v. Lal* [2021] FJHC 247; HAC337.2019 (5 October 2021); *State v. Kaibalauma and Another* [2021] FJHC 349; HAC59.2021 (1 December 2021); and *State v. Senikaboa and Others* [2021] FJHC 416; HAC237.2020 (17 December 2021); *State v. Prasad & Another* [2022] FJHC 70; HAC115.2020 (11 February 2022); and *State v. Pita Nanumi* HAC77.2021 (14 June 2022).

[16] In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[17] In *Ratusili v. State* [2012] FJHC 1249; HAA011.2012 (1 August 2012); His Lordship Justice Madigan proposed the following tariff for the offence of Theft:

- “(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.”*

**[18]** Since the theft in this case involved property of a high value, and was consequent to you and your accomplices entering the premises of a business establishment as trespassers, this cannot be considered as theft simpliciter. Therefore, it is my opinion that the appropriate tariff in this case should be in the range of 2 months to 3 years imprisonment for the offence of Theft.

**[19]** In determining the starting point within a tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

**[20]** In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Rafaele, I commence your sentence at 18 months imprisonment for the first and third counts of Aggravated Burglary.

**[21]** Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Rafaele, I commence your sentence at 6 months imprisonment for the second and fourth counts of Theft.

**[22]** The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You and your accomplices trespassed into a reputed business establishment thereby paying complete disregard to the privacy and property rights of the establishment and its owners.

- (iii) You and your accomplices have caused damage to the said business establishment.
- (iv) Due to your actions, it is said that, the day to day business operations of the said business establishment had been severely affected.
- (v) You and your accomplices had perpetrated these offences in the early hours of the morning. Thus I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences with your accomplices.
- (vi) You are now convicted of multiple offending.

**[23]** In mitigation you have submitted as follows:

- (i) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (ii) You have submitted that you are remorseful and regret your actions. You have promised not to re-offend.
- (iii) That you entered a guilty plea during the course of these proceedings.

**[24]** Considering the aforementioned aggravating factors, Rafaele I increase your sentences by a further 4 years. Now your sentence for counts one and three would be 5 years and 6 months imprisonment. Your sentence for counts two and four would be 4 years and 6 months imprisonment.

**[25]** Rafaele, I accept that you have co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these two mitigating factors, I deduct 1 year and 6 months from your sentences. Now your sentence for counts one and three would be 4 years imprisonment. Your sentence for counts two and four would be 3 years imprisonment.

**[26]** Rafaele, although you have pleaded guilty in this case, you have done so over two years after the Consolidated Information was filed against you. Nevertheless, although you have pleaded guilty belatedly, I accept the fact that you entered a guilty during the course of these proceedings. In doing so, you have still saved precious time and resources of this Court. For your guilty plea I grant you a further discount of 12 months for each of the counts you have been convicted.

**[27]** In the circumstances, Rafaele your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act-  
3 years imprisonment.



Count 2- Theft contrary to Section 291 (1) of the Crimes Act –2 years imprisonment.

Count 3- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years imprisonment.

Count 4- Theft contrary to Section 291 (1) of the Crimes Act –2 years imprisonment.

I order that all sentences of imprisonment to run concurrently. Therefore, your final total term will be 3 years imprisonment.

**[28]** Rafaele you are now 30 years of age [Your date of birth being 25 September 1991]. You are said to be single. Prior to being remanded for this case, you were said to be working as an Office Boy for your sister at her own Accounting firm, earning \$200.00 per week.

**[29]** You have submitted that you regret your actions. You have stated that you were requested to assist in transporting items and blindly obliged which you now deeply regret. However, considering all the facts and circumstances of this case, Court cannot give much credence to this submission.

**[30]** Rafaele you have several previous convictions for various offences, including Assault Causing Actual Bodily Harm, Theft, Unlawful Cultivation of Illicit Drugs, Absconding Bail and Failure to Surrender to Custody. In addition, you have several pending cases against you for like offences. Despite this you have still not reformed.

**[31]** You have stated that the present case is the only High Court matter against you, although you admit that you have numerous pending cases in the Magistrate’s Court. Your Learned Counsel has submitted that you are seeking Court’s mercy, leniency and a second chance at life as you endeavour to close this bleak chapter of your life and begin a fresh as a law abiding citizen.

**[32]** However, in considering the sentence to be imposed on you, I have also to take into consideration the factors that have been stated in Section 4(1) of the Sentencing and Penalties Act. Therefore, considering all the facts and circumstances of this case, your previous convictions and pending cases, you are not entitled to a lenient sentence. The sentence to be imposed on you must signify Court’s denunciation of your conduct and be a deterrence to you and other similar persons from committing offences of the same or similar nature in the future.

**[33]** Accordingly, I sentence you to a term of 3 years’ imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 2 years’ imprisonment.

**[34]** Section 24 of the Sentencing and Penalties Act reads thus:

*“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”*

[35] You were arrested for this case and produced in Court on 24 June 2019 and remanded into custody. You were granted bail by this Court on 5 March 2020. That is a period of over 8 months. Thereafter, your bail was revoked in this matter on 20 June 2020. You have been in remand custody for this case since that day. That is a period of over 2 months. Accordingly, you have been in custody for a period of nearly 11 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 11 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[36] In the result, your final sentence is as follows:

Head Sentence - 3 years' imprisonment.

Non-parole period - 2 years' imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 2 years' and 1 month imprisonment.

Non-parole period - 1 year and 1 month imprisonment.

[37] You have 30 days to appeal to the Court of Appeal if you so wish.



AT LAUTOKA

Dated this 26<sup>th</sup> Day of August 2022

Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

**Solicitors for the State:**  
**Solicitors for the Accused:**

**Office of the Director of Public Prosecutions, Lautoka.**  
**Office of the Legal Aid Commission, Lautoka.**