

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 271 of 2021

STATE

vs.

- 1. AISAKE BURUSO DELE QARANIVALU**
- 2. SAMUELA ALUSIO DINATI**
- 3. SILIVENUSI DELAI**
- 4. SAMUELA KOROI**

Counsel: Ms. N. Ali for the State
Mr. T. Varinava for the 1st & 2nd Accused
3rd & 4th Accused In Person

Date of Sentence/Mitigation Submission: 20th October, 2022

Date of Sentence: 18th November, 2022

SENTENCE

1. Your charges reads thus;

COUNT ONE

Statement of Offence

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

Particulars of Offence

AISAKE BURUSO DELE QARANIVALU, SAMUELA ALUSIO DINATI, SILIVENUSI DELAI & SAMUELA KOROI, on the 18th day of April, 2021 at Raiwaqa in the Central Division, in the company of others, entered into the premises of **DAMODAR CITY COMPLEX**, as trespassers, with intent to commit theft therein.

COUNT TWO

Statement of Offence

THEFT: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

AISAKE BURUSO DELE QARANIVALU, SAMUELA ALUSIO DINATI, SILIVENUSI DELAI & SAMUELA KOROI, on the 18th day of April, 2021 at Raiwaqa in the Central Division, in the company of others, dishonestly appropriated (stole) 1 x Grey Steel safe, 1 x Black 1TB Hard drive, 1 x Samsung Note, 1 x Samsung J5 Pro, 5 x BSP Deposit books, 1 x Banking Card, 1 x LPO Book, 2 x sets of locker keys and 1 x Company Stamp the properties of **DAMODAR CITY COMPLEX** with the intention of permanently depriving **DAMODAR CITY COMPLEX** of the said properties.

2. Both of you the 3rd and the 4th Accused being aware of the legal effects, did plead guilty to the above counts 1 and 2 separately, appearing in person.
3. You have admitted the following summary of facts;

BRIEF BACKGROUND:

*The complainant in this matter is **Debbie Aitcheson**, 28 years old, employed by Damodar City Complex, Raiwaqa, as a Complex Manager who resides at Lot 18 Beddoes Place, Gaji Road.*

ACCUSED PERSONS:

1. *Silivenusi Delai*, 24 years old, Self-Employed, of Muanivatu Settlement, Vatuwaqa.
2. *Samuela Koroi*, 24 years old, Unemployed of Muanivatu Settlement, Vatuwaqa.

Relationship: *There is no relationship between the complainant and the accused persons in this matter.*

*The accused namely **Silivenusi Delai** and **Samuela Koroi** have pleaded guilty to one count of **Aggravated Burglary** contrary to section 313 (1) (a) and Theft contrary to section 291 (1) of the Crimes Act 2009.*

FACTS

1. *On the 19th April, 2021 at about 06.45am, Complainant was at her home when one of her staff namely “**Judo**” called and informed her that her office which is situated of Damodar City Complex in Raiwaqa, has been broken into.*
2. *The Complainant rushed to her office and upon arriving at her office on the 18th April, 2021;*
 - *1x grey steel safe valued at \$2,999.00;*
 - *1x black 1TB Hard Drive valued at \$200.00;*
 - *1x Samsung Note valued at \$300.00;*
 - *1x Samsung J5 Pro valued at \$300.00;*
 - *5x BSP Deposit Book;*
 - *1x Banking Card;*
 - *1x LPO Book;*
 - *2x sets of locker keys;*
 - *1x company stamp and*
 - *\$928.00 cash.*
3. *According to the Complainant she viewed the CCTV Camera of her office whereby she saw 3 (three) male youths entering into the Damodar City Complex building at about 11.20pm on the 18th April, 2021, and were walking out of the building at about 11.40pm with a grey steel safe.*
4. *On the 18th day of April, 2021 at Raiwaqa, **Silivenusi Delai** and **Samuela Koroi**, in the company of two others, entered into the premises of **Damodar City Complex**, as trespassers, with the intent to commit theft therein.*
5. *On the 18th day of April, 2021 at Raiwaqa, **Silivenusi Delai** and **Samuela Koroi**, in the company of two others had dishonestly appropriated (stole) 1x grey steel safe, 1x black 1TB Hard Drive, 1x Samsung Note, 1x Samsung J5 Pro, 5x BSP Deposit books, 1x Banking Card, 1x LPO Book, 2x sets of locker keys, 1x company stamp and \$928.00 cash the property of **Damodar City Complex** with the intention of permanently depriving **Damodar City Complex** of the said properties.*
6. *That **Silivenusi Delai**, **Samuela Koroi** and others walked to Damodar City Complex after they had planned to steal from therein.*
7. *That **Silivenusi Delai**, **Samuela Koroi** and others walked along the Ratu Kadavulevu road, then went through Laucala bay road and thereafter entered into a vacant land and crossed Damodar City Fence to gain entry into the Damodar City Complex building.*

8. Upon reaching the Damodar City Complex the accused persons and their accomplice went straight to the complainant's office (Damodar City's office). The accused persons gained entry into the complainant's office through the back office door. Both the accused persons used a flat screwdriver to open the office door and had smashed the door glass using an iron rod.
9. As they entered into the office, the accused **Silivenusi Delai** blocked the CCTV camera using an umbrella whilst his accomplices were stealing grey steel safe from the complainant's office. At this point in time the accused **Samuela Koroi**, was standing at the back office door acting as a look out.
10. After stealing the grey steel safe and above mentioned items **Silivenusi Delai** and **Samuela Koroi** with assistance of their accomplices lifted the steel safe and carried it through the fence across the Vodafone Arena compound and then took it to the vacant at Rup's Apartment where they waited for one of the accomplice to bring a wheelbarrow to carry the steel safe.
11. Both **Silivenusi Delai** and **Samuela Koroi**, then pushed the wheelbarrow carrying the stolen steel safe to Muanivatu Settlement to one of the accomplice's house.
12. **Silivenusi Delai** and **Samuela Koroi** with assistance of their accomplices opened the steel safe using a pinch bar. Upon opening the safe the accused persons discovered that safe contained Cash, receipts, mobile phones, company stamp and hard drive.
13. That **Silivenusi Delai** and **Samuela Koroi** shared the stolen cash and other items with their accomplices. And immediately after sharing the stolen items from the safe the accused persons buried the said safe at one Aisake Qaranivalu's house (Accomplice of accused persons) at Muanivatu Settlement, Vatuwaqa.
14. That the total value of stolen items from Damodar City Complex is \$4, 857.00.
15. The matter was reported to the Police, and investigations were conducted. Both the accused persons were brought into police custody for questioning whereby they fully admitted to the offence alleged against them.

Caution Interview

1. **Silivenusi Delai**- Admitted in his caution interview dated 24th April, 2021, in question number 35 to 120, that on the 18th April, 2021, at about 11.00pm he was at his friends place in Muanivatu settlement, Vatuwaqa. He said his friend's name is Aisake. He admitted that whilst he was at Aisake's home his other friends also joined them. And one of them is **Samuela Koroi**.

He admits that **Samuela Koroi**, **Samuela Dinati**, **Aisake Qaranivalu** and he went to Damodar City Complex. He said they walked through Ratu Kadavulevu Road, then went to Laucala Bay road, entered into a vacant land near Rup's Apartment and then crossed the Damodar City fence.

He said they had planned to bring a safe from the Damodar City's office. He said he knew there was a safe because he had been working at Damodar City's office before. Accused said he entered in the Damodar City's office many times whilst he was employed with them as he went there to punch in and punch out daily.

This accused admitted that as they reached Damodar City's compound they got onto a container and then entered into the Damodar City's office through the black door. He said they used flat screw driver to open the door. He said his accomplice and he entered into the office where he then blocked the CCTV camera using an umbrella.

He said Samuela Koroi was standing at the back office door acting as a look out. He admits that they had also smashed the door glass using an iron rod.

He further admits that taking out the steel safe from Damodar City's office and taking the same in wheelbarrow at Aisake's house in Muanivatu Settlement. He said they used pinch bar to open the safe and took out the cash, receipts, mobile phones and hard drive. He said they shared the cash amongst themselves and thrown the phones in mangrove swamp.

Moreover, accused admits burying the safe at Aisake's house beside the toilet. He admits that recovered safe from Aisake's premises is the same steel safe which they stole from Damodar City's Complex.

- 2. Samuela Koroi-** Admitted in his caution interview dated 15th September, 2021, in question number 34 to 102, that on 18th April, 2021, at around 11.00pm he was at Damodar City's rear entrance Carpark. He admitted that he was with his accomplices namely Silivenusi Delai, Aisake and Samu Daliga. He said they planned to break into Damodar City. He admitted that they entered into Damodar City from rear staircase entrance.

He further admitted that after entering into Damodar City premises he was standing at the main entry acting as a lookout whilst his accomplices Aisake, Samuela Dinati and Silivenusi went up to the staircase to enter into the main office. He said he had been acting as lookout for about 5 to 7 minutes until his friends returned after stealing.

Moreover, he admits that after his friends returned he took the lead to see no body disturbs their movement on that night. He also admits that they lifted the "Safe" which his accomplice brought from the Damodar City office, took it under the fence and then went into the drain at the old bay Secondary School Compound. He said then they walked towards the fence of Vodafone Arena. He admits that they lifted the "Safe" over the Vodafone Arena fence and then brought the "Safe" near the fence of Ratu Kadavulevu road.

He said that at Ratu Kadavulevu Road near the fence they waited for his friend Aisake to bring the Wheelbarrow from his home. He said Aisake brought the wheelbarrow, they loaded the "Safe" in the wheelbarrow, then took it to Aisake's residence. At Aisake's residence they used pinch bat to open the "Safe" and then they took out the cash and went inside Aisake's house to share the money. His share was \$170.00 cash. He said cash, Deposit books and phones were inside the "Safe". He said after taking the money and other items from the "Safe" they buried the "Safe" near Aisake's house.

Recovery of Items

*The complainant **Debbie Aitcheson** positively identified the recovered damaged grey metal "Safe" belonging to her company on the 23rd April, 2021. She stated that 4 x deposit books, 1x LPO purchase order, 2 x petty cash box (blue in colour), pink bag, remote, key(blue tag) and 2x keys without tags, were recovered which was found inside the "Safe".*

*Thus, partial **recovery** was made in this matter.*

Previous Convictions

1. *Silivenusi Delai*; is known but has Nil Previous Convictions. (Attached and Marked “D” is the Previous Convictions).
2. *Samuela Koroi*; has Nil Previous Convictions. (Attached and Marked “E” is the Previous Convictions).

Agreed Facts for Samuela Alusio Dinati

1. **THAT** *Samuela Alusio Dinati* is, 27 years old, Self-employed of Daya Street, Vatuwaqa, Fiji.
 2. **THAT** *Samuela Alusio Dinati* was arrested on 23rd April 2021, and was interviewed under Caution on the 24th April, 2021.
 3. **THAT** *Samuela Alusio Dinati* was charged on the 25th April, 2021, on one count of Aggravated Burglary and Theft.
4. As per the information filed by the Director of Public Prosecutions dated 27th January, 2022, both of you Mr. *Silivenusi Delai* and Mr. *Samuela Koroi* 3rd and the 4th Accused respective were charged jointly with two others for committing the offences of Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act, 2009 by entering the premises of *Damodar City Complex* as trespasses with the intention to commit theft and also and of theft contrary to Section 291 (1) of the Crimes Act, 2009 by dishonestly misappropriating 1 x Grey Steel safe, 1 x Black 1TB Hard drive, 1 x Samsung Note, 1 x Samsung J5 Pro, 5 x BSP Deposit books, 1 x Banking Card, 1 x LPO Book, 2 x sets of locker keys and 1 x Company Stamp, property of *Damodar City Complex* whilst being in the company of each other and *two others*.
5. Both of you the 3rd and the 4th Accused being aware of the legal effects, did plead guilty to the above counts 1 and 2 separately, appearing in person. This Court was satisfied that both of you fully comprehended the legal effects and that your pleas were voluntary and free from influence. You did so plead guilty at the first available opportunity. When the State presented the summary of facts, you accepted and admitted committing the said acts of Aggravated burglary and theft in the company of each other. In the summary of facts it referees to the sharing of cash between the Accused persons but theft of cash is not mentioned in the theft count No. 2. As all the items mentioned in count No. 2 is covered in the summary of facts there being an additional item in the summary of facts will not prejudice the Accused or affect the proof of the charge or the legality of the plea of guilt. Accordingly this court is satisfied that the summary of facts covers all the ingredients of the said offences and

accordingly **I convict both of you Mr. Silivenusi Delai and Mr. Samuela Koroi in respect of counts 1 and 2 separately as charged.**

6. The offence of burglary involves entering or remaining in a premises as a trespasser with the intention to commit theft of anything in the premises. To be guilty of the offence, it is sufficient to enter the premises with the relevant intention. The offence is committed even if, once inside the premises, the person does not actually carry out the additional intended offence involving theft. The offence of Aggravated burglary occurs if, at the time of the burglary, the offender is in the company of one or more other persons. The offence of Aggravated burglary has a maximum penalty of 17 years and the offence of theft has a maximum penalty of 10 years imprisonment.
7. Aggravated burglary is a preparatory offence, because it involves an act of entering a property with the intention to commit a further offence. If, once the person has entered the premises, he or she actually commits the intended offence involving theft, he or she would be charged and sentenced separately for both the offence of burglary and the offence of theft. Though aggravated burglary is a preparatory offence, in view of the maximum penalty it is considered a serious offence in Fiji and the gravity will depend on the manner and the nature of entering the premises.
8. The prevalence of burglary and home-invasion-style offences including breaking into shops as in the present case will certainly cause great anxiety and disquiet in the community whilst undermining the sense of security that people feel in respect of their business premises and their own homes will certainly bring about a sense of insecurity and inhibition to close up their business premises or houses and go about their daily errands and work freely. I find this is a very serious offence. Wherefore, it is my opinion that such offenders must be endowed with severe and harsh punishments. Thus, in sentencing for offences of this nature it is necessary to convey a message to offenders and also to those who intend to offend that these crimes will not be tolerated and will entail stiff sentences. Therefore, the purpose of this sentence is founded on the principle of deterrence and the protection of the community. I am mindful of the principle of rehabilitation nonetheless the seriousness of these offences outweighs the principle of rehabilitation.

9. The tariff as determined by *State v Seru*, Sentence [2015] FJHC 528 HAC 426.2012 (6 July 2015) and also reiterated by the Court of Appeal in *Daunivalu v State* [2020 FJCA 127; AAU138.2018 (10 August 2020) for the offence of Aggravated Burglary is 18 months to 3 years which carries a maximum penalty of 17 years imprisonment.

10. The tariff as determined by *Waqā v State*, Sentence [2015] FJHC 72 HAA017.2015 (5 October 2015) for the offence of Theft is 4 months to 3 years which carries a maximum penalty of 10 years imprisonment. In **Mikaele Ratusili v. State**, Criminal Appeal No. HAA 011 of 2012 (1 August, 2012) Madigan J. set out the tariff for theft considering various factors in the following form:

“(i) For the 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.”

11. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), reads thus;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

12. The count of aggravated burglary and the count of theft for which both of you have been convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and

appropriate to impose an aggregate sentence for both offences having the Aggravated Burglary count as the base sentence as it is the more serious of the two offences.

13. Both of you in mitigation submitted that you are 26 years of age now and that it was due to lack of good judgement that you committed these offences and 24 years of age as at the date of the offending (vide summary of facts). As per the antecedent report of Silivenusi Delai; is known but has Nil Previous Convictions. As per the antecedent report of Samuela Koroi; has Nil Previous Convictions. As such I consider both of you are young first-time offenders and persons of previous good character.
14. Whilst both of you were 24 years, though young in age, your participation was your own decisions. This being so, there is nothing in the record or submissions to suggest that either one of you was persuaded by peer pressure to commit these offences. You have thus jointly committed the crime and each of you is equally culpable for the offences of 'Aggravated burglary' and theft no question of apportionment arises in the circumstances of this case. Both of you are charged on the basis of 'joint enterprise' based on the legal principle of '*common intention to prosecute an unlawful purpose in conjunction with one another*' as embodied in Section 46 of the Crimes Act of 2009 in view of which '*each one is deemed to have committed the offence.*'
15. This is a premeditated plan put in to action. However, you have played your individual roles together after forming the common intention of prosecuting the unlawful purpose of stealing from this shop.

Sentence

16. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act"), reads thus;

"If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does

not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

17. The count of aggravated burglary and the count of theft for which both of you have been convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for both offences having the Aggravated Burglary count as the base sentence as it is the more serious of the two offences.
18. Upon considering the gravity and the objective seriousness of the offence of Aggravated burglary, to my mind it is reasonable and pick 2 years’ imprisonment as the starting point of the aggregate sentences of both of your sentences for this offence. However, the final sentence will depend on the mitigating and aggravating factors which I will now proceed to consider.

Aggravating factors

19. I will start with considering the aggravating factors. I observe the following aggravating circumstances of your offending:
- a) The Damodar City Complex has employed you Silivenusi Delai prior to this incident in the complainant’s building,
 - b) Thus this is not an opportunistic offending but a well-planned burglary carried out with premeditation,
 - c) Surveillance camera was blocked by the intruders,the items stolen were substantial not all were recovered,
 - d) This was an invasion of a business premises which directly affects entrepreneurs engaging in such business,
20. I am inclined to add 2 years to the starting point for the above-mentioned aggravating factors bringing the interim aggregate sentence of 4 years imprisonment.

Mitigating factors

21. Now I will consider the mitigating factors. I observe the following mitigating circumstances of your offending in respect of both of you;
- a) pleaded guilty early and at the outset;
 - b) you are remorseful and seek forgiveness,
 - c) co-operated with the police,
 - d) you are both now 24 years at the time of the offending thus young offenders,
 - e) Neither of you have any previous convictions nor similar pending cases,

Both of you are employed and

22. You also submitted that you 3rd Accused was working at a construction company and the 4th Accused Koroï is a security guard his wife is now pregnant Further, both of you are willing and promise to reform and not re-offend. You have accepted responsibility of your actions and did save the Court's time by pleading guilty at the earliest opportunity.
23. For all these grounds in mitigation, both of you should receive a considerable discount in the sentence. In this regard, I will consider a reduction of 1 year and 4 months for the early guilty pleas which is a 1/3rd reduction and another 6 months for the previous good character and youth and another 8 months for the other mitigating factors which brings both of your Aggregate sentences down to one (1) year and six (6) months' imprisonment.

Suspending the punishment

24. I will now consider if I should act under section 26(2) of the Sentencing and Penalties Act, especially as you are young offenders. You have no doubt given firm undertakings and promises that you will rehabilitate and reform and you will lead a good lives and to continue with your industry is that sufficient to consider suspending your punishment in

terms of the provisions of section 26(1) of the Sentencing and Penalties Act? I will consider it now.

25. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence/punishment should only be exercised by a High Court where the custodial sentence/punishment does not exceed 3 years and as opined in the Sentence Ruling in *State v Aiding Zhang* [2017] HAC 061 if there be circumstance which are exceptional.
26. In **DPP v Jolame Pita** (1974) 20 FLR 5 at p.7:, Grant Acting CJ (as he was then) explained what special circumstances that warrant and justify the suspension of a sentence thus;

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

27. Nawana J., in the case of *State v Tilalevu* [2010] FJHC 258; HAC081.2010 (20 July 2010) said that;

*"I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as '**First Offender Syndrome**' - where people would tempt to commit serious offences once in life under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule."*

28. Thus, you are youthful but cannot be considered as persons of extreme youth. 4th Accused had been previously employed in this same Shopping complex and considering the bold and planned nature of taking the entire safe with impunity in this manner and in view of the above sentiments of Nawana J., to my mind this is not a fit matter to consider suspending the sentences.

Non-parole period

29. Under section 18 (2) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation.

30. Considering the above, I impose 6 months as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case

Head Sentence

31. Accordingly, I sentence both of you the 3rd and the 4th Accused Mr. Silivenusi Delai and Mr. Samuela Koroï for periods of 18 months' aggregate sentence of imprisonment for the offences of Aggravated Burglary and theft as charged in the information. However, you are not entitled to parole for 6 months pursuant to Section 18 (2) of the Sentencing and Penalties Act.

Actual Period of the Sentences

32. I also observe from the Court record and the submissions that both the Accused have been in remand from 23rd April, 2021 to 22nd June, 2021 for 2 months. In the exercise of my

discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 02 months upon it being considered as a period of imprisonment already served. In view of the above, the final sentence will be 1 year and 4 months' imprisonment.

33. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to consider the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
34. Accordingly, the actual total period of the aggregate sentences imposed on both of you, the 3rd and the 4th Accused Mr. Silivenusi Delai and Mr. Samuela Koroi are sixteen (16) months' imprisonment for each of you separately with a non-parole period of four (04) months.
35. You have 30 days to appeal to the Court of Appeal if you so desire.



At Suva
18th November, 2022.

Solicitors
Office of the Director of Public Prosecutions for the State.
Legal Aid Commission for both the Accused