

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 324 of 2022**

**STATE**

vs.

- 1. PITA SALAUNEUNE**
- 2. ALIVERETI COKANASIGA**
- 3. AKUILA DONUMAIWAI**
- 4. JOSEVA ULUDOLE**

**Counsel:** Mr. Z. Zunaid for the State  
Ms. M Tuiloma for 1<sup>st</sup> Accused  
Ms. S Daunivesi for 2<sup>nd</sup> Accused  
Mr. T Varinava for 3<sup>rd</sup> Accused  
Ms. L Ratidara for 4<sup>th</sup> Accused

**Date of Sentence/Mitigation Submission:** 09<sup>th</sup> December, 2022

**Date of Sentence:** 24<sup>th</sup> January, 2023

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**SENTENCE**

(4<sup>th</sup> Accused Joseva Uludole)

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**Introduction**

1. Mr. **JOSEVA ULUDOLE**, your are the 4<sup>th</sup> Accused, charged with several others by information date 5<sup>th</sup> October 2022 with a single charge against you, which reads thus;

**COUNT FOUR**

*Statement of Offence*

**RECEIVING:** contrary to Section 306(1) of the Crimes Act, 2009.

*Particulars of Offence*

**JOSEVA ULUDOLE**, between the 30<sup>th</sup> day of August – 6<sup>th</sup> day of September, 2022 at Nausori in the Eastern Division, dishonestly received \$600.00 cash (Fijian Dollars), 1x Acer laptop, 1x pair of canvas and \$250.00 cash (New Zealand Dollars), knowing or believing the said property to be stolen.

2. You the 4<sup>th</sup> Accused being aware, well advised and explained of the legal effects, did plead guilty to the above count, in the presence of your Counsel. This Court was satisfied that 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 act of receiving stolen property. I am satisfied that the summary of facts covers all the ingredients of the said offence and accordingly convict you on your own plea of guilt.

Facts

3. Facts of this offending as per the summary read in court is as follows;
  - i. The complainant's are an elderly American couple who have been residing in Fiji for approximately 22 years in which they live and do cattle farming at Vunikoka Farm in Naitasiri.
  - a. On the **30<sup>th</sup> of August 2022** (Tuesday) at around 10.30am, both PW1 and PW2 had left home and headed for Suva. Upon returning around 3.30pm, they entered their home through the back door in which the complainant noticed that their guitar was on the floor. Instantly, the complainant suspected that something was wrong as the guitar was usually placed upstairs in their bedroom. The only person that was ought to be at their home was their house-girl PW3 and one Vilive who looks after the farm and lives in a separate quarters with his family.
  - b. The complainant then made her way upstairs and noticed that their bedroom door was opened, however, she recalled locking the bedroom door prior to leaving for Suva. The complainant noticed that things were all scattered and the cardboard boxes were also opened as they had packed to fly off to New Zealand in a few days' time.

- ii. The complainant and PW2 then noticed that the following items were stolen from their home: **2x binoculars, 1x Acer laptop with bag, 1x Sketchers brand pair of canvas, 1x Asics brand pair of canvas, 1x orange in colour ladies bag and \$14,140.00 cash (New Zealand Dollars)** all to a total value of approximately \$16,050.00.
- iii. On the **7<sup>th</sup> of September 2022**, PW2 had positively identified their 2x binoculars, 1x Acer laptop with bag, 1x Sketchers brand pair of canvas, 1x Asics brand pair of canvas, 1x orange in colour ladies bag at the police station after police recovered the said stolen items.
- iv. PW6 Viliame Motokainava, 26 years old, Farmer, who resides in Tacirua stated that on the **2<sup>nd</sup> of September 2022**, you come to his house and sold him an Acer brand laptop which he bought for \$100. PW6 claimed that he did not know it was stolen. On the **6<sup>th</sup> of September 2022**, police seized the laptop from PW6 as stolen property belonging to the complainant.
- v. PW7 one, Neresini Dikula, stated that on the **5<sup>th</sup> of September 2022**, at around 2 pm, You Joseva whom she knew from the same area, came to her house and asked her whether she wanted to buy a pair of Puma canvas for \$30.00 (bearing in mind, this is not the complainant's canvas). PW7 refused and A4 then went away. After a while you returned with another pair of canvas and was begging PW7 to buy it for \$30.00 as he really needed the money. PW7 stated that he did not know it was stolen and gave you \$30.00 and took the canvas. PW7 stated that on the **6<sup>th</sup> of September 2022**, she received a call from the police informing her that the canvas she purchased was stolen.
- iii. Through police investigations, on the **6<sup>th</sup> day of September 2022**, PW9 being a police officer effected arrest of one of the suspected burglars and you (Joseva) who were both residing at Tacirua. PW8 being a police officer on the **6<sup>th</sup> of September 2022**, arrested another accomplice (second burglar), from the house of A3 (Akuila). After being cautioned, when asked by police in relation to the stolen money, the accomplice showed police the items he had bought from the stolen money (proceeds of crime).
- iv. During police investigations, police further seized the following items:
  - a) 1x Acer laptop with charger
  - b) 1x \$100 (NZD) note
  - c) 1x 32 inch Maxton brand flat-screen TV
  - d) 2x Awei brand speakers

- e) 1x Dork brand binoculars
- f) 1x pair of Asics brand canvas
- g) 1x Samsung A15 phone with cover
- h) \$100.40 cents cash
- i) 1x Green hoody
- j) 1x Red hoody
- k) 1x red Bluetooth speaker
- l) 1x Adidas sling bag

- a. When you were interviewed under caution you denied being part of the offences of aggravated burglary and theft (Q&A 45). It was put to you that you met with Pita Salauneune on the date of the offence, which you denied (Q&A 41). You stated that you met Pita, Alivereti and one Viliame Bose on Wednesday (Q&A 52). A4 stated they all ate food and he returned home. It was put to you whether you he received any laptop, canvas and cash, you admitted receiving \$600 Fijian Dollars, one laptop and canvas, which was given to you by Pita and Alivereti (Q&A 57-58).
  - b. You admit that Alivereti had given him \$250 New Zealand Dollars (Q&A 57-60) and that you sold the laptop for \$100 to Viliame and the canvas for \$80 to Meresani however, you claim that you did not ask Pita and Alivereti where they got those items and cash from
4. According to the admitted summary of fact you have admitted receiving six hundred dollars in cash [FJD], a laptop, pair of canvas and a two hundred fifty [NZ dollars] from Pita, Alivereti. You have thereafter sold the canvas and the laptop.
5. When you were apprehended and questioned you did not admit receiving these items, however when you were confronted and questioned with certain information then you did admit receiving said items. It is unusual for a person to just receive foreign currency in large amounts and also a laptop in this form. In view of the nature of the items received by you, most certain that was aware that these were proceeds of a crime or stolen property. The law provides a maximum sentence of ten years for offences of this nature. This clearly shows that the legislation has considered this as a serious offence. The persons knowingly receiving stolen property in fact do help and assist those involved in theft and robberies to dispose them stealthily and discretely and this no

doubt is the reason to consider knowingly receiving stolen property as a serious offence.

#### Sentencing regime

6. The tariff as determined by *Tabakaru V The State* [2013] FJHC 528 HAC 426.2012 (6 July 2015) and also reiterated by the Court of Appeal in *Daunivalu v State* [2003] FJCA 121; HAA0019J.2003S (18 July 2003) for the offence of Receiving stolen property is 12 months to 3 years which carries a maximum penalty of 10 years imprisonment.

#### Aggravating factors

7. I will start with considering the aggravating factors are not many. I observe the following aggravating circumstances of your offending:
  - a) You have made a substantial profit from this offending,
  - b) the items were substantial not all were recovered (cash 250 New Zealand Dollars and \$600 Fijian Dollars)

#### Mitigating factors

8. Now I will consider the mitigating factors. I observe the following mitigating circumstances of your offending;
  - a) pleaded guilty early and at the outset;
  - b) seek forgiveness,
  - c) co-operated with the police,
  - d) you were 18 years of age respectively at the time of the offending thus a very young and first-time offender,
  - e) you have no previous convictions nor similar pending cases,
  - f) part of the stolen property was recovered.
9. It is also submitted that you were working as a construction worker, earning \$210 a week. Further, 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. You are a young first time offender as evident from your Nil Previous Conviction reports.

#### Early Plea of Guilt

10. No doubt you did plead guilty at the very outset. However, when you were apprehended and questioned you did not admit spontaneously but the admissions were made when you were confronted with certain material and information. It is settled law that an early guilty plea will be considered favorably in determining the sentence. This courts have long accepted that discounts on sentences are appropriate. However determining the discount (quantifying) depends upon the circumstances of each case. The accepted reduction considered is a maximum of one third but quantifying within that 1/3<sup>rd</sup> is for the sentencing judge to determine.
11. There are two possible factors to be considered in determining the appropriate discount to the sentence for a plea of guilt. Firstly, it is now well settled that, if the Accused indicated his intention to plead guilty to that charge at the earliest opportunity then he is entitled to the full benefit of the 1/3<sup>rd</sup> discount and may be on a reducing scale any time thereafter corresponding to the stage of so pleading. Secondly, if the offender was caught red-handed so to say, and is arrested in such circumstances in which he cannot hope to put forward a viable defence of not guilty, then he cannot expect much by way of discount even if he pleads guilty at the earliest. This second aspect was considered in ***R v Hollington and Emmens*** (1986) 82 Cr App R 281 where it was opined thus;

*“This court has long said that discounts on sentences are appropriate, but everything depends upon the circumstances of each case. If a man is arrested and at once tells the police that he is guilty and co-operates with them in the recovery of property and the identification of others concerned in the offence, he can expect to get a substantial discount. But if a man is arrested in circumstances in which he cannot hope to put forward a defence of not guilty, he cannot expect much by way of discount. ....”*

#### Personal circumstances

12. You are nineteen years of age and studied only up to form three. You have been employed as a construction worker, earning \$210. 00 a week and you are single living with your family.

#### Sentence

13. Upon considering the gravity and the objective seriousness of the offence of knowingly receiving stolen property, to my mind it is reasonable and pick Two (2) years' imprisonment as the starting point 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.

14. I am inclined to add six (6) months to the starting point for the above-mentioned aggravating factors bringing the interim sentence to two (2) years and six (6) months imprisonment.
15. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I will consider a reduction of ten(10) months for the early guilty plea which is a 1/3<sup>rd</sup> reduction; and another four(4) months for the previous good character and youth and another four (4) months for the other mitigating factors which brings both of your sentences down to one (1) years' imprisonment.

#### Suspending the punishment

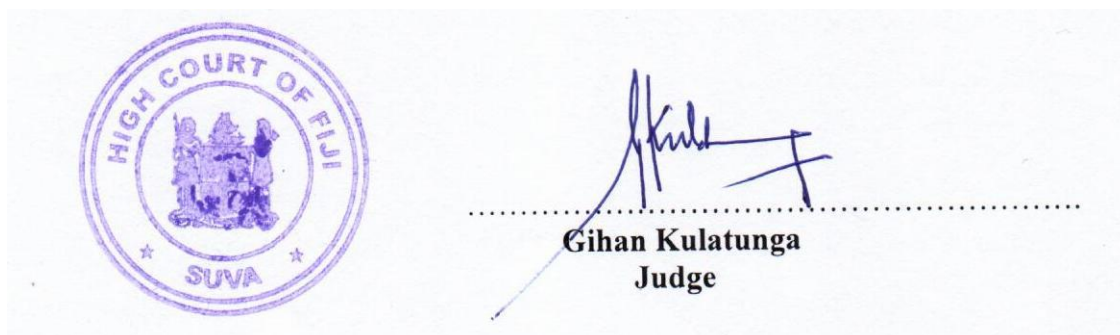
16. 1<sup>st</sup> Accused's Counsel submitted that this is a fit matter for this Court to consider acting under section 26(2) of the Sentencing and Penalties Act, especially as you are a very young offender. I am of the view that the firm undertaking and promise made to this court that you will rehabilitate and reform and you will lead a good life and to continue with your industry. These there are sufficient grounds to consider suspending your punishment in terms of the provisions of section 26(1) of the Sentencing and Penalties Act.
17. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence should only be exercised by a High Court where the custodial sentence 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.
18. 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."*

19. In the circumstances of this case especially considering *the extreme youth or age* of the 4<sup>th</sup> Accused who is a first-time offender with no other pending similar matters, I am of view that this is a fit matter to suspend the sentence of the 4<sup>st</sup> Accused as the final sentence does not exceed 3 years.
20. Thus, upon duly considering the material before me, especially your extreme youth and previous good character I will offer you the 4<sup>th</sup> Accused a chance to get back to a good life of industry and suspend the 1 year term of imprisonment for a period of 7 years.
21. Orders;
  - a) The 4<sup>th</sup> Accused is sentenced to one (01) years' imprisonment and the same is suspended for 7 years, and
22. The effect and the consequences of any violation of a suspended term are explained to the 4<sup>th</sup> Accused.
23. You have 30 days to appeal to the Court of Appeal if you so desire.



At Suva  
24<sup>th</sup> January, 2023

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Accused