

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 19 of 2022

BETWEEN : **THE STATE**

AND : **SAIMONI NABUKAVOU**

Counsel : Ms. Ali, N with Ms. Devi, A for the State
: Ms. David, L for the Accused

Judgment : 31st January 2023

Sentence : 6th February 2023

SENTENCE

1. Saimoni Nabukavou, you have been found guilty of one count of aggravated burglary and one count of theft.
2. The facts at trial are that the Complainant had left her home at Tacirua to go to Labasa for the Christmas holidays. The key was left with a neighbour who discovered the house open and ransacked the next day. A number of household items of value were stolen. You were seen a few hours later selling the stolen washing machine and urn to someone in Tacirua who paid \$120 for both items. Investigations led to your arrest. The washing machine and

urn were recovered and returned to the Complainant. Your explanation as to how you came to be in possession of recently stolen items was not accepted as reasonable or true by the Court and in the circumstances in which the items were found to be in your possession, the Court found you guilty of aggravated burglary and theft.

3. 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)
4. The maximum penalty for aggravated burglary is 17 years imprisonment.
5. In Kumar & Vakatawa v The State AAU 33 of 2018 & AAU 117 of 2019 (24 November 2022), following the application of inconsistent tariffs by the courts, and on an application by the State, the Court of Appeal issued a guideline judgment in respect of sentencing in aggravated burglary cases. Reference was made to sentencing trends in the UK, New Zealand, Australia and Canada. The Court preferred the sentencing guidelines in the UK as being the most apt and suitable for the purposes of formulating the sentencing tariff for burglary and aggravated burglary in Fiji.
6. According to Vakatawa (supra), to decide the level of harm in the offending, a sentencing Court must first determine the harm caused or intended. Harm may be physical and/or psychological. Thus the lesser the harm, the lower the starting point. In the same way, cases with more serious harm will attract higher starting points.
7. I use the guidelines in Vakatawa (supra) in sentencing you.
8. In State v Takalaibau - Sentence [2018] FJHC 505; HAC154.2018 (15 June 2018) at [10], Goundar J stated:

Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt

with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in *Brewster* 1998 1 Cr App R 220 observed at 225:

Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.

9. The offending was perpetrated while the owners were out of the house. A number of items of value were stolen. Louvre blades were removed from the place. A pinch bar was found outside the home but it is not clear whether it was used to gain entry into the home. A number of louvre blades were missing from the sitting room and it is possible that entry was gained through the windows. The Complainant was distraught when giving evidence

of the effect of the offending on her. Hard earned properties were stolen. She found her house upside down and her household items missing.

10. On the facts, your offending falls between the greater and lesser harm as categorized in *Vakatawa* (supra). The level of harm falls squarely within Category 2 of the classification in *Vakatawa*, where the starting point is 5 years imprisonment and with a sentencing range of 3 – 8 years imprisonment.
11. The number of items stolen and the swiftness with which they were removed from the premises point to a planned and organized offending. This is an aggravating factor.
12. You are 25 years old with a young child. You are the sole breadwinner. None of these personal circumstances mitigates your offending but your previously clean record does. This is the only mitigating factor in your favour.
13. The recovery of stolen items is ordinarily a mitigating factor. In your case however, recovery was made possible on information given by prosecution witnesses and not by you. Recovery is therefore not a mitigating factor.
14. Bearing in mind the guidelines in *Vakatawa*, I take a starting point of 5 years imprisonment. I increase it by 1 year for the aggravating factor, and deduct 2 years for the mitigating factor, leaving now a balance of 4 years imprisonment.
15. You have been remanded in custody since 13 January 2022. For this period, I deduct 1 year, 1 month as part of sentence served, leaving now a balance of 2 years, 11 months.
16. For theft, I sentence you to 8 months imprisonment, to be served concurrently with the sentence for aggravated burglary.

17. I have considered suspension. Aggravated burglary is a prevalent offence. There is a need for specific and general deterrence. At the same time, the opportunity to rehabilitate must not be lost in appropriate cases, such as in the case of a young first time offender.
18. You will serve 1 year 6 months imprisonment, with 17 months to be suspended for 4 years. The suspended sentence will run from the date of your release from prison for this matter.
19. Suspended sentence explained.



A handwritten signature in blue ink, appearing to read "Siainiu F. Bull".

Siainiu F. Bull
ACTING PUISNE JUDGE

Solicitors:

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