

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NO. HAC 239 of 2021**

STATE

vs

1. WAISALE VUETI LOVONI
2. OSEA TULEGA

<i>Counsels:</i>	<i>Ms. Ali N</i>	-	<i>for Prosecution</i>
	<i>Mr. Varinava T.</i>	-	<i>for Accused</i>

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**SENTENCE**

1. **OSEA TULEGA** you were jointly charged with **WAISALE VUETI LOVONI** with one count of Aggravated Burglary and one count of Theft by the Prosecution, as below:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**WAISALE VUETI LOVONI** and **OSEA TULEGA** between the 14<sup>th</sup> day of May 2021 and the 19<sup>th</sup> day of May 2021 Nasinu in the Central Division in the company of each other entered into the dwelling house of **UNAISI WATI** as trespassers with the intent to commit theft.

## COUNT 2

### *Statement of Offence*

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

### *Particulars of Offence*

**WAISALE VUETI LOVONI and OSEA TULEGA** between the 14<sup>th</sup> day of May 2021 and the 19<sup>TH</sup> day of May 2021 at Nasinu in the Central Division in the company of each other dishonestly appropriated (stole) 1x 32 inch Philips Flat Screen TV and 2 x traditional mats, the property of **UNAISI WATI** with the intention of permanently depriving **UNAISI WATI** of the said properties.

2. You pleaded guilty on your own free will with the other Accused to the above-mentioned counts represented by counsel in Court on 16/02/2022. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. Further, **OSEA TULEGA** you agreed to the summary of facts, when they were read to you in Court on 12/06/2023. Summary of facts were, as follows:

### SUMMARY OF FACTS

**The complainant in this matter is one Unaisi Wati, 46 years old, unemployed of Rokara Road, Khalsa, Nasinu.**

**The Accused persons are:**

**Accused 1: Waisea Vueti Lovoni, 20 year old, former of Delaivalelevu, Nasinu**

**Accused 2: Psea Tulega, 21 year old, Unemployed of Rokara Settlement, Nasinu**

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

Both the Accused persons have pleaded guilty to the count of Aggravated Burglary contrary to section 313(1)(a) and Theft contrary to section 291(1) of the Crimes Act, 2009.

### **Facts**

- It is alleged that between the 14<sup>th</sup> day of May 2021 and the 19<sup>th</sup> day of May 2021 at Nasinu, the Accused namely **Waisale Vueti Lovoni** and **Osea Tlulega** in the company of each other entered into the dwelling house of Unaisi Wati (Complainant) as trespassers, with the intent to commit theft therein.
- The complainant was residing at the Rokara Settlement with her husband and two children when the alleged offence took place. It is alleged by the complainant that on the 14<sup>th</sup> day of May 2021 at about 05.00pm she left the house with her husband and children to visit her sister at Khalsa Road, Nainu and she returned on the 19<sup>th</sup> day of May 2021 at about 09.00am.
- It is alleged that before the complainant left her house, she had properly closed her house. According to the complainant due to Covid-19 lockdown she could not return to her house until the lockdown was lifted on the 19<sup>th</sup> day of May 2021.
- It is alleged that between the 14<sup>th</sup> May 2021 and 19<sup>th</sup> May 2021 first Accused person namely Waisale Vueti Lovoni and the second Accused namely Osea Tulega planned to break into the 1<sup>st</sup> complainant's house which was vacant at that point in time.
- It is alleged that both the abovenamed Accused persons removed the lower blades from the window to gain entry into the complainant's house. After the accused namely Waisale Vueti Lovoni had pulled out the louvre blades he then entered into the complainant's house with the second accused Osea Tulega with intention to commit theft therein.
- That between the 14<sup>th</sup> of May 2021 and the 19<sup>th</sup> May 2021 both the accused persons namely Waisale Vueti Lovoni and Osea Tulega in the company of each other had dishonestly appropriated (stole) the 32 inch Philips Brand Flat Screen TV valued at \$1,808.00 and 2 x Traditional mats valued \$270.00 the property of Complainant namely Unaisi Wati with the intention of permanently depriving Unaisi Wati of the said property.
- It is alleged that both the accused persons namely Waisale Vuerti Lovoni and Osea Tulega took the 32-inch Phillips Brand Flat Screen TV to one Waqa Raibevu for testing and left the said TV at his residence at Delaivalelevu, Nasinu.

- It is alleged that both accused persons namely Waisake Vueti Lovoni and Osea Tulega stole 2 x Traditional Mats to one Kasaya Busoyaco for the sum of \$50.00.
- That the total value of the complainant's stolen items was at \$2,070.00.
- That the matter was reported to the Police, and upon receiving the report investigation were conducted and the two accused persons were brought into Police custody for questioning whereby they fully admitted to the offence alleged against them.

### **Caution Interview**

1. **Waisale Vueti Lovoni** admitted in question number 38 to 66 that he saw a small dwelling house made of (tin) which was empty and that he saw the louver blade were missing from the window. He admitted that he used a steel stand to climb into the house and saw 2 x mats on top of the drawer and that he folded it. He also admitted that he saw a flat screen TV. He admitted that he took the mats first and placed it under the house. He said he came back and took the TV. He admitted taking the TV to one of the friend's home namely Viliame who resides at Delaivalelevu for testing. Waisale admitted leaving the TV at his friend's home.

Furthermore Waosale also admitted selling the mats to one iTaukei female at Rokara Settlement for \$50.00

2. **Osea Tulega** admitted in question number 34 to 60 that between 14<sup>th</sup> May 2021 to 19 May 2021 Waisale Vueti Lovoni and he broke into the complainant's house. He admitted that they removed the louvre blades and gained entry into the complainant's house. He said they removed three (2) louvre blades and entered into the house and searched the house. He admitted that Waisale Vueti Lovoni and he took out the TV and mat from the complaint's house. He said Waisale took the mats out and he took out the TV.

He said that they committed the alleged offence at nighttime. He admitted selling the mats to one Fijian lady for \$20.00 and leaving the TV at friends place for testing, He was shown the recovered stolen items and he positively identified that it's the same TV and Mats which they stole from the complainant's house and sold it.

### Recovery of Items

The complainant's husband namely Jope Rigamoto was called into the Police Station on the 27<sup>th</sup> day of May 2021 to identify the recovered items as mentioned above in which he confirmed that the recovered items belonged to them.

After the investigation was conducted the two Accused persons were charged with the following offences:

1. Aggravated Burglary contrary to section 313(1)(a) of the Crimes Act 2009
2. Theft contrary to section 291 of the Crimes Act 2009

4. At the very outset, this Court was convinced that the summary of facts agreed by you satisfy all the elements of each offence you are charged with. Therefore, this Court convicts you for the offences charged with by the information in this matter. On considering the submission made by the prosecution in aggravation and your counsel in mitigation, now this matter is pending for sentencing.
5. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of Aggravated Burglary under **Section 313 (1) (a)** of the **Crimes Act of 2009** is an imprisonment term of 17 years and the maximum punishment for Theft under **Section 291** of the **Crimes Act 2009** is an imprisonment term of 10 years.
6. The accepted tariff for counts 1 and 2 depend on the nature and circumstances under which Aggravated Burglary and Theft were committed, and the consequences entailing the commission of the offences to the victims and the society at large.
7. This Court also recognizes that to address the head spinning rapidity of the increase of Burglaries and Robberies in our community, any punishment imposed by Court should have a reprehensible deterrent effect that could also send a profoundly strong signal to the community.

8. In imposing the appropriate punishment for your admitted guilt, the Prosecution brings to the attention of this Court the updated tariff regime pronounced for Aggravated Burglary by the Court of Appeal of Fiji in the case of **State v Avishkar Rohinesh Kumar Sirino Aakatawa**<sup>1</sup>, where it was stated, as below:

*“Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.*

LEVEL OF HARM CATEGORY	<b>BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)</b>	<b>AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)</b>	<b>AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)</b>
HIGH	Starting Point: 05 years Sentencing Range: 03 – 08 years	Starting point 07 years Sentencing Range: 08 – 12 years	Starting Point – 09 years Sentencing Range: 08 - 12 years
MEDIUM	Starting Point 03 years Sentencing Range : 01 – 05 years	Starting Point: 05 years. Sentencing Range 03 – 08 years	Starting Point : 07 years Sentencing Range: 05 – 10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 05 years Sentencing Range: 01 – 05 years	Starting point : 05 years Sentencing Range: 03 – 08 years.

9. In the above pronouncement of the Court of Appeal, Court has further identified the factors indicating the degree of harm, as below:

<sup>1</sup> [2022] FJCA (24<sup>th</sup> November 2022); AAU 33.18 & AAU 117.19 548 925 June 2018),

<b>Factors indicating greater harm</b>
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater than is, necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present.
Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary
Violence used or threatened against victim, particularly the deadly nature of the weapon
Content of general public disorder
<b><i>Factors indicating lesser harm</i></b>
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim.
Limited damage or disturbance to property. No violence used or threatened, and a weapon is not produced.

15. In relation to the offence of Theft, this Court intends to follow the tariffs pronounced by **Midigan J** in the case of **Ratusili v State**<sup>2</sup>, where he stated:

*“From the cases then, the following sentencing principles are established:*

- (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.*

<sup>2</sup> [2012] FJHC 1249; HAA011.2012 (1<sup>st</sup> August 2012)

- (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.”*

In this matter, in considering the value of the items you had stolen and that it was stolen from a dwelling premises, this cannot be regarded as simple theft.

16. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence for you for Count 1 and 2.
17. In assessing the objective seriousness of offending of you in this matter, I considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a Burglary that happened in a residential premise of a fellow citizen. I am very mindful that offences of this nature disturb the peace and tranquility of minds of residents of our community and threatens safety of our community. In dealing with matters of this nature Courts have a bounden duty to discourage and deter this kind of anti-social behavior that makes living in our society unpleasant and risky. Having considered all these factors, I would pick a starting point of 5 years imprisonment against you placing your offence in the medium level of harm category in relation to the tariff available for Aggravated Burglary committed with another.
18. In aggravation, Prosecution brings to my attention that you have had unheeding disregard to the property rights of the victim in this matter, where you had planned this robbery with your accomplice and you had sold the stolen items causing financial loss to the complainant. In considering the direction given by the **Court of**



**Appeal of Fiji** in the case of **State v Avishkar Rohinesh Kumar Sirino Aakatawa**<sup>3</sup>, I increase your sentence by one (01) year.

19. In mitigation, your counsel informs Court that you are 21 years old, and you are married with one child of one month old. Also, your counsel informs that your wife is very sickly having fitting episodes. In proof of this condition a medical report has been tendered. Considering your family situation and the need of your presence for your infant child and your rehabilitation potential due to your young age, I reduce your sentence by 1½ years.
20. Further in mitigation, your counsel has informed the Court that you have entered an early guilty plea and that you regret your action on the day in question. You have also been supportive to the police during investigations after your arrest. Further, by pleading guilty to the charge you have saved courts time and resources at a very early stage of the court proceedings. For all these grounds in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
21. Still further, Prosecuting counsel brings to my attention that since your arrest on bench warrant on 15<sup>th</sup> March 2023 you have been in custody for almost 2 months, which period has to be reduced from the final sentence.
22. **OSEA TULEGA**, consequent to your conviction, I impose on you **34** months imprisonment forthwith with an applicable non-parole period of **28** months under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the count you are charged with.

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<sup>3</sup> Supra, note 1

23. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "Thushara Kumarage", written over a dotted line.

Hon. Justice Dr. Thushara Kumarage

**At Suva**  
**This 09<sup>th</sup> day of August 2023**

*cc:* 1. *Director of Public Prosecutions*  
2. *Legal Aid*