

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 195/2021

STATE

V

EREMASI RINASAU

Counsels:

Ms. Kantharia B.	-	for State
Ms. Ratidara S.	-	for Accused

SENTENCE

1. The accused in this matter, **EREMASI RINASAU** was charged with one count of **Aggravated Robbery** by the **Director of Public Prosecutions**, as below:

FIRST COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to **Section 311(1) (a)** of the **Crimes Act 2009**.

Particulars of Offence

EREMASI RINASAU with others on the 2nd day of April 2002 at Nadawa in the Central Division in the company of each other stole 1 x Dessert Boot, 1 x Puma brand canvas, 1 x Adidas hand carry bag, assorted clothes and \$95.00 in cash from **RONAL RITESH PRASAD** and immediately before stealing from **RONAL RITESH PRASAD** used force on him.

2. Accused pleaded not guilty to the charge on the 19th of April 2022 and the trial in this matter commenced on 07/06/2023 and two witnesses gave evidence for the Prosecution. Since the Defense was called the Accused opted to give evidence in Court under cross-examination. The Judgement in this matter was pronounced on 1st of August 2023 and the Accused was convicted by this Court for the count of Aggravated Robbery. Today this matter is coming up for sentencing.

3. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum sentence prescribed by law for Aggravated Robbery is 20 years' imprisonment.

4. However, the tariff for this offence depends on the nature and circumstances of the robbery at issue. In the case of **The State v EPARAMA TAWAKE¹**, the **Supreme Court of Fiji** has updated the applicable tariff for Aggravated Robbery, by the below pronouncement:

“Once the court has identified the level of harm suffered by the victim, 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 pleaded guilty or not guilty and irrespective of previous convictions.”

	ROBBERY <i>(Offender alone and without a weapon)</i>	AGGRAVATED ROBBERY <i>(Offender either with another or with a weapon)</i>	AGGRAVATED ROBBERY <i>(Offender with another and with a weapon)</i>
HIGH	<i>Starting point: 5 years imprisonment Sentencing Range: 3 – 7 years</i>	<i>Starting Point: 7 years imprisonment Sentencing Range: 5 – 9 years</i>	<i>Starting Point: 9 years imprisonment Sentencing Range: 6 – 12 years imprisonment</i>
MEDIUM	<i>Starting point: 3 years imprisonment Sentencing Range: 1 – 5 years</i>	<i>Starting Point: 5 years imprisonment Sentencing Range: 3 – 7 years imprisonment</i>	<i>Starting point: 7 years imprisonment Sentencing Range: 5 – 9 years imprisonment</i>
LOW	<i>Starting Point: 18 months imprisonment Sentencing Range: 6 months – 3 years.</i>	<i>Starting Point: 3 years imprisonment Sentencing Range: 1 – 5 years imprisonment</i>	<i>Starting point: 5 years imprisonment. Sentencing Range: 3 – 7 years imprisonment.</i>

5. In this matter, you have committed this offence with the assistance of several other individuals. Therefore, in assessing the objective seriousness of offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I

¹ CAV 0025 of 2019 [Court of Appeal No. AAU 0013 of 2017]

gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In the present matter, you have committed this offence on an innocent young citizen who was proceeding with his usual daily routine as an employee of a domestic bakery peacefully. Considering the circumstances of this case, **EREMASI RINASAU**, I start your sentence with a starting point of 5 years imprisonment, i.e. in the medium-range of the applicable tariff.

6. On promulgating the above table for tariff for the offence of Robbery in the case of **The State v EPARAMA TAWAKE²**, the Supreme Court has also ventured to identify aggravating and mitigating factors, as below:

“Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an exhaustive list of aggravating factors, but these may be common ones:

- *Significant planning*
- *Prolonged nature of the robbery*
- *Offence committed in darkness.*
- *Particularly high value of the goods or sums targeted.*
- *Victim is chosen because of their vulnerability (for example age, infirmity or disability) or the victim is perceived to be vulnerable.*
- *Offender taking a leading role in the offence where it is committed with others.*
- *Deadly nature of the weapon used where the offender has a weapon.*
- *Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery.*
- *Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution.*

Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:

- *No or only minimal force was used.*
- *The offence was committed on the spur of the moment with little or no planning.*
- *The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure.*
- *No relevant previous conviction*
- *Genuine remorse evidenced, for example by voluntary reparation of to the victim.*

² Ibid

7. In aggravation, Prosecution informs this Court that you have pre-planned the commission of this robbery with two others and that it was committed in the night on a passenger who was travelling on the street. In view of this pre-planning noticed in the commission of this robbery and committing this offense in the night, I increase your sentence by one (1) year.
8. By the Antecedent Report Prosecution informs this Court that you have 12 reported previous convictions, out of which 9 were committed during the last 10 years. In this regard, **Section 4 (2) (i)** of the **Sentencing and Penalties Act of 2009** instructs the Court to consider the previous character of the Accused. In this regard, for the past 13 years you have been committing crimes in the community and disturbing the peace. Considering this fact, I increase your sentence by 06 months.
9. In mitigation, the defense counsel has informed Court that you are the sole bread winner of the family looking after 5 children and your 75-year-old father. In considering your family background, I reduce your sentence by one (01) year.
10. Further, counsel for the Prosecution brings to the attention of this Court that you have been in custody for 43 days in relation to this matter, which period should be deducted from your sentence separately.
11. Taking all these factors into consideration, **EREMASI RINASAU**, I impose on you 5 years and 4 months imprisonment forthwith with an applicable non-parole period of 58 months (4years and 10 months) under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the count you were convicted.
12. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage', is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 24th day of August 2023

cc: *Office of Director of Public Prosecutions*
Office of Legal Aid Commission