

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Crim. Case No: HAC 174 of 2023

STATE

vs.

- 1. WAISEA SO BALEIWAI**
- 2. JOSHUA CECIL EMMANUEL TUINIVONO**
- 3. MK (Juvenile)**

Counsel: Ms S Prakash for State
Ms P. Reddy for 1st Accused
Ms Priyanka for 2nd Accused
Ms L. Taukei for the Juvenile MK

Date of Sentence Hearing: 20 June 2024

Date of Sentence/Punishment 24 June 2024

SENTENCE/ PUNISHMENT

1. Waisea So Baleiwai (1st Offender), Joshua Cecil Emmanuel Tuinivono (2nd offender) and the Juvenile MK were charged with one count of Aggravated Robbery contrary to Section 311(1)(a) of the Crimes Act 2009. The Information was as follows:

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

Particulars of Offence

WASEA SO BALEIWAI; JOSHUA CECIL EMMANUEL TUINIVONO & MK on the 4th day of October 2023, at Lautoka in the Western Division, robbed one **IMRAN MOHAMMED** of 1 x Samsung A04e mobile phone, \$40.00 cash and Taxi Registration number LK 0617, and at the same time of such robbery used personal violence on the said **IMRAN MOHAMMED**.

2. They pleaded guilty to the aforesaid count voluntarily and unequivocally. They were represented by a Counsel of the Legal Aid Commission when the pleas were entered.
3. They admitted the following summary of fact that was read in Court.
 - I. The 1st Accused in this matter is **Waisea So Baleiwai** (hereinafter referred to as "1st Accused"), who was 21 years old at the time of the Offence.
 - II. The 2nd Accused in this matter is **Joshua Cecil Emmanuel Tuinivono** (hereinafter referred to as "2nd Accused"), who was 23 years old at the time of the Offence.
 - III. The juvenile in this matter is **MK** (hereinafter referred to as "juvenile"), who was 16 years old at the time of the Offence.
 - IV. The Complainant in this matter is Mohammed Imran (hereinafter referred to as "Complainant"), who was 40 years old at the material time.
 - V. The Complainant drives his own taxi registration number LK 0617.
 - VI. On the 4th October 2023, the Complainant was driving taxi registration number LK 0617, at around 10.30 pm when he picked up three male iTaukei passengers from near Keshwa's shop in Lautoka city.
 - VII. These three iTaukei passengers were the 1st Accused, the 2nd Accused and the Juvenile in this matter.
 - VIII. The Juvenile sat in the front passenger seat whilst the two Accused loaded two cartons and one sack in the trunk and sat at the back seat.

- IX. They then informed the Complainant to take them to Natabua Seaside and upon reaching there, the Complainant was asked to enter the third driveway on the left.
 - X. As soon as the Complainant entered the driveway, the 2nd Accused got off and the Juvenile told the Complainant to take the car to the corner of the building. One of the Accused then gave the Complainant \$5.00 and the Complainant told him that the fare totaled to \$8.20.
 - XI. At this time, the Juvenile sprayed the police pepper spray on the Complainant's face which gave burning sensation to his face and eyes.
 - XII. They then pulled the Complainant out of the taxi and the Juvenile searched his pockets and stole the Complainant's wallet containing \$40 and Samsung Galaxy A04E phone.
 - XIII. The Accused persons and the Juvenile ran away with the Complainant's taxi as well, which was later found abandoned at Tavakubu with no damages.
 - XIV. The Complainant's phone was recovered from the 2nd Accused's wife who voluntarily handed over the phone to Police.
 - XV. Later, both Accused and the Juvenile were arrested and during their caution interview they admitted that they robbed the Complainant off his taxi registration number LK 0617, Samsung Galaxy A04E phone and cash from his wallet.
 - XVI. Both Accused and the Juvenile were subsequently charged for 1 Count of Aggravated Robbery contrary to section 311 (1) (a) of Crimes Act 2009 and they pleaded guilty to the offence.
4. The facts admitted by the Accused and the Juvenile satisfy all the elements of Aggravated Robbery. I find the Accused and the Juvenile guilty of Aggravated Robbery as charged.
 5. This Court adjourned the matter for plea in mitigation and sentencing hearing and for the report from the Social Welfare Officer in respect of the Juvenile. Plea in mitigation was filed by the Legal Aid counsel and a progress report by the Social Welfare Officer. The State filed a sentencing submission.
 6. In selecting the sentences that are best suited to the offenders, the courts must have regard to the proportionality principle enshrined in the Constitution, the Sentencing principles in the Penalties Act 2009 (SPA), the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victims, the final sentence should be

determined after making appropriate adjustments for the aggravating and mitigating circumstances.

7. Property-related offences such as Aggravated Robbery and Burglary are on the rise in Fiji. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent punishments. The community must be protected from robbers. This Court must see that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such offences. The offenders must receive condign punishment to mark society's outrage and denunciation against such offences.
8. The maximum sentence for Aggravated Robbery is 20 years' imprisonment. It is now settled that offenders of Aggravated Robbery must be sentenced in accordance with the sentencing regime and the tariff set out in **Eparama Tawake v State**¹ (*Tawake*) by the Supreme Court.
9. In *Tawake*; the Supreme Court identified the starting points and the sentencing ranges for the three categories of "Robbery" as follows;

HIGH	ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON	AGGRAVATED (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON
	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment	Starting point: 9 years imprisonment Sentencing range: 6-12 years imprisonment
MEDIUM	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment
LOW	Starting point: 18 months imprisonment Sentencing range: 6 months - 3 years imprisonment	Starting point: 3 years imprisonment Sentencing range: 1 - 5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3 - 7 years imprisonment

¹ CAV 0025.2019 (28th April 2022)

10. According to the tariff set out in *Tawake*, there is no need to identify different levels of culpability because the level of culpability is reflected in the nature of the offence, and if the offence is one of aggravated robbery, which of the forms of aggravated robbery the offence took. When it comes to the level of harm suffered by the victim, there should be different levels. The harm should be characterised as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge's opinion, the harm falls between high and low (para 25).
11. Once the level of harm suffered by the victims has been identified, the Court should use the corresponding starting point from the table set out in the judgment to reach a sentence within the appropriate sentencing range (para 26).
12. MK was 16 years old at the time of the offence. Accordingly, he is classified as juvenile by virtue of Section 57 of the Corrections Services Act 2006 which has amended Section 2 of the Juveniles Act. The Corrections Services Act 2006 defines a juvenile to be a person who has not attained the age of 18 years, including a child and a young person.
13. Section 30(3) of the Juveniles Act provides that a young person shall not be ordered to be imprisoned for more than two years for any offence. Section 32 (1) and (2) further provides how to deal with juvenile offenders as follows:

32 (1) Where a **juvenile** is tried for an offence and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other written law, the case should be dealt with, namely-

- (a) by discharging the offender under section 44 of the Penal Code;
- (b) by ordering the offender to pay a fine, compensation or costs;
- (c) by ordering the parent or guardian of an offender to pay a fine, compensation or costs;
- (d) by ordering the parent or guardian of the offender to give security for the good behaviour of the offender;

- (e) by making a care order in respect of the offender;
- (f) by making a probation order in respect of the offender;
- (g) where the offender is a young person, by ordering him to be imprisoned;
- (h) by dealing with the case in any other lawful manner.

14. However, nothing in Section 32 of the Juveniles Act in any way restricts the power of the court to make any order or combination of orders which it is empowered to make under the Juvenile Act or any other written law except corporal punishment.
15. The culpability levels of all offenders are almost on the same footing. No weapon was used in the commission of the offence. However, the Juvenile sprayed a police pepper spray on the victim's face which gave burning sensation to his face and eyes. Considering the sentencing guidelines in Tawake, I would pitch this case in the medium category of aggravated robbery (offender either with another and with a weapon) in view of the physical and psychological harm caused to the victim. Accordingly, the corresponding sentencing range would be 3 – 7 years imprisonment and the starting point would be 5 years.
16. I would identify aggravating features in terms of the non-exhaustive list of aggravating factors in Tawake guidelines. There is evidence of pre-planning signified by the presence of a police pepper spray in the possession of the juvenile and making the victim drive the taxi to an isolated place. The value of the property targeted was high. They robbed the victim of his taxi which was his livelihood, two mobile phones and money. The victim was pulled out of the taxi after spraying pepper on his eyes. The juvenile played the leading role in spraying pepper and searching the pocket of the victim and robbing of his belongings.
17. **The sentence for Waisea So Baleiwai (1st Offender)**

Baleiwai is 22 years of age, young and first offender. He is single and he lived with his parents. He admitted responsibility at the caution interview and pleaded guilty to the charge

at the first available opportunity. He has cooperated with police and the Court. He saved time and resources of this Court. I accept Baleiwai's is genuinely remorseful. The stolen items including the car were recovered.

18. I add one year for the aggravating features to the starting point of five years to arrive at six years. I deduct two years for the early guilty plea and one year for other mitigating factors to arrive at a sentence of three years imprisonment. He has been in remand for 8 months since he was arrested on 8 October 2023. I further deduct 8 months to arrive at a final sentence of two years and four months imprisonment.
19. Since the final sentence has not exceeded three years, I considered if Baleiwai is a suitable candidate to receive a suspended sentence. He is qualified to be considered for rehabilitation as a young and first offender who has expressed genuine remorse. However, he has pending cases of similar nature in other courts. His suitability for rehabilitation should be rightly balanced with the need for deterrence, and denunciation. Therefore, a full suspended sentence is not warranted. He deserves only a partially suspended sentence.

The sentence for Joshua Cecil Emmanuel Tuinivono (2nd offender)

20. Tuinivono is 22 years of age young and first offender. He is married with a child of two years. He is a labourer and lives with his family. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. He has cooperated with police and seeks mercy of the Court. He saved time and resources of this Court. Tuinivono is genuinely remorseful. The stolen items including the taxi were recovered.
21. I add one year for the aggravating features to the starting point of five years to arrive at a sentence of six years imprisonment. I deduct two years for the early guilty plea and one year for other mitigating factors to arrive at a sentence of three years imprisonment. Tuinivono has been in remand for 8 months since he was arrested on 8 October 2023. I

further deduct 8 months to arrive at a final sentence of two years and four months imprisonment.

22. Since the final sentence has not exceeded three years, I considered if Tuivono is a suitable candidate to receive a suspended sentence. He is qualified for rehabilitation as a young and first offender who has expressed genuine remorse. However, he has pending cases of similar nature in other courts. His suitability for rehabilitation should be rightly balanced with the need for deterrence, and denunciation. Therefore, a full suspended sentence is not warranted. He deserves only a partially suspended sentence.

23. **The Punishment for MK (Juvenile)**

MK was 16 years of age at the time of the offence. He is a child, and he comes from a broken family. He admitted responsibility at the caution interview and pleaded guilty to the charge at the first available opportunity. I accept that MK is genuinely remorseful. He has cooperated with the police and the Court. He saved time and resources of this Court. The stolen items including the car were recovered.

24. I add one year for the aggravating features to the starting point of five years to arrive at a punishment of six years. I deduct two years for the early guilty plea and two years for other mitigating factors to arrive at a sentence of two years imprisonment. He has been in boys' detention centre for 8 months since he was arrested on 8 October 2023. I further deduct 8 months to arrive at a final sentence of one year and four months imprisonment.
25. The progress report filed by the Social Welfare Officer indicates that the juvenile has shown a remarkable progress while in the Fiji Juvenile Rehabilitation Development Centre (FJRDC) for the past 8 months. He has handled tasks entrusted to him well without needing much guidance. He was always ready to help peers at the Centre and has created positive vibe in the community in his commitment to change for the better. The Officer is of the view that MK is committed to his journey of rehabilitation, taking part in programs like

arts and crafts and activities that help build character and social skills. Full suspended sentence is heavily weighted in favour of MK.

26. The following Orders are made:

- i. Waisea So Baleiwai (1st Offender) is sentenced to 2 years and 4 months imprisonment. 12 months of his sentence is suspended for a period of 3 years. Accordingly, he is to serve only 1 year and 4 months in the correction facility and the remainder of his sentence to be suspended for a period of three years.
- ii. Joshua Cecil Emmanuel Tuinivono (2nd offender) is sentenced to 2 years and 4 months imprisonment. 12 months of his sentence is suspended for a period of three years. Accordingly, he is to serve only 1 year and 4 months in the correction facility and the remainder of his sentence to be suspended for a period of 3 years.
- iii. MK (Juvenile) is sentenced to one year and four months imprisonment. The sentence is fully suspended for a period of three years.

27. The consequence of the suspended sentence is explained to the offenders and the juvenile.

28. 30 days to appeal to the Court of Appeal.




Aruna Muthge
Judge

24 June 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for Prosecution

Legal Aid Commission for Offenders