

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 096 of 2024

STATE

v

TANIELA RAIKILAGI

Counsel: Ms. Pai for the State
Accused: In Person

Mitigation Submission: 20th September, 2024
Date of Sentence: 27th September, 2024

SENTENCE

[1]. The Accused has pleaded guilty to the following offences

COUNT ONE

Statement of Offence

AGGRAVATED BURGLARY: contrary to Section 313 (1) (a) of the Crimes Act, 2009.

Particulars of Offence

TANIELA RAIKILAGI, on the 11th day of June, 2024 at, Nadi in the Western Division, entered into the property of **JACKS FIJI PTE** as trespassers, with the intention to commit theft therein.

COUNT TWO

Statement of Offence

THEFT: contrary to Section 291 (1) of the Crimes Act, 2009.

Particulars of Offence

TANIELA RAIKILAGI, with another on the 11th day of June , 2024at Nadi in the Western Division, dishonestly appropriated(stole) 1x modem and 1 x monitor speaker all to the value of \$576.40 the property of JACKS OF FIJI PTE with an intention of permanently Depriving JACKS OF FIJI PTE of all the said properties.

[2]. The Accused Taniela Raikilagi was first produced in the Lautoka Magistrate's Court on the 17th of June 2024and the matter was sent up to the High Court as an indictable offence.

[3]. He was then arraigned in the High Court on the 17th of June 2024. On the 1st of August 2024, He was explained and given his rights to counsel and he opted to personally appear on his behalf. He advised the Court through his counsel that he wished to take a progressive approach. He then pleaded guilty on both counts. The matter was adjourned to the 15th of August 2024 or the Summary of Facts to be outlined to the Accused.

[4]. **The Summary of Fact**

You have admitted the following summary of facts outlined;

- i) That the accused Taniela Raikilagi is 23 years of age unemployed and resides at Korociri in Nadi.
- ii) That the complainant Pritika Devi 32 years of age employed as a property Administrator at Jacks Fiji and resides at Korociri in Nadi
- iii) That on the 11th of June, 2024 at about 2.30 am the complainant went with one Rajith Nayanesh Nandan who is a technician at Jacks Fiji to one of their properties located at Nakurakura in Nadi. When the complainant Rajith entered the premises they noticed network cable box was left open. Search was conducted and they noticed 1x modem and 1x monitor screen both to the total that value of \$576 .40 were missing. There after a complainant was lodge Nadi Police Station and investigation was carried out.
- iv) During the course of investigations CCTV footage was viewed by Joshua Namumu and he confirmed that he viewed the CCTV footage extracted from Jacks Fiji Limited PTE Premise's and positively identified the accused on it. He had dealt with the accused on other cases that are pending in Court which is how he was able to identify him from the footage.

- v) On the 14th of June 2024 the accused was located near Nadi handicraft Centre by police and after his rights were given to him he was arrested and escorted to Nadi Police Station.
- vi) The accused was interviewed under caution by DC 6183 Sitiveni at the Nadi Police Station. The accused admitted that he and one Max went to one double storey apartment located at Nakurakura Nadi entered the house and into the room whereby Max unplugged the computer screen and also took the decoder with him. They carried the screen and the Decoder to the Vaivai tree at Raniga Street. The accused said that Max than asked him to look for the transport and upon his return he could not find Max. He showed the police the scene of crime and the place they carried the screen with the Decoder. He was also shown the CCTV footage and confirmed that he and Max were seen in the footage at the Crime Scene (Q&A 58 -91 of the Caution Interview Notes) annexed and Marked as PEX 1.
- vii) The accused was later charged with one count of aggravated Burglary contrary to 313 (1) (a) of the Crimes Act, 2009 and one count of Theft contrary top section 291 (1) of the Crimes Act 2009

[5]. Mitigation

In mitigation, counsel offers the following plea in mitigation: -

- (a) The Accused is 24 years of age,
- (b) He employed as a Construction worker and earns around \$300.00 a week
- (c) He is single and resides with his sister at Namaka, Nadi.
- (b) He is a young and first offender and a person of previous good conduct.
- (d) He fully cooperated with the police during the course of the investigations.
- (e) He has taken his early guilty plea and he has thus saved the Court's time.
- (f) He is remorseful for his actions and seeks forgiveness.
- (g) He has been in remand for a total period of 1month and 24 days

[6]. Law and Tariff

In terms of Section 313 (1) of the Crimes Act, "A person commits an indictable offence (of Aggravated Burglary) if he or she-

- (a) Commits a burglary in company with one or more other persons; or
- (b)

The offence of 'Burglary is defined at Section 312 (1) of the Crimes Act as follows: "A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building".

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

[7]. The tariff that this Court had been consistently following for the offence of Aggravated Burglary, was between 18 months to 3 years imprisonment. Even the Court of Appeal in **Leqavuni v. State** [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary was between 18 months to 3 years.

[8]. However, in the decision of **(Avishkar Rohinesh Kumar & Another v State** [2022] FJCA 164; AAU117.2019 (24 November 2022), the Fiji Court of Appeal formulated a new tariff for the offences of Burglary and Aggravated Burglary. Resident Justice of Appeal, His Lordship Justice Chandana Prematilaka (with Justices Suhada Gamalath and Priyantha Nawana agreeing) held:

*"[75] As the first step, the court should determine harm caused or intended by reference to the level of harm in the offending to decide whether it falls into High, Medium or Low category. The factors indicating higher and lower culpability along with aggravating and mitigating factors could be used in the matter of deciding the sentencing range. This would allow sentencers wider discretion and greater freedom to arrive at an appropriate **sentence** that fits the offending and the offender.*

[9]. **Determining the offence category**

The Court should determine the offence category among 01-03 using *inter alia* the factors given in the table below:

- **Category 1** - Greater harm (High)
- **Category 2** - Between greater harm **and** lesser harm (Medium)
- **Category 3** - Lesser harm (Low)

Factors indicating greater harm
<i>Theft of/ damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)</i>
<i>Soiling, ransacking or vandalism of property</i>
<i>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</i>

<i>Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.</i>
<i>Violence used or threatened against victim, particularly the deadly nature of the weapon</i>
<i>Context of general public disorder</i>
Factors indicating lesser harm
<i>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</i>
<i>Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced</i>

[10]. 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 or not guilty and 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)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER <u>EIT</u> HER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 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	Starting Point: 03 years	Starting Point: 05 years

	<i>Sentencing Range: 06 months – 03 years</i>	<i>Sentencing Range: 01–05 years</i>	<i>Sentencing Range: 03–08 years</i>
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- [11]. Considering all the facts and circumstances of this case, as reflected in the Summary of Facts, it is my opinion that the level of harm could be considered as medium. Therefore, the appropriate tariff in this case should be in the range of 3 to 8 years imprisonment for the offence of Aggravated Burglary.
- [12]. In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.
- [13]. In **Ratusili v. State [2012] FJHC 1249; HAA011.2012 (1 August 2012)**; His Lordship Justice Madigan proposed the following tariff for the offence of Theft:
- (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.*
 - (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.”*
- [14]. Since the theft in this case involved property of a reasonably high value, this cannot be considered as theft. Therefore, it is my opinion that in this case the appropriate tariff should be in the range of 6 months to 3 years imprisonment for the offence of Theft.

Sentence

- [15]. In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Korovuki v State [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013)**; has formulated the following guiding principles:

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating

*and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the **sentence** is outside the range."*

- [16]. In ***Kumar & Another v State (supra)***, their Lordships held that once the level of harm has been identified, the Court should use the corresponding starting point in the given table to reach a sentence within the appropriate sentencing range (paragraph 76 of the Judgment). As could be observed, the starting points in the said table are all in the middle range of the sentencing tariff.
- [17]. However, I respectfully submit that this is not consistent with what has been stated in ***Laisiasa Koroivuki v State (supra)***, where it was held that as a matter of good practice, the starting point should be picked from the lower or middle range of the sentencing tariff.
- [18]. In the light of the above, Taniela Raikilagi, I commence your **sentence** at 3 years imprisonment for the first count of Aggravated Burglary.
- [19]. Similarly, Taniela Raikilagi, I commence your sentence at 6 months imprisonment for the second count of Theft.
- [20]. The aggravating factors in this case are as follows:
- (i) The frequent prevalence of these offences in our society today.
 - (ii) You and your accomplices had trespassed into the business/commercial establishment of the complainant in the early hours of the morning thereby paying complete disregard to the complainant's privacy and property rights.
 - (iii) I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences, along with your accomplices.
 - (iv) You are now convicted of multiple offending.
- [21]. Taniela Raikilagi, in mitigation you have submitted as follows:
- (i) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
 - (ii) You have submitted that you are truly remorseful of your actions. You have promised not to re-offend.

(iii) That you entered an early guilty plea during the course of these proceedings.

[22]. Taniela Raikilagi, you are now 23 years of age [Your date of birth being 05th March 2001]. You are single and reside with your sister at Nawaka in Nadi. You are a Construction worker by occupation earning approximately \$300.00 per week. You are paying for the flat that you are living in which you are supporting your family.

[23]. You have submitted that at the time of the offending, you made a wrong decision as you were intoxicated and not in the right state of mind therefore because of that decision you are stand convicted before this honorable court.

[24]. You have submitted that you are a young and first offender and you have pleaded guilty at the earliest opportunity available. You admitted voluntarily at your own free will. Saving the courts time and resources of running full trial. You have cooperated with police in your caution interview notes. You admitted to the offence and there should be substantial remission for your early guilty plea. You have fully cooperated with police during caution interview you have shown remorse to your actions by pleading guilty to the offences and you are extremely sorry for what you have done.

[25]. You provide financial support for your younger sister. You are earning a honest livelihood contributing positively to society. You are actively working towards your personal rehabilitation.

Considering the aforementioned aggravating factors, Taniela Raikilagi, I increase your sentences by a further 4 years. Now your sentence for count one would be 7 years imprisonment. For count two, I increase your sentence by 2 years your sentence for count two would be 2 years and 6 months imprisonment.

[26]. Taniela Raikilagi, I accept that you have fully co-operated with the Police in this matter and you are a first offender, I accept that your remorse maybe genuine. However, considering that you are a young first offender, I cannot accept your promise not to re-offend. Accordingly, considering that you fully co-operated with the Police in this matter and your show of remorse, I deduct 2 years from your sentences. Now your sentence for count one would be 5 years imprisonment. I deduct 1 year for count two, your sentence for count two would be 1 years and 6 months imprisonment.

[27]. Taniela Raikilagi, you have entered an early guilty plea as it was given soon after the information was read to you in court. Therefore, your guilty plea will be considered as an early guilty plea, nevertheless, in doing so you saved some of the resources of this Court, instead of proceeding with the matter for trial. For your guilty plea I grant you a further discount of 1 years 7 months for Count 1 and 10 months for Count 2. Now your sentence for

count one would be 3 years and 5 months imprisonment and for count 2 I deduct 6 months your sentence for count two would be 1 year imprisonment.

[28]. In the circumstances, Taniela Raikilagi, your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act-3years and 5 months imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –1 year imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your final total term will be **3 years and 5 months imprisonment.**

[29]. The next issue for consideration is whether your sentence should be suspended.

[30]. Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate’s Court.

[31]. Taniela Raikilagi, considering the nature and gravity of the offending and your culpability and degree of responsibility for the offending in this case, and the previous convictions against your name, this Court is not in a position to suspend your sentence or even a part of the sentence that the Court is imposing in this case.

[32]. Accordingly, I sentence you to a term of 3 years and 5 months imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 2 years imprisonment.

In the result, your final sentence is as follows:

Head Sentence - 3 years and 5 months imprisonment.

Non-parole period - 2 years imprisonment

[33]. Section 24 of the Sentencing and Penalties Act reads thus:

“If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.”

[34]. Considering the time you have spent 3 months in remand, the time remaining to be served is as follows:

Sentence - 3 years and 2 months imprisonment.

Non-parole period - 1 year and 2 months imprisonment.

[35]. You have 30 days to appeal to the Court of Appeal.




Sekonaia V. Vodokisolomone
Acting Puisne Judge

27th Day of September 2024

Solicitors:

Office of the Director of Public Prosecutions, Lautoka.
Office of the Legal Aid Commission, Lautoka.