

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 201 OF 2023

STATE

-v-

KITIONE RATU

Counsel : Ms S. Naibe for Prosecution
: Mr P. Chand for Offender

Date of Sentence Hearing : 27 November 2024

Date of Sentence : 11 December 2024

SENTENCE

1. Mr Kitione Ratu (The Offender), along with two others, was arraigned on the following information filed by the Director of Public Prosecutions:

COUNT ONE

Statement of Offence

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

Particulars of Offence

KITIONE RATU, RAVIELI RATU and ISOA NASARA ROKOBARO between November 13 and November 14, 2023 at Tavua in the Western Division, entered into the dwelling house of EREMASI SAUNE as a trespasser, with intent to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence KITIONE RATU, RAVIELI RATU and ISOA NASARA ROKOBARO between November 13 and November 14, 2023 at Tavua in the Western Division, dishonestly appropriated (stole) 3 x mats valued at \$600.00, 1 x portable wifi valued at \$100.00, 1 x PUMA black travelling bag valued at \$20.00, 1 x money box valued at \$3.95 and 1 x RKS t-shirt valued at \$20.00, the properties of EREMASI SAUNE, with intention of permanently depriving EREMASI SAUNE of his properties.

2. You understood and pleaded guilty to both counts of your own free will, while the two co-accused pleaded not guilty. I am satisfied that your pleas were informed, voluntary and unequivocal.
3. You agreed to the following summary of facts read by the State:

The complainant in this matter EREMASI SAUNE (PW1), at the material time, was residing at Kavuli, Tavua.

The accused in this matter is KITIONE RATU, at the material time was 20 years old, residing at Korovou village, Tavua.

Between the 13th and 14th of November 2023, PW1 left his home to attend a family function at Rabulu village, and before leaving, he had securely locked the house and left with this family. Upon returning on 14th November 2023, PW1 noticed that his house had been broken into and certain items were missing. PW1 noticed that the following items were missing from his home: - 3x mats valued at \$600.00; - 1x portable WiFi valued at \$100.00; - 1x PUMA black travelling bag valued at \$20.00; - 1x money box valued at \$3.95; - 1x RKS t-shirt valued at \$20.00; All to the total value of \$743.95.

The matter was reported to the police and investigations were carried out. The accused was then arrested and interviewed under caution. The accused admitted to entering PW1's house when the house was empty and stole the above-mentioned items.

The accused was later charged with one count of Aggravated Burglary contrary to section 313 (1) (a) of the Crimes Act 2009 and 1 count of Theft contrary to section 291 (1) of the Crimes Act 2009. There were partial recoveries.

4. The maximum penalty for the offence of aggravated burglary is 17 years imprisonment. The Court of Appeal in *Avishkar Rohinesh Kumar and Another v The State* [2022] FJCA 164; AAU 117 of 2019 (24 November 2022) established a new tariff for the offence of aggravated

burglary. Accordingly, 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 the High, Medium or Low category. The Court should determine the harm category using 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>

5. There is no evidence that you had caused any damage to the property when you entered the house. The value of property stolen is very low (\$743.94). There were partial recoveries. I would put this burglary into the lesser harm category.

6. Having identified the level of harm, I would consider the culpability level of your offence using the following tables to reach a sentence within the appropriate sentencing range and select a starting point. Further adjustments will be made for aggravating or mitigating features once the starting point has been picked.

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND 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 Sentencing Range: 06 months - 03 years	Starting Point: 03 years Sentencing Range: 01-05 years	Starting Point: 05 years Sentencing Range: 03-08 years

Factors indicating higher culpability
<i>Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence). Child or the elderly, the sick or disabled at home (or return home) when offence committed</i>
<i>A significant degree of planning, or organization or execution. Offence committed at night.</i>
<i>Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.</i>
<i>Equipped for burglary (for example, implements carried and/or use of vehicle)</i>
<i>Member of a group or gang</i>
Factors indicating lower culpability
<i>Offence committed on impulse, with limited intrusion into property or little or no planning</i>
<i>Offender exploited by others or 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</i>
<i>Mental disorder or learning disability, where linked to the commission of the offence</i>

7. The culpability level is low in this case. It appears that the offence was opportunistic. There is no evidence that you were equipped with a weapon or equipment. I would put this offence

in a low-level category, attracting a starting point of 01 year within the sentencing range of 06 months to 03 years imprisonment.

8. The maximum sentence for Theft is 10 years' imprisonment. The tariff ranges from 4 months to 3 years imprisonment (*Waqa v State* [2015] FJHC 72 (5 October 2015)).
9. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence on each offender for both offences.
10. Having considered the harm factor and the culpability factor discussed above, I would select a starting point of one year from the bottom end of the tariff for Aggravated Burglary, which is the principal offence.
11. Property-related offences such as Burglary and Theft are on the rise in Fiji. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent punishments. However, the young and first offenders should be given a second chance to rehabilitate themselves.
12. There are no significant aggravating factors in the offence. However, the courts should be sensitive to the increasing number of burglaries happening in this country and the expectations of the public the court system is required to respond.
13. You are 20 years old and was 19 at the time of the offence. You are the eldest of four younger siblings who are still schooling. You were selling vegetables to feed your siblings and parents. You have maintained a clear record in the past. You pleaded guilty at the first available opportunity when your co-accused maintained not-guilty pleas. I accept that you are genuinely remorseful of your wrongdoing. You saved this Court's time and resources by pleading guilty.

14. You are a young and first offender. You are remorseful and you pleaded guilty at the first available opportunity accepting responsibility. The value of property stolen is low. The combination of these mitigating factors constitutes exceptional circumstances that justify a partially suspended sentence.

Summary

15. Mr Kitione Ratu, I sentence you to 18 months imprisonment. Twelve months of your sentence is suspended for 3 years. You are to serve 6 months immediately. The remainder (12 months) is suspended for three years.
16. You will be liable to be prosecuted if you re-offend in the three years to come. The consequences of breach of suspended sentence are explained.
17. 30 days to appeal to the Court of Appeal if the offenders so desire.



Aruna Aluthge
Judge

11 December 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for Prosecution

Legal Aid Commission for Defence