

**STATE v MALAKAI LABALABA, LORIMA DUAKA YABAKIDUA, APENISA NASORO (HAC0062 of 2012L)**

5 HIGH COURT — CRIMINAL JURISDICTION

THURAIRAJA J

26 June, 3 July 2012

10 **Criminal Law — sentencing — aggravated burglary — theft — tariffs for offences — aggravating factors — mitigating circumstances — early guilty plea — national disaster — suspended sentence — Crimes Decree ss 291(1), 313(1)(a) — Sentencing and Penalties Decree s 26(1).**

15 The first accused was convicted of aggravated burglary and theft. The accused, along with two others, had broken into a shop and stolen \$3,006 worth of biscuits.

**Held –**

20 The accused was sentenced to 12 months' imprisonment. Considering the amount involved in the theft and the accused's very early plea, only three months of the sentence will be served immediately and the balance of nine months will be suspended for two years.

Twelve month sentence imposed, with three months to be served immediately, and balance of nine months suspended for two years.

**Cases referred to**

25 *Chand v State* (2007) FJHC 65 HAA30.2007; *Maharaj v State* (2011) FJHC; HAA 014.2011; *Niudamu v State* (2011) FJHC 661; *Tomasi Turuturuvesi v State* (2002) AAA 86/02S, considered.

*K. Semisi* for the State.

30 *First Accused* in Person

[1] **Thurairaja J.** The 1st Accused above named had pleaded guilty to the charges leveled against him. The charges are as follows:

**First Count**

35 *Statement of Offence*

**AGGRAVATED BURGLARY:** Contrary to s 313(1)(a) of the Crimes Decree No 44 of 2009.

*Particulars of Offence*

40 **MALAKAI LABALABA, LORIMA DUAKA YABAKIDUA and APENISA NASORO** on the 1st day of April 2012 at Nadi in the Western Division entered **FLAVIO ITALIAN SHOP FIJI LTD** owned by **FLAVIO PISONI** as trespassers with intent to commit theft therein.

**Second Count**

**THEFT:** Contrary to s 291 (1) of the Crimes Decree No 44 of 2009.

45 *Particulars of Offence*

50 **MALAKAI LABALABA, LORIMA DUAKA YABAKIDUA and APENISA NASORO** on the 1st day of April 2012 at Nadi in the Western Division entered **FLAVIO ITALIAN SHOP FIJI LTD** and stole from therein 6 cartons of Di Puglia Biscuits, 6 cartons of Murgie Rosso Biscuits, 7 cartons of Castel Del Monte Biscuits, 4 cartons of Grifo Rose Biscuits, 5 cartons of Due Carri Saneilovese, 2 cartons of Souisitti Biscuits, 4 cartons of Chocolate Cookies, 4 cartons of Plain Cookies, 4 cartons of Olive Oil, 2 Gas Cylinders 1 Small Mini Fridge, 6 Frying Pans, Assorted Knives,

Plates & Spoons, 1 Bag with Assorted Tools, 1 Electrical Lead Wife, 1 Rain Coat and 1 Coil Rope all valued at \$3,006, the properties of **FLAVIO PISONI**.

[2] The 1st Accused admitted to the Summary of Facts.

5 **Summary of Facts**

On the 1st April 2012, Malakai Labalaba and two others broke into the Flavio Italian Shop Fiji Ltd on Denarau Road in Nadi and stole \$3,006 worth of Italian imported Biscuits.

The complainant is Mr flavio Pisoni, originally from Italy and is running this business in Nadi.

10 On the 31st March 2012, the complainant and some of his staff members went to the shop and organized everything inside the shop anticipating the floods and left the shop after securely locking the doors. On the 1st April 2012, the complainant was informed by one of his staff members that the shop had been broken into and on the 2nd April 2012, the complainant went to check on his shop and found the main door broken and the above items stolen from therein.

15 The matter was reported to the police and upon receiving information, Malakai Labalaba was arrested and interviewed under caution wherein he admitted to breaking into the Flavio Italian Shop Fiji Ltd and stealing several items from inside the store. Malakai Labalaba was later charged for one count of Aggravated Burglary, contrary to s 313(1)(a) and one count of Theft, contrary to s 291(1) of the Crimes Decree No 44 of 2009.

[3] Being convinced with the Plea of the 1st Accused being unequivocal he was found guilty and convicted as charged.

[4] Malakai Labalaba you stand convicted for Aggravated burglary and Theft 25 punishable under s 313(1)(a) and s 291(1) of the Crimes Decree 44 of 2009.

[5] Section 313(1) prescribes a maximum sentence of 17 years imprisonment.

[6] Section 291 (1) of the Crimes Decree prescribes a maximum sentence of 10 years imprisonment.

30 [7] Considering the tariff to the offence of Aggravated Burglary was discussed in *Maharaj v The State* (2011) FJHC; HAA 014.2011 and *Tomasi Turuturuvesi v State* (2002) AAA 86/02S according to these cases the tariff is between 18 months and 3 years imprisonment.

35 [8] Tariff for Theft was discussed in *Niudamu v The State* (2011) FJHC 661; HAA 028.2011 (20th October 2011) the tariff set was 2 – 9 months. In *Chand v State* (2007) FJHC 65 HAA30.2007 Mataitoga J affirming the tariff of Larceny is with range of 2 to 3 years.

[9] Considering law and the tariff I commence your sentence as follows:

- 40 (i) Aggravated Burglary – 2 years imprisonment  
(ii) Theft – 12 months imprisonment.

[10] Considering the aggravating factors:

- (a) You have entered a business place at Nadi Town;  
(b) You have burgled a shop which was closed for floods;  
45 (c) Your act causes the business community especially foreign investors insecure.  
Considering above factors I increase your sentence by 6 months now your sentence are as follows:

- (i) Aggravated Burglary – 2 years & 6 months imprisonment  
(ii) Theft 18 months imprisonment.

50 [11] Both offences were committed in the same course of transaction hence your both sentence will be implemented concurrently.

[12] Considering the mitigating circumstances:

- (a) You have pleaded guilty at the very beginning of the case;
  - (b) Your period in remand little more than 2 months
  - (c) You are remorseful
  - 5 (d) Sole breadwinner of your family
  - (e) Married, with 2 small children
  - (f) Seeking forgiveness
- Considering all above mitigating circumstances I reduce your sentence by 18 months now your sentence is 12 months imprisonment.

10 [13] You plead with Court to consider a suspended sentence to you. I consider s 26(1) of the Sentencing & Penalties decree.

[14] You have committed the offence at the time of National Disaster I am unable to consider your request fully. But considering the amount involved in the theft and your very early plea your sentence will be implemented as follows:

15 Part of your sentence of 3 months you will be serving immediately and the balance of 9 months is suspended for a period of 2 years.

[15] You are sentenced to 12 months imprisonment 3 months you will be serving and the balance 9 months suspended for a period of 2 years.

20 [16] Thirty days to appeal to Court of Appeal.

*Sentence imposed.*

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