

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 92 of 2016

STATE

v

TAITUSI MIKAELE

For the Prosecution : **WCPL Musuqawa**
For the Accused : **Ms Nasedra. S**
Sentence : **24 November 2017**

SENTENCE

1. The accused, Taitusi Mikaele, you are before this court to be sentenced for three counts of *Theft*.
2. On 3 July 2017, you pleaded guilty to all the three counts of theft in the presence of your counsel. I find your plea to be unequivocal.
3. The brief summary of facts are;-

"The accused stole yaqona plants from the farm of his brother Josaia Qovunitokalau at Bureseni, Seaqaqa in three separate occasion. First, is on 2 February 2016, where you stole 5 grog plant valued \$300.00. Second, is on 6 February 2016, where you stole 7 grog plants valued \$400.00. Lastly on 13 February 2016, where you stole 2

grog plants valued \$150.00. You sold all these grog plants and only the 2 grogs plants you stole on 13 February 2016 were recovered."

4. You admitted to the above summary of facts on 3 July 2017, and convicted as charged. Your counsel submitted oral mitigation on your behalf on the same day.
5. The maximum penalty for *Theft* is 10 years imprisonment. In the case of ***Ratusili v State*** [2012] FJHC 1249; HAA011.2012 (1 August 2012), the High Court set the tariff as follows:-
 - a) *First offence of simple theft, sentence range between 2 and 9 months;*
 - b) *Any subsequent offence, attracts penalty at least 9 months;*
 - c) *Theft of large sum of money and theft in breach of trust, whether first offence or not attract sentences of up to 3 years;*
 - d) *Planned thefts attract greater sentence than opportunistic thefts.*
6. The only aggravating factor is that you deprive the victim from harvesting the fruit of his hard work.
7. The mitigation factors are:-
 - a. *24 years with one child,*
 - b. *Remorseful and ask for the court forgiveness.*
 - c. *Promise not to re-offend.*
 - d. *Ask for court leniency*
8. This is a well planned theft as it were executed on three separate occasion and it attract greater sentence. For your sentence, I pick 12 months as my starting point. I add 6 months for the aggravating factor. That increases your sentence to 1 year and 6 months imprisonment. I reduce 4 months for your mitigation. That reduces your sentence to 1 year and 2 months imprisonment.
9. You plea to the charge after one year from the first day you produce in court and you are not entitle for the early guilty plea concession. However, I will reduce 3 months from your sentence for your guilty plea. That reduce your sentence to 11 months imprisonment.

10. In **State v Filipe Ratusuka & others**, *High Court, Criminal Appeal No. HAA 001 of 2013 (7 March 2013) Goundar. J*, stated that animal and farm theft is considered as a serious offence and immediate custodial sentence should be imposed. In light of this decision I find that this is not an appropriate case for suspended sentence.
11. Your final sentence is 11 months imprisonment.
12. In your mitigation, you informed the court that you are currently serving in custody and you asked for a concurrent sentence.
13. Taitusi Mikaele, I now sentence you as follows;-
 - a. *Count 1 - Theft - 11 months imprisonment.*
 - b. *Count 2 - Theft - 11 months imprisonment.*
 - c. *Count 3 - Theft - 11 months imprisonment.*
 - d. *Sentence to be served concurrently and also to run concurrently with the sentence that you currently serving.*

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE