

**IN THE RESIDENT MAGISTRATES COURT  
AT LABASA - CRIMINAL JURISDICTION**

**Criminal Case No. 483 of 2017**

**BETWEEN :** The State

**Prosecution**

**AND :** Metuisela Tawake

**Accused**

For the State : PC Kaisusu  
For the Accused : In-person

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**SENTENCE**

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1. The accused has been charged with the following offence:

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Statement of Offence [a]

BURGLARY: Contrary to section 312(1) of the Crimes Act of 2009.

Particulars of Offence [b]

**Metuisela Tawake** on the 23<sup>rd</sup> day of September 2017, at Labasa in the Northern Division, entered into the dwelling house of SABHATRA WATI as a trespasser, with intent to steal therein.

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2. The accused indicated that he was ready to take his plea, after he had waived his right to counsel and had elected to have his matter dealt with in the Magistrate's court.

3. The charge was put to the accused he pled guilty and admitted the summary of facts.

4. The summary of facts are stated as follows:

“On the 23<sup>rd</sup> day of September, 2017 at about 6pm at Siberia, Labasa, one Metuisela Tawake (Accused) broke and enter into the



dwelling house of Sabhatra Wati (Victim) 58 yrs, Domestic Duties of Siberia, Labasa.

On the above mention date, time, and place victim securely closed and locked the house before he went to Suva and his wife stayed back in another house. The said house was vacant. (Pw -1) was (victims) brother who went to check the house and discovered the front door opened. Whilst checking around he saw the (Accused) sitting near the house and upon questioning him he stated that he opened the house himself and slept inside.

The matter was reported at Labasa Police Station and investigation was conducted. Scene was visited and photograph by the investigating officer. Initial enquiry conducted around the vicinity (Accused) was arrested and interviewed under caution whereby he stated that he was chased away from home by his aunty and decided to go and sleep over to that vacant house. (Accused) admitted to the offence he committed and also cooperate with the police investigation. (Accused) was charge for one count of BURGLARY: contrary to section 312 of Crimes Act of 2009 (Accused) will be produced in custody today 27/9/2017."

5. Prosecution has chosen to charge the accused pursuant to Section 312 (1) of the **Crimes Act 2009** and it states as follows:  
" ...  
(1) 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.  
..."
6. The summaries of facts do not reveal that the offence of burglary has been committed however they do reveal that the alternative offence of **Criminal Trespass** has been committed.
7. Section 162 (i) of the **Criminal Procedure Act 2009** allows this court to convict an accused for a lesser or alternative offence related to property when the original charge is burglary.
8. As such in light of the facts the original charge is not made out however this court convicts the accused for the lesser charge of Criminal Trespass contrary to Section 387 (4) of the **Crimes Act 2009**.
9. The maximum penalty for Criminal Trespass under the Crimes Act is 01 year imprisonment.



10. The tariff for the offence of criminal trespass is mentioned as 1 - 9 months (Ravuwai v State [2007] FJ HC55; Buli v State [2011] FJHC 696; HAA 025.2011 (3 November 2011), State v Basilio Nukumata [2011] FJHC 109; HAC 184.2010).
11. In mitigation the accused stated that he was 20 years old, unemployed and was single. He also sought the forgiveness of the court.
12. Considering the offence, the facts, the tariff and the first and young offender status of the accused the court sentences the accused to one (1) month imprisonment which is suspended for 12 months.
13. If the accused is convicted within the next 12 months pursuant to section 28 of the **Sentencing and Penalties Act 2009** this sentence may be activated.
14. 28 days to appeal.

  
J .N.L.SAVOU

Resident Magistrate

23<sup>rd</sup> May 2018