

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 28 - 2019

STATE

-v-

APISAI NATINAVOU

Before : RM Fotofili L.
For Prosecution : WPC Chand A. and IP Lenaitasi S. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 19th July 2019

SENTENCE

1. **APISAI NATINAVOU**, you have pleaded guilty to the following charge:

Statement of Offence

THEFT: Contrary to section 291 of the *Crimes Act of 2009*.

Particulars of Offence

APISAI NATINAVOU on the 31st day of December, 2018 at Koro No. 2 Nadelei, Vatukoula in the Western Division stole a Brown Bull branded RYA valued at \$1,000 the property of Jay Prakash Chand.

2. I am satisfied that your guilty plea is voluntary, it is supported by the evidence tendered in support of your guilty plea and your admission in court. I am also satisfied that you understand the consequences of your plea.
3. I convict you of the charge accordingly.
4. You saw the victim's bull grazing near your land. You lured the bull to the river where you had some other boys ready there to slaughter the bull. You slaughtered the bull and sold the meat.

5. When arrested and interviewed by police later, you admitted that you went to your farm to kill the victim's bull which was grazing near the farm. The victim did not know anything about it. The bull followed your cow to the river. There you had 4 other boys slaughtered the bull. You sold the meat. You showed police during your interview where the incident happened. You knew the bull was not yours.
6. On the day you pleaded guilty, you admitted selling the meat for \$550.
7. On the 16th of July 2019 you paid \$1,000 into court as compensation for the victim. \$1,000 being the value claimed by the prosecution for the bull.
8. Pursuant to section 155 (1) (c) of the **Criminal Procedure Act 2009**, I order the whole of this sum or \$1,000 cash, is to be given to the victim. Prosecution is to advise the victim accordingly.
9. You have not spent any time in remand.
10. You have 1 previous conviction in June 2017 for absconding bail. I find this previous conviction unrelated to this case and 'irrelevant'. I will still consider you as a first offender and I will sentence you in this theft case you on that basis.
11. You are 30 years old. You have 2 children who are in school who you support. You are helping your elderly father build a home. You are a farmer and you have paid \$1,000 into court as compensation for the victim. You seek forgiveness and you want to move on.

MAXIMUM SENTENCE

12. The maximum punishment for theft is up to 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

13. The sentencing tariff for theft is as follows [**Ratusili v State** [2012] FJHC 1249; HAA011.2012 (1 August 2012)] :

(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. Your case was simple but it was planned.

STARTING POINT

15. Based on the objective seriousness of the case, I select a starting point of 6 months imprisonment.

AGGRAVATING FEATURES

16. This was your neighbour.

17. The value of the bull stolen was relatively high.

18. You sold the meat.

19. The theft was planned. You had your boys ready for example.

20. Your sentence is increased to 12 months imprisonment.

MITIGATION

21. I accept that you are remorseful.

22. You have a family to look after and you are helping your elderly father.

23. I will treat you as a first offender.

24. You have paid \$1,000 to compensate the victim.

25. You cooperated with police during your interview.
26. Your sentence is reduced to 5 months imprisonment.

GUILTY EARLY

27. I accept that your guilty plea is early and I reduce your sentence to 3 months and 2 weeks imprisonment.

SUSPENDED SENTENCE & OBJECTIVE OF SENTENCING

28. I can suspend your sentence whether in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009** as long as your sentence is below 2 years imprisonment.
29. Your sentence will be aimed at deterrence and to punish you adequately.

FINAL SENTENCE

30. Your sentence is 3 months and 2 weeks imprisonment.
31. No further time will be deducted as you did not spend any time in remand.
32. I am inclined to suspend your sentence but only in part.
33. 2 months is suspended for the next 18 months. You commit any other offence punishable with imprisonment in the next 18 months and this 2 months imprisonment held in waiting may be activated.
34. You will serve the remaining 1 month and 2 weeks imprisonment immediately.
35. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 19th day of July, 2019.