

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

Criminal Case No: 85 - 2019

STATE

-v-

JOSEFA LASAGANIBAU

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 29th October 2019

SENTENCE

1. **JOSEFA LASAGANIBAU**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

JOSEFA LASAGANIBAU, on the 28th day of February, 2019 at Tavua in the Western Division, stole a **NOKIA** brand mobile valued at \$50.00 and a I-PRO brand mobile phone valued at \$50.00 to the total value of \$100.00 the property of **SHARDA DEVI** with intent to permanently deprive the said **SHARDA DEVI** of her property.

2. I am satisfied that your guilty plea 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 and two others were selling brooms. You came across the 64 year old female victim's house. She needed help fixing her tv connection and invited all of you into the house. When leaving the house, you took the 2 phones which were on top of a table inside her house. The victim only realized it was missing after you had left.

5. During the course of police investigation, you were arrested and interviewed by police. You admitted the same. You added that you gave the phones to 2 people who had asked to use them. You also showed police during a scene reconstruction where you had stolen from.
6. Only 1 of the phones has been recovered. It is the Nokia brand mobile phone.
7. I have already ordered the release of this item to the owner pursuant to section 155 (1) (c) of the Criminal Procedure Act 2009. That was done on the 28th of March 2019.
8. You were bailed when you were produced for the first time before me. Your bail was later cancelled after being subsequently produced for another burglary and theft case Tavua CF 104 – 19. You had to be remanded in custody.
9. You were supposed to be sentenced on the 13th of September 2019 but due to no fault of yours, your sentence was adjourned to today.
10. I will only consider the time you have spent in remand from the 13th of September 2019 until today as time served and that I approximate to 1 month and 14 days imprisonment.
11. You are a first offender.
12. You are 22 years old. You seek forgiveness. You promise not to reoffend. You wife gave birth recently.

MAXIMUM SENTENCE

13. The maximum punishment for theft is 10 years imprisonment.

SENTENCING RANGE or SENTENCING TARIFF

14. 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.

STARTING POINT

15. Based on the objective seriousness of the offence, I select a starting point of 5 months imprisonment.

AGGRAVATING FEATURES

16. You stole from inside the victim's house. She trusted you in allowing you inside her home. You breached that trust.
17. Your sentence is increased to 9 months imprisonment.

MITIGATION

18. You are a first offender.
19. Your cooperation has resulted in 1 of the phones being recovered.
20. You have cooperated with police during your interview.
21. I accept that you are remorseful.
22. You have a family to look after.
23. Your sentence is reduced to 5 months imprisonment.

GUILTY EARLY

24. I accept that your guilty plea is early and I reduce your sentence to 3 months and 14 days imprisonment.

FINAL SENTENCE

25. Your sentence will be aimed at deterrence and to punish you adequately.
26. You are sentenced to 3 months and 14 days imprisonment.
27. As explained earlier, I will only consider 1 month and 14 days you have spent in remand as time served and I deduct this from your sentence.
28. You have 2 months imprisonment remaining.
29. I am aware of your sentence for the burglary and theft case passed on you today in CF 104 – 19.
30. I have considered the totality principle and the one transaction rule.
31. Your remaining 2 months imprisonment term in this case will be suspended in part.
32. 1 month is suspended for the next 2 years. Do not commit any other offence punishable with imprisonment in the next 2 years. If you do, this 1 month imprisonment held in waiting maybe activated.
33. You will serve 1 month imprisonment immediately and it will be consecutive to your sentence in your burglary and theft case CF 104 – 19.
34. 28 days to appeal to the High Court if you are dissatisfied with your sentence.



[Handwritten signature]

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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 29th day of October 2019