

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 187 of 2018

STATE

v

ATUNAIISA BALEITOGA DAUMEKE

Appearance : **WSGT Mere** for Prosecution
Accused in person

Sentence : **21 January 2019**

SENTENCE

1. Atunaisa Baleitoga Daumeke, today is for sentencing for one count of *Theft* where you contravened *section 291* of the *Crimes Act*.
2. On 16 April 2018, you wish to be represented by counsel from the Legal Aid Commission (LAC). On 3 December 2018, the accused still appearing without his counsel after seven adjournment. The accused fail to submit any acknowledgement slip from LAC to confirm that he has lodge his application at LAC. The accused was informed that right to counsel is not absolute so the charge was put to the accused for plea.

3. The accused pleaded guilty to the charge on 3 December 2018. I find your plea to be unequivocal as it was given on your own free will.
4. The brief summary of facts are;-

“On 4 April 2018, the victim Maafu Hunt, farmer of Savadridri, Saivou, reported that Atunaisa Daumeke Baleitoga (the accused) stole 8 yaqona plants from his farm. The accused was arrested and interviewed where he admitted to the allegation.”
5. You admitted to the above summary of facts on 3 December 2018, and convicted as charged. On the same day the Accused submitted his oral mitigation.
6. 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.*
7. The aggravating factor is that you deny the victim to enjoy the fruit of his hard work and sweat.
8. The compelling mitigating factor are;-
 - a. *First Offender.*
 - b. *Seek the court forgiveness.*
9. This is a planned theft. For your sentence, I pick 1 year as my starting point. I add 1 year for the aggravating factor and that increase your sentence to 2 years imprisonment. I reduce 6 months for your mitigation that reduce your sentence to 1 year and 6 months imprisonment.

10. I reduce 6 months from your sentence, as your one third entitlement for your early guilty plea. That reduce your sentence to 1 year imprisonment.
11. I noted from the court record that you have been in remand for about 4 months and 3 weeks. I reduce 4 months and 3 weeks from your sentence. Your final sentence is 7 months and 1 week imprisonment.
12. In this sentence I have considered *section 4* of the *Sentence and Penalties Act*, and the principle of rehabilitation. In doing so, I also reminded myself of *Goundar. J*, decision in ***State v Filipe Ratusuka & Others***, *High Court, Criminal Appeal No. HAA 001 of 2013 (7 March 2013)*, where his Lordship stated that animal and farm theft are considered as a serious offence and immediate custodial sentence should be imposed.
13. This Court is bound by the decision in ***Ratusuka*** (*supra*), therefore, suspended sentence is not an option in this case.
14. Atunaisa Baleitoga Daumeke, I now sentence you to 7 months and 1 week imprisonment with immediate effect.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE

