

**IN THE MAGISTRATES' COURT OF FIJI**  
**AT NAUSORI**

Criminal Case No: - 770/2017

**STATE**

**V**

**TANIELA DAMASO**

For the Prosecution : WPC Siteri and PC Sharma

The accused : In person

Date of Judgment: 29<sup>th</sup> of April 2019

Date of Sentence: 29<sup>th</sup> of April 2019

**SENTENCE**

1. **TANIELA DAMASO** , you were convicted this morning to one count of Burglary contrary to section 312(1) of the Crimes Act No 44 of 2009("Crimes Act") and one count of Theft contrary to section 291(1) (2) of the Crimes Act .
2. You pleaded not guilty and during the hearing the prosecution proved you entered into the house of the complainant as trespasser on 15<sup>th</sup> April 2017 and stole one LG TV and one Deck to the total value of \$3237.00. You are from the same village as the complainant and whilst he was away in hospital attending to his sick son you committed these offences. Only the TV was later recovered when the complainant identified it from the shop where you sold it earlier for only \$150.00.
3. The maximum penalty for Burglary under the Crimes Act is 13 years imprisonment.
4. The penalty for the Theft is 10 years imprisonment.
5. In **State v Mate** - Sentence [2018] FJHC 249; HAC76.2018 (3 April 2018) his Lordship Justice Goundar observed :

“The maximum penalty prescribed for burglary is 13 years imprisonment. The suggested tariff for burglary is between 1 to 3 years’ imprisonment *Waqavanua v State* [2011] FJHC 247; HAA013.2011 (6 May 2011); *Uluicicia v State* [2015] FJHC 61; HAA028.2014 (30 January 2015).

[5] The maximum penalty prescribed for theft is 10 years imprisonment. The tariff depends on the nature of theft, but it can range from 2 months to 3 years imprisonment (*State v Saukilagi* [2005] FJHC 13; HAC0021X.2004S (27 January 2005)).”

6. Section 17 of the Sentencing and Penalties Act, provides:

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

7. The offences that you convicted are found on same facts and hence I am going to impose an aggregate sentence of imprisonment for these two counts pursuant to section 17 of the Sentencing and Penalties Act.
8. In *Laisiasa Koroivuki v the State* [2013] FJCA 15; AAU0018.2010 (5 March 2013) Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed :

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

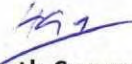
9. Considering the above judicial precedents and based on an objective seriousness of offences, I select 18 months as starting point of your aggregate sentence.
10. In State v Takalaibau - [2018] FJHC 505; HAC154.2018 (15 June 2018) Justice Goundar cited the Brewster 1998 1 Cr App R 220 where Lord Bingham CJ observed : “**Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.**”

11. Hence a sentencing court may consider the following grounds as aggravating factors in a domestic burglary :
- a. **Considerable loss of properties ;**
  - b. **The properties stolen may have some sentimental value to the owner;**
  - c. **Significant damage done to the property;**
  - d. **There were some planning ;**
  - e. **The owner was present when this was committed;**
  - f. **The offence was committed in the night time.**
12. According to the facts revealed during the hearing you stole LG TV and Deck to the total value of \$3237.00. Even though this may not seem to be a big amount in the present time, in a rural area and especially a village this is still a considerable amount. During the hearing it was also shown you are from the same village as the complainant. When inquired about this in your mitigation by this court, you admitted that the complainant is your cousin. Hence by committing these offences you breached his trust.
13. For these aggravating factors I add 20 months to reach 38 months imprisonment.
14. In mitigation this morning you submitted that you are 34 years old, married with 06 children, wife is 07 months pregnant , farmer and remorseful. For these mitigating factors I deduct 08 months to reach 30 months imprisonment.
15. Since you have previous conviction you are not entitled for discounts for your previous good character.
16. In Hayes (1984) 11 A. Crim R. 187 the Chief Justice, Sir Laurence Street of New South Wales Court of Criminal Appeal, made the following observations:
- “The invasion of people's homes and the plundering of their property is a social evil from which the community looks for protection to the law**

enforcement agencies and the criminal courts. It is, however, the considered view of this Court that the time has come for a hardening in the policy of criminal courts when sentencing for this offence.”

17. With the increase number of home invasions happening in the country and also in area of Nausori , I find the courts need to give more emphasis to deterrence and the protection of the public .Only in exceptional cases the court may consider non-custodial sentences even for young offenders. The time has come for the courts to hardened their policies and consider the public safety as paramount in dealing with these kinds of offences.
18. **TANIELA DAMASO**, accordingly I sentenced you to 30 months imprisonment for this charge with a non- parole period of 20 months.
19. 28 days to appeal.



  
Shageeth Somaratne

Resident Magistrate