

**IN THE MAGISTRATES' COURT OF FIJI  
AT SUVA  
EXTENDED CRIMINAL JURISDICTION**

*High Court Criminal Case No. 196 of 2016  
Magistrates' Court Criminal Case No. 822 of 2016*

**STATE**

**v.**

**JOSUA NAIVALU**

**For the State:** Ms. B. Kantharia, *of counsel*, for the Director of Public Prosecutions  
**For the Defendant:** In Person

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**SENTENCE**

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1. You entered a guilty plea to each Count on the State's Charge as follows:

***Count 1***

**Statement of Offence**

**AGGRAVATED BURGLARY:** contrary to section 313 (1)(a) of the **CRIMES  
ACT 2009**

**Particulars of Offence**

**JOSUA NAIVALU** and **ISOA KARAWA** on the 19<sup>th</sup> day of May, 2016 at Suva in the Central Division, entered into Scope Global Office at St. Fort Street, Suva as trespassers with intent to steal.

## ***Count 2***

### **Statement of Offence**

**THEFT**: contrary to section 291 (1) of the **CRIMES ACT 2009**

### **Particulars of Offence**

**JOSUA NAIVALU** and **ISOA KARAWA** on the 19<sup>th</sup> day of May, 2016 at Suva in the Central Division, dishonestly appropriated (stole) 2 x HP Laptop with bag valued \$2,300.00, 1 x Toshiba Laptop valued \$1,000.00, 2 x Black Berry Mobile phone valued \$1,000.00, 1 x white LG Mobile Phone valued \$500.00, 2 x External Hard Drive valued \$530.00 and 1 x Laptop charger valued \$100.00, all to the total value of \$5,430.00, the property of Scope Global Office, with intention to permanently deprive the said Scope Global Office of the above mentioned properties.

2. You entered your guilty pleas on 13 January 2020 and after you entered your guilty pleas I asked you if anyone had forced you into pleading guilty and you said, "No". I asked you if anyone had promised you anything in exchange for your guilty plea, and you said, "No." The following day, the State presented its Summary of Facts. This was read out to you in open court. We went count by count and you indicated that you understood and admitted the Facts as they related to each Count.

### ***Facts: Count 1***

3. On 19 May, 2016 at about 7.53pm, Daniel Tufaga, Manager of Scope Global, securely closed the office (Scope Global) and went home. You and another had been walking along St. Fort Street when you noticed the office of Scope Global and you decided to break into the office and steal from it. You and that other person went and hid at the ground floor of the office and waited for everyone to leave. After all the staff left, you and that other person forcefully broke the side wall and the main door to the Scope Global office. You used a gardening shovel to lever the main door in order to gain entry into the office. On 20 May, 2016 at about 8.47am, Daniel Tufaga received a call from one of his office employees informing him of the break-in at the office. He came to work and discovered that the side wall and the main door to the office had been broken into and items scattered on the floor.

***Facts: Count 2***

4. On 19 May, 2016, you and another at around 7.53 pm entered into Daniel Tufaga's office at Scope Global and dishonestly appropriated (stole) the following properties belonging to Scope Global:
- (i) 2 x HP laptops with bag valued at \$2, 300.00
  - (ii) 1 x Toshiba laptop valued at \$1, 000.00
  - (iii) 2 x Black Berry mobile phones valued at \$1, 000.00
  - (iv) 1 x white LG mobile phone valued at \$500.00
  - (v) 2 x external hard drives valued at \$530.00
  - (vi) 1 x laptop charger valued at \$100.00.

On 20 May, 2016 at about 8.30pm, police from Totogo Police Station were on mobile patrol along Anand Street, Suva when they saw you and another carrying two knapsack bags and acting suspiciously. They arrested you both and searched you and they found the items mentioned above on you both. You were both escorted to Totogo Police Station and interviewed under caution. You both admitted to the offences and you, in particular, had described how you entered the property and stole the properties listed herein. You looked through your Record of Interview in open court and you told me that you had given the answers contained in that Record and that you had given your answers voluntarily.

5. Moreover, you were shown your record of previous convictions and you admitted to having four live previous convictions. They are for two counts of burglary and two counts of theft and the dates of your convictions are 10 September 2013 and 26 September 2013. After perusing the Record and taking into account all that transpired during your sentencing hearing, I am satisfied that you knew what you were about when you entered your guilty pleas. I have no hesitation in finding you guilty and convicting you of *aggravated burglary* and *theft* as charged.

***Maximum Penalty & Tariffs***

6. The maximum penalty for *aggravated burglary* is imprisonment for 17 years. The tariff that applied at the time of the commission of this offence was 18 months to 3 years. That is the tariff I apply here: see ***Kumar v. State*** [2018] FJCA 148; AAU165.2017 (4 October 2018) at [3], [9] and [14] per Gamalath, Premalitika and Fernando JJA.

7. The maximum penalty for *theft* is imprisonment for 10 years. The tariff that applies ranges from 2 months to 3 years: see *Ratusili v. State* [2012] FJHC 1249; HAA011.2012 (1 August 2012) at [13] per Madigan J.

### ***Aggravating Factors***

8. In the course of the break-in, you caused significant damage and made a mess.

### ***Mitigating Factors***

9. You are 42 years old. You are married and you have 3 children, the eldest of whom is 13 years old and the youngest of whom is 8 years old. You state that you are genuinely sorry for what you did. You said in open court, with head bowed, that you did what you did voluntarily, without the effect of alcohol or drugs to cloud your mind and you said that you are very sorry indeed for what you did.
10. I received the distinct impression that you are ashamed of the man you were at that time.
11. You are a father, and a husband and you emphasised this several times. I understood from this that these are roles that are important to you now in a way that they were not before. You have a pig farm and a yagona farm and you told me that all your children are in school. More, you have experienced a sea-change internally. You were baptized as a member of the Church of the Latter Day Saints on 10 August 2019 and were ordained a priest on 22 September of that year.
12. You have been in remand since the 31 December 2019. I released you on bail on 14 January 2020. On 13 January 2020, you entered a guilty plea to this offence. I am of the firm belief that you are genuinely remorseful for what you did. In respect of the *theft*, the items taken were fully recovered *albeit* through the immediate actions of the Police rather than as a result of anything you had done to assist in that recovery at the time.

### ***Sentencing***

#### ***Aggravated Burglary***

13. I pick a starting point of 2 years and I increase this sentence by 12 months for the aggravating factors apparent here. Your sentence is now imprisonment for 3 years. I decrease this by 1 month for your personal circumstances. Your sentence is now

imprisonment for 2 years and 11 months. I deduct this sentence by 11 months and 2 weeks for your guilty plea. I declare the two weeks you spent in remand time already served. Your sentence is now imprisonment for 1 year and 11 months.

### ***Theft***

14. I pick a starting point of 12 months. It was the theft of a large amount of property. There are no readily discernable aggravating factors apparent here. I reduce this sentence by 1 month for your personal circumstances. Your sentence is now imprisonment for 11 months. I reduce this further by 1 month for the fact that the property taken were recovered. Your sentence is now imprisonment for 10 months. I reduce this further by one third for your <sup>P.</sup>early guilty plea. Your sentence is now imprisonment for 6 months and 2 weeks. I declare the 2 weeks you spent in remand time already served. Your sentence is now imprisonment for 6 months.

### ***Suspended Sentences***

15. Leo Tolstoy wrote, "*Everyone thinks of changing the world but no one thinks of changing himself.*" I am glad that was not true in your case. Your criminal history from 2013 notwithstanding, I believe you to be a good prospect for rehabilitation. I suspend both your sentences pursuant to section 26 (2) (b) of the **Sentencing and Penalties Act 2009** for a period of 3 years.
16. You must not commit another crime in the next 3 years. If you do, you may find yourself serving the 1 year and 11 month term for *aggravated burglary* and the 6 month term for *theft* that I suspended for your benefit today. In that unfortunate event, I make a prospective order that your terms be served concurrent to each other.

17. **30 days to appeal to the Court of Appeal.**



Seini K Puamau  
**RESIDENT MAGISTRATE**



Dated at Suva this 17<sup>th</sup> day of January, 2020.