

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

CF 285 – 2018 and CF 1247 – 2019 } consolidated under CF 285 - 2018

STATE

-v-

QILIVOTE NUKUCIRI – 1<sup>st</sup> Defendant  
MELI RATUBALAVU – 2<sup>nd</sup> Defendant  
NAELESONI NAVUASE – 3<sup>rd</sup> Defendant

Before : RM Fotofili L.  
For The Prosecution : A/WCPL Chand A. [ Police Prosecution ]  
For The Defendants : All In Person, All Waived Right To Counsel  
Date of Sentence : 22<sup>nd</sup> November 2021

SENTENCE

1. QILIVOTE NUKUCIRI, MELI RATUBALAVU and NAELESONI NAVUASE, all of you have pleaded guilty to the following consolidated charge [consolidated on the 2<sup>nd</sup> of July 2019]:

*Statement of Offence*

THEFT: Contrary to section 291 ( 1 ) of the Crimes Act Number 44 of 2009.

*Particulars of Offence*

QILIVOTE NUKUCIRI, MELI RATUBALAVU and NAELESONI NAVUASE on the 1<sup>st</sup> day of October, 2018 at Nakiniwai Togovere, Tavua in the Western Division, dishonestly appropriated a cow valued at \$600, the property of INIA SEGA, with the intention of permanently depriving the said INIA SEGA.

2. All of your plea and admission in court and the evidence tendered, supports all your guilty pleas. I am satisfied that all of you understand the consequences of your plea.
3. I find all of you guilty and convict all of you of the charge.
4. The three of you were on horseback. All of you were seen on the victim's farm who got suspicious and followed you three. All of you led the victim's cow away by tying the rope that was with the cow, to the tail of one of the horses. You all were signalling to each other about taking the cow away. When the victim shouted, you all released the cow and rode away. The cow was recovered by the victim. All of you were arrested and then interviewed under caution by police.
5. The 1<sup>st</sup> defendant Qilivote Nukuciri, in your interview with the police you voluntarily admitted that you went to set up traps for pigs. You went with others. You were informed that the victim's cow was tied nearby. You and the others untied the cow and led it away by horseback.
6. The 2<sup>nd</sup> defendant Meli Ratubalavu, in your interview with the police you voluntarily admitted that you went to steal the victim's cow but you were disturbed and ran away. You went with others. The victim's cow was tied to one of the horses you rode.
7. The 3<sup>rd</sup> defendant Naelesoni Navuase, in your interview with the police you voluntarily admitted much of the same as the other defendants.
8. For this case, only the 2<sup>nd</sup> defendant has spent time in remand.
9. The 2<sup>nd</sup> defendant Meli Ratubalavu was bailed initially but was then remanded on the 27<sup>th</sup> of October 2020 after he was charged with a case of theft Rakiraki CF 351 – 20 which was supposedly committed by him on the 18<sup>th</sup> of September 2020 while on bail for this case. He had to be remanded because ostensibly he has reoffended while on bail bearing in mind that the Bail Act 2002 defines an offence to include an alleged offence for the purposes of bail.
10. There were disruptions this year 2021 due to the COVID-19 pandemic which delayed the conclusion of many cases including this case. The 2<sup>nd</sup> defendant has been remanded unusually long due to that.
11. Arrangements had to be made to have the 2<sup>nd</sup> defendant appear from remand virtually via video conference.
12. I calculate that the 2<sup>nd</sup> defendant has been in remand for approximately 13 months.

13. I will not consider all of this time in remand as time served since the defendant was remanded again because of a subsequent allegation. I will only consider 8 months of the time the 2<sup>nd</sup> defendant has spent in remand as time served and I will deduct this from his sentence.
14. All three of you were first offenders when you committed the offence in this case.
15. The 1<sup>st</sup> Defendant Qilivote Nukuciri and the 2<sup>nd</sup> defendant Meli Ratubalavu, you did not wish to say anything in your mitigation before sentence.
16. The 3<sup>rd</sup> defendant Naelesoni Navuase, you only submitted that you seek forgiveness and you say that you can pay compensation but you have not paid anything yet or since the inception of your case.
17. From what I gather from the record of all your police interviews and the facts you all admitted, you are all farmers and your ages range between 19 to 22 years.

#### **MAXIMUM SENTENCE**

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

#### **SENTENCING RANGE or SENTENCING TARIFF**

19. 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**

20. Based on the objective seriousness of the offence, I select a starting point of 6 months imprisonment for all 3 of you.

### **AGGRAVATING FEATURES**

21. I am unsure who was leading this enterprise even after reading your police interviews. I deem all of you equally culpable or responsible.
22. The offence was committed in a group or in concert by all of you.
23. I am certain that this was planned.
24. Seeing the number of cases I have dealt with this jurisdiction. This offence is prevalent.
25. In agricultural communities such as our local district, farmers, their farms, farm equipment and farm animals are particularly vulnerable to sabotage and theft. Farms are usually unfenced and farm animals are usually kept in the open and not in farm houses, barns or stables. The cow in this case was of no exception.
26. I find the value of the animal stolen to be significant.
27. I increase all of your sentences to 11 months imprisonment.

### **MITIGATION**

28. The recovery of the cow cannot be said to be in your favour. You all were disturbed when taking the cow away.
29. However, all of you are first offenders.
30. Despite your unwillingness to be open during your mitigation, I accept that all of you are remorseful particularly because you all have pleaded guilty.
31. You all cooperated with police when questioned.

32. I reduce all of your sentences to 7 months imprisonment which is equivalent to 196 days imprisonment.

**GUILTY PLEA**

33. All of you have pleaded guilty early.
34. I reduce all of your sentences to 131 days imprisonment.

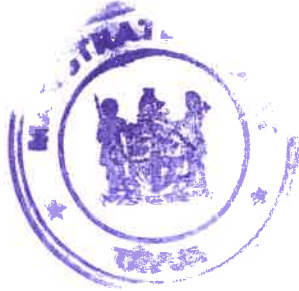
**OBJECTIVE IN SENTENCE**

35. All of your sentences is aimed at deterrence and is to punish you adequately.

**SUMMARY**

36. **QILIVOTE NUKUCIRI, MELI RATUBALAVU** and **NAELESONI NAVUASE** all of you are sentenced to 131 days imprisonment.
37. For the **1<sup>st</sup> defendant Qilivote Nukuciri** and the **3<sup>rd</sup> defendant Naelesoni Navuase**, your 131 days imprisonment will be suspended but only in part.
38. 13 days imprisonment will be served immediately by both of you in prison from today.
39. The remaining 118 days, that will be held in suspense in both your accounts for the next 18 months.
40. Both of you are not to reoffend or commit a serious offence in the next 18 months because you risk having this 118 days that is held in suspense or in waiting, being activated.
41. For the **2<sup>nd</sup> defendant Meli Ratubalavu**, you would have received the same sentence as your other co-defendants but as I have explained, I will take into account the 8 months you have spent in remand already.
42. I do not require you to observe the suspended sentence or serve any immediate term of imprisonment.

43. You are convicted but I discharge you of any further punishment in this case pursuant to section 15 (1) (h) of the Sentencing and Penalties Act 2009.
44. I am not sure whether there is any family or domestic relationship here between any of you with the victim and so I will not impose any domestic violence restraining order [DVRO] on any of you.
45. 28 days to appeal to the High Court if there is any dissatisfaction with the sentence.



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Lisiate T.V. Fotofili

Resident Magistrate

At TAVUA this 22<sup>nd</sup> day of November, 2021