

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 351 - 2020

STATE

-v-

MELI RATUBALAVU

Before : RM Fotofili L.
For The Prosecution : A/CPL Chand A. [Police Prosecution]
For The Defendant : Mr. Samy A. [LAC]
Date of Sentence : 22nd November 2021

SENTENCE

1. **MELI RATUBALAVU**, you have pleaded guilty to the following charge:

Statement of Offence

THEFT: Contrary to section 291 (1) of the **Crimes Act No. 44 of 2009**.

Particulars of Offence

MELI RATUBALAVU on the 18th day of September, 2020 at Nakiniwai, Ra in the Western Division dishonestly appropriated (stole) a greyish black cow branded '5VP' valued at \$900, the property of **UNUR KUMAR** with the intention to permanently deprive the said **UNUR KUMAR** of his property.

2. Your plea and admission in court and the evidence tendered, supports your guilty plea. I am also satisfied that you understand the consequence of your plea.
3. I find you guilty and convict you of the charge.
4. You had taken or stolen the victim's cow which was inside his fence a few meters away from his house. You sold the cow valued at \$900 for \$300 to another person to be used in a funeral. The cow was slaughtered and presumably consumed or disposed. You have used the money. During the course of the police investigation,

you were arrested. You have used some of the money you received from selling the cow to buy clothes and the clothes has been seized and exhibited by police.

5. You were interviewed under caution by police, you voluntarily admitted that you took the victim's cow and sold it not for \$300 but for \$200. You say that the cow was slaughtered for a funeral.
6. I will reserve making any decision or order regarding the clothes or proceeds of crime which is in police custody, until police or prosecution verify whether these items are still exhibited and what is to be done regarding these tainted property.
7. You were a first offender at the time.
8. You have been in remand since the 23rd of October 2020.
9. You were out on bail for another theft case Rakiraki 285 -18, when you committed this theft case.
10. Most of the time you have spent in remand has been absorbed into your sentence for Rakiraki CF 285 – 18 when I sentenced for that file earlier today.
11. I consider that you have 3 months balance and I will take that into account and deduct that 3 months from the sentence you will receive in this case.
12. You have offered no mitigation.
13. From what I gather from your police interview, you are about 22 years old now, you are married and you are a cane cutter.

MAXIMUM SENTENCE

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

SENTENCING RANGE or SENTENCING TARIFF

15. 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

- 16. Based on the objective seriousness of the offence, I select a starting point of 3 months imprisonment.

AGGRAVATING FEATURES

- 17. I find the value of the animal you stole to be significant.
- 18. You sold the animal.
- 19. In agricultural communities such as our local districts, 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.
- 20. You also trespassed onto the compound of the victim to commit the theft.
- 21. This offence is prevalent in our community.
- 22. I increase your sentence to 9 months imprisonment.

MITIGATION

- 23. You are a first offender.
- 24. You cooperated with police when interviewed.

25. You are remorseful.
26. I reduce your sentence to 7 months imprisonment which is equivalent to 196 days imprisonment.

GUILTY PLEA

27. You have pleaded guilty early.
28. I reduce your sentence to 131 days imprisonment.

OBJECTIVE IN SENTENCE

29. Deterrence and to punish you adequately is the aim of your sentence.

SUMMARY

30. **MELI RATUBALAVU**, you are sentenced to 131 days imprisonment.
31. I would have suspended your sentence in part.
32. I would have ordered that you serve 20 days imprisonment and the remaining 111 days is to be suspended for 18 months.
33. Since you have spent 3 months in remand, I deem that you have served your sentence in this case.
34. 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**.
35. 28 days to appeal to the High Court if there is any dissatisfaction with the sentence.



A handwritten signature in blue ink, appearing to read "Lisiata T.V. Fotofili".

Lisiata T.V. Fotofili

Resident Magistrate

Dated at TAVUA this 22nd day of November, 2021