

**IN THE COURT OF APPEAL, FIJI**  
**On Appeal from the High Court**

**CRIMINAL APPEAL NO.AAU 107 OF 2019**  
**High Court Criminal Case No. HAC 194 of 2018L**

**BETWEEN**

**ALIPATE RAVUNAGI CAWI**

***Appellant***

**THE STATE**

***Respondent***

**Coram**

**Prematilaka, RJA**

**Morgan, JA**

**Andrews, JA**

**Counsel**

**Mr. S. Waqainabete for the Appellant**

**Mr. R. Kumar for the Respondent**

**Date of Hearing**

**9 November 2023**

**Date of Judgment**

**29 November 2023**

## **JUDGMENT**

### **Prematilaka, RJA**

[1] I agree with reasons and orders proposed by Andrews, JA.

### **Morgan, JA**

[2] I have read the judgment of Andrews JA. I concur with the reasoning and conclusions of the judgment.

### **Andrews, JA**

#### **Introduction**

[3] On 28 February 2019 the appellant was convicted in the High Court at Lautoka on one count of aggravated robbery (s 311(1)(a) of the Crimes Act 2009) and one count of driving a motor vehicle without being the holder of a valid driver's licence (s 56(3)(a), (6) and 114 of the Land Transport Act 1998). He had earlier pleaded guilty to both charges. On 27 March 2019 he was sentenced to an aggregate sentence of eight years, six months and 25 days' imprisonment, with a non-parole period of seven years six months.<sup>1</sup>

[4] In a Ruling issued on 11 January 2021, the appellant was granted leave to appeal against sentence.<sup>2</sup>

#### **Background facts**

[5] The summary of facts admitted by the appellant recorded that the victim of the offending was a 60 year old taxi driver. On 17 October 2018 the victim was in his taxi, parked outside a bank in Lautoka. The summary continued:

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<sup>1</sup> *State v Alipate Cawi – Sentence [2019] FJHC 244*; HAC 194/2018 (27 March 2019) (Hon Sunil Sharma J).

<sup>2</sup> *Cawi v State [2021] FJCA12*; AAU 107/2019 (11 January 2021).

Whilst parked in front of the bank [the victim] noticed [the appellant] with another iTaukei man. They boarded his taxi and told him to take them to Qalitu. [The victim] agreed to take them and [the appellant] sat in the front passenger seat while the other man sat in the back. [The victim] switched the taxi meter on and drove them to Qalitu. Whilst entering Qalitu Road about half a kilometre inside [the appellant] asked [the victim] to turn into a feeder road. [The victim] turned into the feeder road and as they were travelling for a few meters in, [the appellant] told [the victim] to get out of the car. [The victim] parked the car and the man sitting behind them got off and dragged [the victim] out of the car and into the back seat. [The appellant] then sat in the driver's seat and drove the car. [The victim] lay in between the front and back seats and the other man sat on his back. [The victim] yelled and both men told him to keep shut or else they will kill him. [The appellant] drove the car for a while and after that he switched with the second man. [The appellant] tied [the victim's] hands when [the victim] was trying to look up, [the appellant] kept pushing his head down. After 30 minutes the car stopped and [the appellant] with another grabbed the money inside the [console] box which was about \$40.00 worth of coins, [the victim's] wallet containing \$210.00 and mobile phone. Before leaving [the victim], both men threw the car keys and left [the victim] behind. [The victim] then got up, untied himself and searched for the key. [The victim] then found the key and drove to the Police Station to report the matter.

### Sentence

- [6] The High Court Judge recorded that the maximum penalty for the offence of aggravated robbery is 20 years' imprisonment, while for driving without a licence the maximum penalty is a fine of \$200, in default 30 days' imprisonment.<sup>3</sup> The Judge then referred to the sentencing tariff of eight to 16 years' imprisonment for offences of aggravated robbery, as set out in the judgment of the Supreme Court in *Wise v State*.<sup>4</sup>
- [7] The Judge adopted a starting point for the appellant's sentence of eight years six months imprisonment, which he then increased by four years to take account of aggravating factors of the offending: that the appellant and the other man had carefully planned their offending by pretending to be genuine passengers, that the victim was a public service vehicle licence

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<sup>3</sup> The Judge also referred to the maximum penalty for a second offence, but there is no indication in the summary of facts or the sentence that this was a second offence.

<sup>4</sup> *Wise v State* [2015] FJSC 7; CAV004.2015 (24 April 2015)

holder who was misled into believing that it was a genuine hire of his taxi, he was providing a service to the public, and he was helpless, alone and vulnerable at the time of the offending.

- [8] The Judge accepted the appellant's early guilty plea indicated genuine remorse and applied a reduction of three years. He applied further reductions of six months for mitigating factors and five months five days for the period the appellant was remanded in custody. This led to the ultimate sentence of eight years, six months and 25 days' imprisonment.

### **Appeal submissions**

- [9] Mr Waqainabete submitted for the appellant that the Judge erred in applying the tariff in *Wise*, which refers to home invasion robberies committed at night, with violence. He submitted that the appropriate tariff for aggravated robbery where the victim is a taxi driver (or other person performing a public service) is four to ten years imprisonment, and that an appropriate starting point for the appellant's sentence would have been six years' imprisonment.
- [10] For the State, Mr Kumar accepted that the Judge used the more serious *Wise* tariff as opposed to the "commonly accepted" tariff for aggravated robbery of a taxi driver, of four to ten years' imprisonment. However, he submitted that the ultimate sentence was well within the applicable tariff. He submitted that the sentence could remain undisturbed, as the appellant's offending was against a vulnerable 60 year old taxi driver being beset upon while earning a livelihood, and being subjected to unlawful physical confinement in his own vehicle for some considerable time. He submitted that while the victim suffered minimal physical injury, he suffered psychological trauma.

### **Discussion**

- [11] In its recent judgment in *Matairavula v State*,<sup>5</sup> the Court of Appeal considered an appeal against sentence brought by an offender who, with two others, had been convicted of the

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<sup>5</sup> *Matairavula v State* [2023] FJCA 192; AAU054.2018 (20 September 2023)

aggravated robbery of a taxi driver. The sentence imposed by the High Court in that case was 13 years' imprisonment, reduced to eight years and one month after deduction of the period spent in custody on remand. The Judge had adopted a starting point for sentencing of ten years' imprisonment. The Court of Appeal held that the Judge had made a sentencing error in applying the *Wise* tariff.

[12] Having considered sentences imposed by the High Court in cases of aggravated robbery of taxi drivers,<sup>6</sup> and the comments of the Court of Appeal in *Usa v State*,<sup>7</sup> and *Tabualumi v State*,<sup>8</sup> the Court in *Matairavula* set out a Sentencing Table for offences of aggravated robbery against providers of services of a public nature, according to categories of culpability (whether the offender acted alone and without a weapon, acting either alone or with a weapon, and acting with another and with a weapon) and harm (high, medium or low).<sup>9</sup> That Sentencing Table is reproduced below:

Culpability \ Harm	ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED ROBBERY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH (CATEGORY 1)	<i>Starting Point:</i> 06 years <i>Sentencing Range:</i> 04–08 years	<i>Starting Point:</i> 08 years <i>Sentencing Range:</i> 06–10 years	<i>Starting Point:</i> 10 years <i>Sentencing Range:</i> 08–14 years
MEDIUM (CATEGORY 2)	<i>Starting Point:</i> 04 years <i>Sentencing Range:</i> 02–06 years	<i>Starting Point:</i> 06 years <i>Sentencing Range:</i> 04–08 years	<i>Starting Point:</i> 08 years <i>Sentencing Range:</i> 06–10 years
LOW (CATEGORY 3)	<i>Starting Point:</i> 02 years <i>Sentencing Range:</i> 01 year – 03 years	<i>Starting Point:</i> 04 years <i>Sentencing Range:</i> 02–06 years	<i>Starting Point:</i> 06 years <i>Sentencing Range:</i> 04–08 years

<sup>6</sup> *State v Ragici* [2012] FJHC 1082; HAC 366, 367, 368.2011 (15 May 2012), *State v Bola* [2018] FJCA 274; HAC 73 of 2018 (12 April 2018)

<sup>7</sup> *Usa v State* [2020] FJCA 52; AAU81.2016 (15 May 2020)

<sup>8</sup> *Tabualumi v State* [2022] FJCA 41; AAU096.2016 (26 May 2022)

<sup>9</sup> *Matairavula*, at [17].

- [13] It is well understood that when a sentence is before this court on appeal, it is the ultimate sentence that is of importance, rather than each step in the reasoning process leading up to the ultimate sentence. The appellate court assesses whether in all of the circumstances of the case, the sentence is one that could reasonably be imposed by a sentencing Judge; that is, whether the sentence imposed is within the permissible range.
- [14] It is also well understood that the taxi industry serves the community by providing public transport, and that violent and armed robberies of taxi drivers have become too frequent. Thus, the risk of personal harm taken by taxi drivers in going about their business requires deterrent sentence.
- [15] In the present case, the appellant acted with another person, but there was no evidence that either had a weapon. The victim was 60 years old, alone, and confined for 30 minutes, and while there was no evidence that he suffered any physical injury, he clearly suffered psychological trauma. Counsel for the appellant and the state agreed that the appellant's offending should be placed in the medium categories of culpability and harm, for which a starting point of six years is suggested, and a sentencing range of four to eight years. It is evident from that analysis that the High Court Judge made an error of principle when applying *Wise* and adopting a starting point of eight years six months imprisonment. That led to the ultimate sentence being outside the range set out in *Matairavula*. It is necessary for this Court to reconsider the appellant's sentence.
- [16] It is not appropriate for this Court to undertake a mathematical exercise such as is undertaken by the Magistrates' Court or High Court when determining the appropriate sentence to impose in a particular case. This Court looks at the ultimate sentence as a whole. Having considered all the factors set out above, together with the appellant's early guilty plea, the mitigating factors put forward in the High Court, and the time he spent in custody on remand, an ultimate sentence of six years' imprisonment is appropriate for the appellant's offending, with a non-parole period of five years.

**ORDERS**

- (1) The appeal against sentence is allowed.
- (2) The sentence imposed on the appellant of eight years, six months and 25 days' imprisonment, with a non-parole period of seven years, six months imprisonment is quashed.
- (3) A sentence of six years' imprisonment, with a non-parole period of five years is imposed on the appellant with effect from 27 March 2019.



**Hon. Mr. Justice Chandana Prematilaka**  
RESIDENT JUSTICE OF APPEAL



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**Hon. Mr. Justice Walton Morgan**  
JUSTICE OF APPEAL



**Hon. Madam Justice Pamela Andrews**  
JUSTICE OF APPEAL