

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

**CRIMINAL APPEAL NO. AAU 0042 of 2021**  
**[In the High Court at Suva Case No. HAC 111 of 2019]**

**BETWEEN** : **JONE CAMA**

**AND** : **THE STATE** *Appellant*  
*Respondent*

**Coram** : **Prematilaka, RJA**  
**Mataitoga, RJA**  
**Heath, JA**

**Counsel** : **Ms. T. Kean for the Appellant**  
**Mr. R. Kumar for the Respondent**

**Date of Hearing** : **05 July 2024**

**Date of Judgment** : **26 July 2024**

**JUDGMENT**

**Prematilaka, RJA**

1. I have had the benefit of reading in draft the judgment of Heath, JA and agree with reasons and conclusions therein.

**Mataitoga, RJA**

2. I concur with the judgment of Heath, JA.

## **Heath, JA**

### **Introduction**

3. Mr. Jone Cama was charged jointly with Mr. Setoki Galuvakadua on one count of aggravated burglary and seven of theft. The charges arose out of a single series of events which occurred in the early hours of 6 March 2019.
4. Between midnight and 4.00am on 6 March 2019, Mr. Cama and his accomplice entered the offices of the Fiji Bureau of Statistics with intent to commit theft (the aggravated burglary charge) and stole a number of items, including laptops and clothing (the seven theft charges).
5. Mr. Cama entered guilty pleas to each charge. On 25 September 2019, a *nolle prosequi* was entered in respect of Mr. Galuvakadua on the basis that there was insufficient evidence to prove, to the criminal standard, that he was Mr. Cama's co-offender.
6. Mr. Cama was sentenced in the High Court at Suva on 14 October 2019. Perera J imposed an effective term of imprisonment of six years, with a non-parole period of four years.<sup>1</sup>

### **The appeal**

7. Mr. Cama made a late application for an extension of time to appeal against sentence. His application was granted by a single judge on 27 October 2023.<sup>2</sup> The point identified by the leave judge, Prematilaka ARJA, was stated as: "The question of law on the issue of sentencing tariff for aggravated burglary which is yet to be resolved by the Court of Appeal or the Supreme Court".<sup>3</sup> That question arises out of an inconsistent range of starting points to assist sentencing judges when dealing with burglary charges. A range of between 18

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<sup>1</sup> *State v Cama* [2019] FJHC 985; HAC 111.2019 (14 October 2019).

<sup>2</sup> *Cama v State* [2021] FJCA 175; AAU 42.2021 (27 October 2021).

<sup>3</sup> *Ibid*, at para 20.

months and three years imprisonment had been set by this Court in *State v Buliruarua*<sup>4</sup> and approved subsequently in *Leqavuni v State*, and a line of cases following it. (the *Leqavuni* approach).<sup>5</sup>

8. Perera J used a range of six years to 14 years imprisonment to fix a starting point. That range was taken from his earlier decision, sitting as a High Court Judge in 2017, in *State v Prasad*.<sup>6</sup> (the *Prasad* approach).
9. Notwithstanding the *Leqavuni* line of Court of Appeal decisions, Perera J had, in *Prasad*, purported to increase the range of starting points for burglary offences from six years to 14 years imprisonment.<sup>7</sup> In sentencing Mr. Cama, Perera J adopted that range of starting points rather than the lower range approved by the Court of Appeal in the *Leqavuni* line of cases. After sentence was imposed on 14 October 2020, this Court gave a guideline judgment on sentencing for burglary and aggravating burglary offences: *Kumar v State* [2022] FJCA 164; AAU 117.2019 (24 November 2022).
10. This Court’s task, on the present appeal, is to provide a clear indication to High Court Judges of the range of starting points available before this Court’s guideline judgment in *Kumar*, and to determine whether the correct range was applied when Perera J sentenced Mr. Cama. The importance of that is to ensure that like offences are treated alike for sentencing purposes. The need for consistency in sentencing was recently highlighted by the Supreme Court in *Chandra v State*.<sup>8</sup> Goddard J (giving the principal judgment with which Temo AP and Mataitoga J agreed) said:

“32. *Ensuring even-handedness in the dispensation of justice is of the utmost importance and can be notoriously difficult to achieve in the area of criminal justice sentencing. The development of tariffs identifying ranges of sentences for categories of broadly similar*

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<sup>4</sup> *State v Buliruarua* [2010] FJHC 384; HAC 157.2010 (6 September 2010) at para 4, citing *Turuturuvesi v State* [2002] HAA 86/02S.

<sup>5</sup> *Leqavuni v State* [2016] FJCA 31; AAU 0106.2014 (26 February 2016).

<sup>6</sup> *State v Prasad* [2017] FJHC 761; HAC 254.2016 (12 October 2017) at para 16.

<sup>7</sup> *State v Buliruarua* [2010] FJHC 384; HAC 157.2010 (6 September 2010) at para 4, citing *Turuturuvesi v State* [2002] HAA 86/02S.

<sup>8</sup> *Chandra v State* [2024] FJSC 21; CAV 0029.2022(27 June 2024) at para 32.

*offending has done much to assist the courts in achieving even-handedness. Where a marked non-conformity with an identified range of sentencing levels occurs, this has the potential to distort what has come to be regarded as certain in the law and may also result in a substantial and grave injustice.”*

### Analysis

11. In *Kumar v State*,<sup>9</sup> this Court considered the problem that had arisen from Magistrates and High Court Judges deciding for themselves whether to follow the *Leqavuni* approach or the *Prasad* approach. In *Kumar*, Prematilaka RJA (with whom Gamalath and Nawana JJA agreed) referred to the *Leqavuni* approach as the “old tariff” and that identified in *Prasad* as the “new tariff”. However, Prematilaka RJA was careful to use inverted commas in referring to those terms. Strictly speaking, neither the *Leqavuni* line of cases of *Prasad* (which departed from it) were guideline sentencing decisions that fixed a “tariff”. Rather each identified a range of starting points without undertaking a comprehensive review of prior sentences.
12. *Kumar* also involved the application of the presumption against retrospectivity to “tariff” judgments. While that point had been left open by the Supreme Court in *State v Tawake*,<sup>10</sup> that Court later, in *Ratu v State*,<sup>11</sup> determined that, pending a review of that issue after hearing full argument, it would apply the position adopted by the New Zealand Court of Appeal in *Zhang v R*.<sup>12</sup> After citing the relevant passages, *Ratu* indicated that guideline judgments only apply “to sentences that have already been imposed, if and only if two conditions are satisfied: (a) that an appeal against the sentence has been filed before the date the judgment is delivered; and (b) the application of the judgment would result in a more favourable outcome to the appellant”.<sup>13</sup>

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<sup>9</sup> *Kumar v State* [2022] FJCA 164; AAU 117.2019 (24 November 2022).

<sup>10</sup> *State v Tawake* [2022] FJSC 22; CAV 0025.2019 (28 April 2022) at para 32.

<sup>11</sup> *Ratu v State* [2024] FJSC 10; CAV 24.2022 (25 April 2024) at para 27.

<sup>12</sup> *Zhang v R* [2019] 3 NZLR 648 (CA).

<sup>13</sup> *Ratu v State* [2024] FJSC 10; CAV 24.2022 (25 April 2024) at para 27, (Keith J, with whom Calanchini and Arnold JJ agreed) citing *Zhang v R* [2019] 3 NZLR 648 at para [188]. See also *Cheung v R* [2021] 3 NZLR 259 (CA) at paras [38]–[49], in which the Court of Appeal explained why guideline judgments have limited retrospective effect.

13. Retrospectivity arises in relation to application of the *Kumar* guidelines to the present case. It does not arise in relation to the judge’s decision to apply the *Prasad* approach in preference to the *Leqavuni* approach. The Judge was aware of the difference between those approaches at the time he passed sentence. In this case, it is clear that the *Kumar* guidelines should not apply retrospectively to Mr. Cama’s sentence. Its application would result in a more unfavourable outcome. The issue is where the *Prasad* approach should have any lingering effect.<sup>14</sup>
  
14. In my view, it was not open to the sentencing judge to use the (so called) “tariff” that he had “established” in *Prasad*. Any alteration to the *Leqavuni* approach was for the Court of Appeal or the Supreme Court to consider. Undesirable inconsistency in sentencing for burglary and aggravated burglary has resulted from Magistrates and High Court Judges believing that they are entitled to follow the *Prasad* approach, in preference to the *Leqavuni* line of cases. That has led to like cases being treated in an unlike manner, which offends the principle of consistency in sentencing recently emphasised by the Supreme Court, in *Chandra*.<sup>15</sup> First instance sentencing judges (or those exercising appellate jurisdiction in the High Court) are not, in comparable cases to which the *Kumar* guidelines do not apply, entitled to follow the *Prasad* approach and should desist from doing so.
  
15. It follows that Perera J erred in applying the *Prasad* approach to Mr. Cama’s offending. Given the acute difference in the ranges identified in the *Leqavuni* and *Prasad* approaches, I consider it is necessary to undertake sentencing afresh. In my view, it would be wrong in principle to consider whether the end sentence at which Perera J arrived would have been imposed if the *Leqavuni* approach had been adopted.

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<sup>14</sup> *Prasad* was decided in 2017 and Mr. Cama was sentenced in 2019. Accordingly, at the time that sentence was imposed, both the *Leqavuni* and *Prasad* approaches were known to the sentencing judge.

<sup>15</sup> *Chandra v State* [2024] FJSC 21; CAV 0029.2022(27 June 2024) at para 32, set out at para 10 above.

**Re-sentencing Mr. Cama**

16. In his sentencing remarks in the High Court, Perera J set out the facts on the basis of which Mr. Cama had entered guilty pleas.<sup>16</sup> The relevant portion of summary of facts is as follows:<sup>17</sup>

**“Brief Facts:**

1. *[Mr. Cama] is charged with another and he has voluntarily pleaded guilty to one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act 2009 and 7 counts of Theft, contrary to section (1) of the Crimes Act 2009.*
2. *On the 6th March 2019 between – 211; 4am, [Mr. Cama] and his accomplice in the company of each other entered into the Fiji Bureau of Statistics) office at Sukuna House, Suva and dishonestly, appropriated a number of items.*
3. *To simplify this, a tabular form is created on the next page to illustrate what items were dishonestly appropriated, from whom were they dishonestly appropriated in the premises of FBS and what items were recovered.*

<i>Prosecution Witness</i>	<i>Items Stolen from FBS</i>	<i>Items Recovered</i>
<i>Meli Nadakuca</i>	<i>1x Pair of Nike canvas (blue &amp; yellow in colour), 1 x Nike Bag, 1x Electronic dictionary, 1x HP Laptop (grey in colour) with charger</i>	<i>1x Nike Bag</i>
<i>Vaciseva Dravi</i>	<i>1x HP Laptop (Black in colour), 1x Pair of Puma canvas (Black &amp; pink in colour).</i>	<i>1x HP Laptop (black in colour).</i>
<i>Salanieta Tubuduadua</i>	<i>1x Dell Laptop (black in colour).</i>	<i>1x Dell Laptop (black in colour).</i>
<i>Josese Ragigia</i>	<i>1x Rip Curl Cap</i>	<i>-</i>

<sup>16</sup> *State v Cama* [2019] FJHC 985; HAC 111.2019 (14 October 2019), at para 2.

<sup>17</sup> References in the table to PW10, 11 etc, are to prosecution witnesses in the order previously summarised in the sentencing remarks. A1 is a reference to Mr Cama.

<i>Filomena Browne</i>	<i>1x Sony Camera (black in colour), 1x Pair of Reebok canvas, 1x CCC Jacket (black in colour), 1x Carton of Rewa Powdered Milk (24 packets) and \$100.00 cash.</i>	<i>1x Pair of Reebok canvas.</i>
<i>Niraj Chandra</i>	<i>1x Kenwin Radio (black in colour), 1x torch (Yellow in colour).</i>	-
<i>Poasa Nimila</i>	<i>1x Dell Laptop.</i>	-

4. *In addition to the above items recovered as tabulated above, another HP Laptop belonging to the Fiji Bureau of Statistics was also recovered from PW11.*
5. *A CCTV footage was uplifted from the crime scene by police in which PW17 identified [Mr Cama] as one of the persons who had committed the alleged offence.*
6. *On the 7<sup>th</sup> [March] 2019, at around 3pm, PW8 received information that PW10 had bought 3 laptop's from [Mr Cama]. PW8 then left with a team of police officer conduct a search at PW10's residence. PW10 in his statement stated that the accused whom he also knew as "Small Dee" came with another i-Taukei youth to sell him four laptops.*
7. *PW10 then called PW11 and asked if he was interested in buying the laptops. PW10 then went to PW11's house with the four laptops. From there, PW10 and PW11 then went to PW12's house to sell PW12 the laptops.*
8. *PW12 bought two of the laptops whilst PW11 kept one of the laptops. The fourth laptops was not recovered.*
9. *Police officers upon receiving information from PW10 then made their way to PW11's residence whereby PW9 then seized 1x laptop from PW11.*
10. *Police officers upon receiving information from PW11 then made way to PW12's residence whereby PW12 voluntarily handed over 1x Dell Laptop [black] colour) and 1x HP Laptop (black in colour) with both chargers.*
11. *On the 7<sup>th</sup> of March 2019, PW13 aW13 arrested [Mr Cama]. [Mr Cama] was then caution interviewed and charged. [Mr Cama] did not make any admissions in his record of interview as he chose to answer in court via Skype."*

17. The maximum sentence for aggravated burglary is one of 17 years imprisonment. The maximum penalty for theft of the type committed by Mr. Cama is 10 years imprisonment. As the offences on which Mr. Cama was convicted are founded on the same facts, it is

necessary to apply the totality principle, to which s 17 of the Sentencing and Penalties Act 2009 refers. Applying that provision, the aggregate sentence cannot exceed the total effective period of imprisonment that could have been imposed if the Court had imposed separate terms of imprisonment for each offence.

18. In this case, to avoid the risk of double-counting aggravating factors,<sup>18</sup> I would take the bottom end of the sentencing range identified in *Leqavuni* and then determine what should be added to that sentence to represent all aggravating factors of the offending. Accordingly, I start at 18 months imprisonment.
19. Leaving to one side, conduct reflected in the elements of the offences, which are captured within the starting point, the aggravating factors concerning the offending involved:
  - a. the disregard of property rights of others,
  - b. the property stolen was public in nature, belonging to the Fiji Bureau of Statistics,
  - c. the laptops that were taken may have contained sensitive information and
  - d. the number and nature of the items stolen.
20. In my view, two years should be added for those aggravating factors, making an adjusted starting point of three years and six months imprisonment. To that should be added a further period of three months to reflect aggravating factors personal to Mr. Cama: four previous convictions as an adult had been disclosed to the Court. That makes a sentence, before taking into account mitigating factors, of three years and nine months imprisonment.
21. Given that a guilty plea was not entered at the first opportunity, I would apply a credit of 20% for that mitigating factor. There are no other mitigating factors. That mitigating factor equates to nine months.

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<sup>18</sup> This difficulty was identified by the Supreme Court in *Kumar v State* [2018] FJSC 30, *Nadan v State* [2019] FJSC 29 and (most recently) *Chandra v State* [2024] FJSC 21 at paras 22–25, citing extracts from both *Kumar* and *Nadan*.



22. On that basis, I would impose a head sentence of three years imprisonment. That contrasts with the final sentence of six years imprisonment imposed by the sentencing judge.

### **Conclusion**

23. The Court heard no argument on whether the non-parole period fixed under s 19 of the Sentencing and Penalties Act 2009 was appropriate. The Judge chose a period of four years. In my view, that should be adjusted to one of two years and three months imprisonment. That reflects the approach to non-parole periods taken by the Supreme Court in *Ratu v State*.<sup>19</sup> A non-parole period representing 75% of the head sentence provides a sufficient “gap between the non-parole period and the head sentence [to] be a meaningful one”. Two years and three months is not at a level which might disincentivize good behaviour in prison.<sup>20</sup>
24. The sentencing judge, in taking into account time spent in custody, fixed the time remaining to be served from sentencing date (14 October 2019) at five years four months and 23 days (for the head sentence) and three years four months and 23 days (for the non-parole period).<sup>21</sup> The Court was informed that Mr. Cama has, to date, served a total of three years seven months and 10 days in prison. That exceeds the end sentence that I would have imposed.
25. On that basis, I would quash the sentence imposed by Perera J and substitute an effective sentence of three years seven months and 10 days. That equates to time served.

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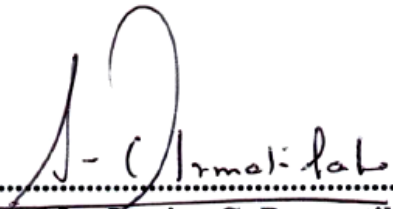
<sup>19</sup> *Ratu v State* [2024] FJSC 10; CAV 24.2022 (25 April 2024) at paras 33–35.

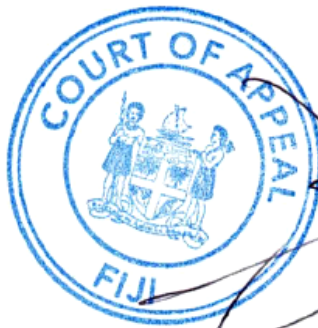
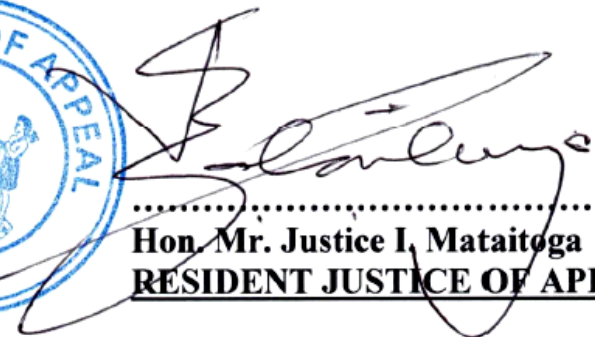
<sup>20</sup> *Ibid*, at para 34.

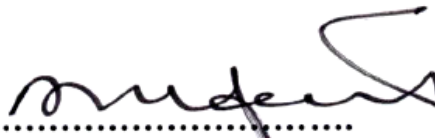
<sup>21</sup> *State v Cama* [2019] FJHC 985; HAC 111.2019 (14 October 2019), at para 39.

**Orders of the Court:**

1. The appeal against sentence is allowed.
2. The sentence of six years imprisonment with a non-parole period of four years is quashed.
3. In substitution, a sentence of three years, seven months and 10 days is imposed, with effect from 14 October 2019.
4. Mr. Cama shall be released immediately.

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

  
  
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**Hon. Mr. Justice I. Mataitoga**  
**RESIDENT JUSTICE OF APPEAL**

  
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**Hon. Mr. Justice P. Heath**  
**JUSTICE OF APPEAL**

**Solicitors:**

Legal Aid Commission for the Appellant  
Office of the Director of Public Prosecution for the Respondent