

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 52 OF 2012

STATE

-v-

MECIUSELA RATU
DAVID LOCKINGTON

Counsels : **Ms. S. Puamau for the State**
Both Accused In person

Date of Sentence : **16 September 2013**

SENTENCE

1. The Director of Public Prosecutions preferred following charges against the two accused above named.

FIRST COUNT

Statement of Offence

AGGRAVATED BURGLARY: Contrary to Section 313 (1) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MECIUSELA RATU and **DAVID LOCKINGTON** on the 9th day of March 2012 at Nadi in the Western Division entered the house of **SISILIA MAKARITA** and **CHRISTIAN SCHUMACHAR** as trespassers with intent to commit theft therein.

SECOND COUNT

Statement of Offence

THEFT: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MECIUSELA RATU and **DAVID LOCKINGTON** stole 1 black Sony laptop valued at \$6,000.00, 1 grey Sony silver laptop valued at \$5,000.00, 1 Sony digital camera valued at \$2,400.00, 1 silver Sony cyber camera valued at \$1,800.00, 1 silver cordless Siemens mobile phone valued at \$500.00, 1 Tissot wrist watch valued at \$2,000.00, 1 Sony Ericson mobile phone valued at \$1,600.00, 1 silver chain with white pearl 18 carat valued at \$2,450.00, 1 Sony Ericson 801 black slide phone valued at \$1,000.00, 1 silver chain with cream pearl valued at \$50.00, 1 men's wedding ring valued at \$1,300.00, 1 white gold ring 18 carat valued at \$6,000.00, 1 white men's gold diamond ring valued at \$500.00, 1 ladies silver ring valued at \$300.00, 1 silver ring oval design valued at \$100.00, 1 men's black leather wallet valued at \$160.00 with cash of \$90.00, ATM cards, driving licenses, overseas visa cards, 1 carry on black bag valued at \$656.00, 1 Vodafone flash net valued at \$39.00, 3 short sleeves men's shirt valued at \$150.00, 6 short sleeve round neck t-shirts valued at \$240.00, 1 sealed packet BH 20's valued at \$5.20, 1 silver JVC Camera valued at \$500.00, 1 mini compressor valued at \$100.00, all to the total value of \$30,590.20, the properties of **SISILIA MAKARITA** and **CHRISTIAN SCHUMACHAR**.

2. The voir dire inquiry of this case was commenced on 26th August 2013 and concluded on 28th August 2013. Then both of you wanted to change your plea. On 29th August 2013 both of you pleaded guilty to both charges against you.
3. The summary of facts was admitted by both of you on 4th September 2013.
4. The Summary of Facts submitted by the State Counsel states as follows:

CHRISTIAN SCHUMACHAR and **SISILIA MAKARITA SCHUMACHAR** (*'the complainants'*) are married. On 9 March 2012, they resided at **LOT 10, MAYOTRA PLACE, MARTINTAR, NADI** as lawful tenants. The complainants' had gone to sleep at around 8.30pm that night.

At around 9.30pm on 9 March 2013, **METUISELA RATU** and **DAVID LOCKINGTON**, in company with one another, entered **LOT 10, MAYOTRA PLACE, MARTINTAR, NADI**. They were trespassers, not having received permission from **CHRISTIAN SCHUMACHAR & SISILIA MAKARITA SCHUMACHAR** and the landlords of the property to enter and/or remain in the building that night. They entered the building in company with each with the plan to steal items therein.

*Breaking into the house by stealth, **METUISELA RATU** and **DAVID LOCKINGTON**; without the permission of the **SCHUMACHARS'**, who owned the property; and without any right to the property; carried the following items away with the intention of disposing of those items as if they were their own:*

- (1) 1 Black Sony Laptop valued at \$6,000.00*
- (2) 1 Grey Sony silver Laptop valued at \$5,000.00*
- (3) 1 Sony digital camera valued at \$2,400.00*
- (4) 1 silver Sony cyber camera valued at \$1,800.00*
- (5) 1 silver cordless Siemens mobile phone valued at \$500.00*
- (6) 1 Tissot wrist watch valued at \$2,000.00*
- (7) 1 Sony Ericson mobile phone valued at \$1,600.00*
- (8) 1 silver chain with white pearl 18 carat valued at \$2,450.00*
- (9) 1 Sony Ericson 801 black slide phone valued at \$1,000.00*
- (10) 1 silver chain with cream pearl valued at \$50.00*
- (11) 1 men's wedding ring valued at \$1,300.00*
- (12) 1 white gold ring 18 carat valued at \$6,000.00*
- (13) 1 white men's gold diamond ring valued at \$500.00*
- (14) 1 ladies silver ring valued at \$300.00*
- (15) 1 silver ring oval design valued at \$100.00*
- (16) 1 men's black leather wallet valued at \$160.00 with cash of \$90.00, ATM cards, driving licenses and overseas visa cards.*
- (17) 1 carry on black bag valued at \$656.00*
- (18) 1 Vodafone flash net valued at \$39.00*
- (19) 3 short sleeve men's shirt valued at \$150.00*
- (20) 6 short sleeve round neck t-shirts valued at \$240.00*
- (21) 1 sealed packet BH 20's valued at \$5.20*
- (22) 1 silver JVC camera valued at \$500.00*
- (23) 1 mini compressor valued at \$100.00*

*That following the break-in and the thefts **METUISELA RATU** and **DAVID LOCKINGTON** either gifted or sold these items to others. That upon investigating the matter further, the Police were able to recover the following items from friends, family members and acquaintances that the accused persons had distributed and sold the items to:*

- (1) Black Sony Laptop valued at \$6,000.00*
- (2) Grey Sony silver Laptop valued at \$5,000.00*
- (3) Sony Ericson mobile phone valued at \$1,600.00*
- (4) 5 out of the 6 round neck singlets stolen valued at \$200.00*
- (5) Sony Cyber Camera valued at \$1,800.00*
- (6) Sony Digital Camera valued at \$2,400.00*
- (7) JVC Video Camera valued at \$500.00*
- (8) 18 carat Silver Chain with cream pearl valued at \$50.00*
- (9) Men's white gold wedding ring*
- (10) Ladies silver ring valued at \$300.00*

(11) Sony Ericson 801 black slide phone valued at \$1,000.00

The following items remain missing:

- (1) 1 silver cordless Siemens mobile phone valued at \$500.00
- (2) 1 Tissot wrist watch valued at \$2,000.00
- (3) 1 silver chain with white pearl 18 carat valued t \$2,450.00
- (4) 1 men's black leather wallet valued at \$160.00 with cash of \$90.00, ATM cards, driving licences and overseas visa cards
- (5) 1 carry on black bag valued at \$656.00
- (6) 1 Vodafone flash net valued at \$39.00
- (7) 3 short sleeve men's shirts valued at \$150.00
- (8) 1 sealed packet BH 20's valued at \$5.20
- (9) 1 singlet
- (10) 1 mini compressor valued at \$100.00

METUISELA RATU was arrested by the Police on 13 March 2012. In his Charge Interview with the Police he admitted breaking into the **SCHUMACHAR's** residence and taking the items alleged above.

DAVID LOCKINGTON was arrested by the Police on 14 March 2013. In his Interview with the Police he admitted breaking into the **SCHUMACHAR's** residence and taking the items alleged above.

5. After carefully considering your Plea to be unequivocal, this Court found both of you guilty for aggravated burglary and theft and accordingly you are convicted under Section 313 (1) (a) and Section 291 (1) (c) of the Crimes Decree respectively.
6. You stand convicted for Aggravated Robbery and Theft.
7. Section 313 (1) prescribes a maximum sentence of 17 years imprisonment for aggravated burglary.
8. Section 291 (1) prescribes maximum sentence of 10 years for the offence of Theft.
9. Considering the tariff for the offence of Aggravated Burglary in **Tabekusi v State** HAC 95-113/2010 and **Mucunabitu v State** HAC 17 of 2010 the Court accepted between 18 months to 3 years as tariff.
10. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State** [2005] FJHC 13 HAC 0021/2004 (27 January 2005) the Court accepted between 2 to 9 months as tariff for simple theft.

*“The tariff for simple larceny on first conviction is 2-9 months (**Ronald Vikash Singh v. State** HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (**Isoa Codrokadroka v. State** Crim. App. HAA 67 of 2002) and 3 years imprisonment have been upheld by the High Court (**Sevanaia Via Koroi v. State** Crim. App. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and the defendant. The method of stealing is also relevant.”*

11. The first accused, you have 15 previous convictions. The 2nd accused you are a first offender.
12. Considering the nature of the offence and all other circumstances, I commence your sentence for the 1st count at 30 months.
13. State had submitted following aggravating factors:
 - (a) According to the victim impact statement, complainants no longer feel secure in their own home and no longer able to sleep comfortably through the night.
14. I increase your sentence by 3 months for the above aggravating factor. Now your sentence is 33 months.
15. Mitigating circumstances of the 1st accused are:
 - (a) You are single parent and father of 10 year old son-your wife was killed during the pending of this case.
 - (b) You are remorseful.
16. I deduct 3 months for the above mitigating factors. Now your sentence is 30 months. I deduct 6 months for the guilty plea. Now your sentence is 24 months. You have been in remand from 13th March 2012. I deduct 18 months for that period. Now your sentence is 6 months.
17. Mitigating circumstances of the 2nd accused are:
 - (a) You are a first offender,
 - (b) You are only 20 years old,
 - (c) You are from a broken family,
 - (d) At the time of offence you were a student at FNU,
 - (e) You are remorseful.
18. Considering above, I reduce 6 months of your sentence, now your sentence is 27 months.

19. For your guilty plea I deduct 6 months. Now your sentence is 21 months.
20. I deduct 2 more months for the time period you spend in remand. Now your sentence is 19 months.
21. I take a starting point of 18 months in respect of the theft charge against the 1st accused. I add 2 months for the aggravating circumstances and deduct 3 months for mitigating circumstances. Now your sentence is 17 months.
22. I take a starting point of 8 months in respect of the theft charge against the 2nd accused. I add 1 month for the aggravating circumstances and deduct 4 months for the mitigating circumstances. Now your sentence is 5 months.
23. Both the offences stated above were committed in the course of same transaction, therefore, I order both sentences to run concurrently.

Summary;

24. First accused, you are sentenced for 6 months for the first count and 17 months for the second count. Both sentences to run concurrently.
25. Second accused, you are sentenced for 19 months for the first count and 5 months for the second count. Both sentences to run concurrently.
26. 30 days to appeal

Sudharshana De Silva
JUDGE

AT LAUTOKA
16th September 2013

Solicitors for the State : Office of the Director of Public Prosecution, Lautoka
Solicitors for the Accused: Both Accused In person