

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC 122 OF 2012

STATE

-v-

MIKAELE LEDUA

Counsels : **Mr. Timoci Qalinauci for the State**

Accused In person

Date of Sentence : **01 April 2014**

SENTENCE

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

Count 1

Statement of Offence

SACRILEGE: Contrary to 305 (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MIKAELE LEDUA on the 31st day of August 2012 at Rakiraki in the Western Division broke and entered into the Hare Rama Hare Krishna Temple, a place of worship and stole 1 brush cutter valued at \$1,075.00, the property of Hare Rama Hare Krishna Temple.

Count 2

Statement of Offence

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

Particulars of Offence

MIKAELE LEDUA on the 31st day of August 2012 at Rakiraki in the Western Division stole 1 brush cutter valued at \$1,075.00, the property of Hare Rama Hare Krishna Temple with the intention of permanently depriving the Hare Rama Hare Krishna Temple of the said brush cutter.

2. When the case was mentioned on 06.03.2014 you pleaded guilty to both the charges and admitted the Summary of Facts on the next day.
3. The Summary of Facts submitted by the State Counsel states as follows:

On the 1st of September, 2012, the complainant, Jag Prasad went to the Hare Rama Hare Krishna Temple in Drana to prepare the temple for prayer and a birthday when he noticed that the temple door was open. He noticed that the louvers in the temple had been removed and the item in the temple was missing namely; Kawasaki TH-48 brush cutter valued at \$1,075.00.

On 31st of August, 2012 the complainant had securely locked the temple and placed the key in the dining area. The location of the key is only known to the members of temple and the complainant. At about 7.30pm the accused went to the temple in Drana and took the key which was in the dining area in the temple. The accused had noticed the hiding place of the said key in the dining area when he had visited the dining area to rest. The accused then open the door to the bulk area of the temple and he took the brush cutter which was inside the bulk area. After taking the brush cutter, accused then placed the key back in the dining area and went away.

The matter was reported to the police. The accused was later arrested after he tried to sell the brush cutter to Mahendra Prakash Lal (PW-2).

The accused was interviewed under caution and he admitted to entering the temple and using the key which was hidden in the wooden rafter to open the bulk store [Q & A-20]. He also admitted stealing the brush cutter from the store room [Q & A-21].

Subsequently, the accused was formally charged for the offences of one count of Sacrilege: contrary to Section 305 (a) and one count of Theft: contrary to Section 291 (1) of the Crimes Decree, No. 44 of 2009.

4. After carefully considering your Plea to be unequivocal, this Court found you guilty for Sacrilege and Theft and accordingly you are convicted under Section 305 (a) and Section 291 (1) of the Crimes Decree respectively.
5. Mikaele Ledua you stand convicted for Sacrilege and Theft.
6. Section 305 (a) prescribes a maximum sentence of 14 years imprisonment for Sacrilege .
7. Section 291 (1) prescribes maximum sentence of 10 years for the offence of Theft.

8. In **Vetau v The State** [2003] FJHC 159; HAA 0054J.2003S (21 November 2003) Hon. Madam Justice Nazhat Shameem considered the tariff for Sacrilege. It was held that:

'This offence clearly called for a custodial sentence of more than 12 months imprisonment. Sacrilege is an offence which strikes at the heart of religious freedoms guaranteed by the Constitution. It is an offence far more hurtful to a person than a theft in a house. In Fiji, religion and faith are of paramount importance to all our communities. Offenders who insult the faiths of the community who fail to show others the respect they themselves expect to receive, should be given custodial sentences which reflect society's disapproval of such behavior.'

In this case 15 months imprisonment was imposed for theft of \$13.00 from a temple.

9. In **State v Kaulawe** [2011] FJHC 336; HAC 073.2008 (8 June 2011) it was held by Hon. Mr. Justice Paul Madigan that:

'Sacrilege is a serious offence. It shows complete disregard for the contempt for other people's religious buildings. In Fiji where there are major religious denominations living together, it is most important that tolerance of each other's religions and their fixtures be respected and protected.'

A starting point of three years was taken in this case of theft of money boxes containing \$70.00 from a temple.

10. Tariff for the offence of theft was discussed in several cases. In **Saukilagi v State** 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. Considering the nature of the offence and all other circumstances, I commence your sentence for the 1st count at 24 months.

12. The aggravating factors are:

- (a) The planned nature of the offence
- (b) The high value of the items stolen.

I add 6 months for the aggravating factor. Now your sentence is 30 months.

13. Your mitigating circumstances are:

- (a) You are 22 years old and sole bread winner for your elderly parents
- (b) You are remorseful
- (c) The item stolen was recovered.

14. Considering above, I reduce 6 months of your sentence now your sentence is 24 months.

15. For your guilty plea I deduct 8 months. Now your sentence is 16 months.

16. Considering the above and nature of the offence, I impose 12 months imprisonment for the offence of Theft.

17. Both the offences stated above were committed in the course of same transaction therefore I order both sentences to run concurrently.

18. You were in remand from 05.10.2012 to 05.12.2012. You are again in remand since 06.03.2014. Therefore acting under Section 24 of the Sentencing and Penalties Decree, I deduct three months from your sentence. Now your sentence is 13 months.

19. You are pleading the Court that you be given another chance in your life.

20. You are pleading the Court to impose a non custodial sentence.

21. Section 26 (1) of the Sentencing and Penalties Decree states as follows:

On sentencing an offender to a term of imprisonment, a Court may make an order suspending, for a period specified by Court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.

22. You are not a first offender. You have pleaded guilty for a charge of Aggravated robbery. Considering the seriousness of the offence and your record, this court cannot suspend your sentence.

Summary;

23. You are sentenced to 13 months imprisonment.

24. 30 days to appeal

Sudharshana De Silva
JUDGE

AT LAUTOKA
1st April 2014

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