



admitted proved all the elements of each count. You were accordingly convicted as charged for the following counts;

### **COUNT 1**

#### *Statement of Offence*

**AGGRAVATED BURGLARY:** Contrary to Section 313 (1) (a) of the Crimes Act 2009.

#### *Particulars of Offence*

**SEMI RAVUNACECA** and **EMOSI PENIJUELI SIKURI** between the 28<sup>th</sup> day of July 2018 and 29<sup>th</sup> day of July 2018, at Nadi in the Western Division, entered into the premises of **MN BUILDERS** as trespassers with intent to commit theft.

### **COUNT 2**

#### *Statement of Offence*

**THEFT:** Contrary to Section 291 of the Crimes Act 2009.

#### *Particulars of Offence*

**SEMI RAVUNACECA** and **EMOSI PENIJUELI SIKURI** between the 28<sup>th</sup> day of July 2018 and 29<sup>th</sup> day of July 2018, at Nadi in the Western Division, dishonestly appropriated 1 x Fixtec brand circular saw valued at \$350.00, 1 x Prescott brand circular saw valued at \$180.00, 1 x Makita brand circular saw valued at \$400.00, 1 x Hitachi brand circular saw valued at \$400.00, 1 x Ryobi circular saw valued at \$350.00, 1 x Total brand grinder valued at \$100.00, 1 x Angle brand red grinder valued at \$700.00, 1 x Makita brand drilling machine valued at \$1000.00, 1 x drilling machine green in colour valued at \$1000.00, 1 x Ingo brand drilling machine valued at \$300.00, 1 x Ryobi brand portable planner valued at \$350.00, 1 x Makita brand concrete cutter valued at \$900.00 and 1 x wheel barrow valued at \$150.00, all to the total value of \$6,180.00 the property of **MN BUILDERS** with the intention of permanently depriving the said **MN BUILDERS**.

2. You have admitted the following summary of facts;

*On the 28<sup>th</sup> of July, 2018 at about 3 pm, both accused who work for MN BUILDERS were laid off by Mohammed Nadim. Both accused persons then packed their things and left the work site located at Fantasy, Nadi.*

*At about 6.30 pm on the same date, Shalvin Kumar ("PW1"), carpenter for MN BUILDERS, locked all the carpentry tools inside a machine box and was left at the Foreman's room at the site.*

*On the 29<sup>th</sup> of July, 2018 at about 2.00 am to 3.00 am, both accused persons returned and entered the work site as trespassers with intent to steal some tools. Whilst Emosi Penijueli Sikuri kept watch, Semi Ravunaceva pulled out the screen and removed the louver blades, gaining entry the Foreman's room.*

*After gaining entry, Semi Ravunaceva passed tools outside to Emosi Penijueli Sikuri. They stole, permanently depriving MN BUILDERS the following tools:*

*1 x Fixtec brand circular saw valued at \$350.00,  
1 x Prescott brand circular saw valued at \$180.00,  
1 x Makita brand circular saw valued at \$400.00,  
1 x Hitachi brand circular saw valued at \$400.00,  
1 x Ryobi circular saw valued at \$350.00,  
1 x Total brand grinder valued at \$100.00,  
1 x Makita brand drilling machine valued at \$1000.00,  
1 x drilling machine green in color valued at \$1000.00,  
1 x Ingo brand drilling machine valued at \$300.00,  
1 x Ryobi brand portable planner valued at \$350.00,  
1 x Makita brand concrete cutter valued at \$900.00 and;  
1 x wheel barrow valued at \$150.00, all to the total value of \$6180.00.*

*The matter was reported to the Nadi Police Station and investigations were carried out. During investigations, PC 5540 Sefeti received information that the stolen tools were kept at a house at Koroipita House 129, Lautoka and a search warrant was obtained for a search of the house. Upon search of the house tools were recovered from the house. On the 31<sup>st</sup> of July, 2018 at around 1 pm, "PW1" was called back to Nadi Police Station and he identified the tools to be property of MN Builders.*

*The two accused persons were arrested and caution interviewed. When they were caution interviewed, they both admitted to stealing the mentioned tools of MN BUILDERS site at Fantasy, Nadi. Attached and marked "1" is a copy of Semi Ravunaceva's record of interview and marked "2" is a copy of Emosi Penijueli Sikuri's record of interview.*

*The accused persons were then charged for one count **Aggravated Burglary**: contrary to Section 313 (1) (a) and one count of **Theft**: contrary to Section 291 (1) both of the Crimes Act 2009. Attached and marked "3" is a copy of Semi Ravunaceva's charge statement and marked "4" is a copy of Emosi Penijueli Sikuri's charge statement.*

3. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) is an imprisonment term of 17 years and the Maximum punishment for Theft is an imprisonment term of 10 years.
4. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: *State v. Mikaele Buliruarua* [2010] FJHC 384; HAC 157.2010 (6 September 2010); *State v. Nasara* [2011] FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu* [2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa* [2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru* [2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose* [2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi & Another* [2018] FJHC 364; HAC 101.2018 (7 May 2018) and most recently in *State v Tukele* - [2018] FJHC 558; HAC179.2018 (28 June 2018) .
5. The Court of Appeal in *Leqavuni v. State* [2016] FJCA 31; AAU 106.2014 (26 February 2016), considering an appeal filed against a sentence for Aggravated Burglary observed that the tariff for Aggravated Burglary is between 18 months to 3 years. The court said:

*"The learned counsel submitted that the appropriate tariff for the offence of burglary and/ or aggravated burglary is set in State v Seninawanawa [2015] FJHC 261; HAC 138.2012 (22 April 2015). Madigan J stated in that case as follows, "The maximum penalty for aggravated burglary is a term of*

*imprisonment for 17 years...The accepted tariff for aggravated burglary is a sentence of between 18 months and 3 years, with 3 years being standard sentence for burglary of domestic premises”.*

6. In *State v Naulu* [2018] FJHC 548 (25 June 2018) Perera J has proposed a new tariff for Aggravated Burglary and stated:

*“As I have explained in the case of State v Prasad [2017] FJHC 761; HAC254.2016 (12 October 2017), based on the tariff endorsed by the Supreme Court for the offence of aggravated robbery in the case of Wise v State [2015] FJSC 7, the tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years”*

7. In proposing this new tariff, Perera J took the view that the observation made by the Court of Appeal in *Leqavuni v State* (supra) does not preclude the High Court from revisiting the tariff for the offence of aggravated burglary for the reason that *the appropriateness of the tariff for the offence of aggravated burglary was not an issue before Court of Appeal in that case and therefore that issue was not considered by the Court of Appeal.*
8. I agree with the appealing reasons given by Perera J to justify the proposed higher tariff for Aggravated Burglary. However it appears that the Court of Appeal in deciding *Leqavuni v State* (supra) has not thought it fit to set a new tariff when it considered the appropriateness of sentence imposed by the learned magistrate. It rather endorsed the existing tariff cited in *State v Seninawanawa* (supra). The following statement made by His Lordship Basnayake JA in the said case confirms the above contention;

*“At the time of commission of this offence the tariff that was in operation was between 18 months to 3 years. Considering the fact that the appellant was charged for the offence of aggravated burglary, I am of the view that the point to start should be at the highest level”*

9. In view of the above, I believe that the tariff that existed before *Leqavuni v State* (supra) should be applied by lower courts until the Court of Appeal decides otherwise.

10. For the offence of Theft, the tariff was outlined in *Ratusili v State* [2012] FJHC 1249; HAA011.2012 (1 August 2012). Madigan J at paragraph 13 and 14 observed:

*“From the cases then the following sentencing principles are established:*

*(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.*

*14. Although the higher tariff is apposite for breach of trust thefts of large amounts of money, thefts of sums of money from an employer by way of fraud come within the *Barrick* 81 CrApp R(S) 78 guidelines, as developed by this Court in *Anand Kumar Prasad and ors* [2011] FJHC 218.*

11. In your case, the two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of Section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment for the two offences you have committed.

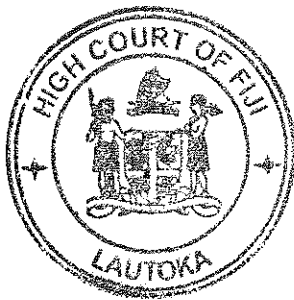
12. Innocent people in Fiji live in fear of burglaries and thefts and look to courts for security. The prevalence of these offences in Fiji and the deterrent effect that punishments will have on potential offenders should be considered objectively in


- identifying the appropriate starting point for the sentence. Negative effect these crimes have on the economic activities of the country should also be considered. Having considered the culpability and the harm caused to the complainant, I pick a starting point of 3 years imprisonment from the upper end of the tariff.
13. It is aggravating that the complainant which is a construction company was badly affected by your offending. They could not continue with their operations as almost all the tools they used were stolen. The fact that you burgled a construction premises that you were once employed should also be considered. Although you were no longer employed by the complainant at the time of the offences, I consider the offending as a breach of trust situation. This is no doubt a premeditated and well planned burglary. I will also take into account the total value of the items you have stolen, which is \$6180.00.
  14. I increase your sentence by 2 years for aforementioned aggravating factors.
  15. You are 25 years old young offender. You are married and not employed. Your wife is currently 3 months pregnant. The State confirms that you have no previous convictions. You have cooperated with police and admitted the offence to the police and pleaded guilty to the charges at the first available opportunity. You have saved precious time and resources of this court. You have been remorseful. You promise not to reoffend and beg another opportunity to rehabilitate yourself. Except the wheelbarrow, all other stolen items have been recovered. I have considered all these factors in mitigating your sentence.
  16. In your mitigation, you have submitted that you were ill-treated and not paid the salary as promised by your former employer whose property you have stolen. That is not a good excuse to commit the crimes you have committed.
  17. I deduct 1 year for mitigating features and 1 year separately for your early guilty plea to arrive at a sentence of 3 years' imprisonment. You have spent nearly 3 months in remand. I deduct further 3 months for the remand period. Accordingly, your final aggregate sentence is a term of 2 years and 9 months imprisonment.
  18. In view of the fact that your sentence fell below 3 years, I considered if a total suspended sentence is warranted in the circumstances of your case. However,

you have stolen property from your former employer in a well-planned burglary. The prevalence in Fiji of burglaries does not allow me to impose a totally suspended sentence on you. For the purpose of promoting rehabilitation, and in balancing other considerations in sentencing, I would partially suspend your sentence in terms of section 26(1) of the Sentencing and Penalties Act. I order that you serve only 9 months of your sentence in prison forthwith and the remaining period of 02 years is suspended for a period of 3 years.

### Sentence

19. Accordingly, you are sentenced to 2 years and 9 months' imprisonment. Your sentence is partially suspended. You shall serve only 9 months in prison and the remaining period of 02 years is suspended for 03 years.



  
Aruna Aluthge  
Judge

At Lautoka

25 October, 2018

### Counsel:

- Office of the Director of Public Prosecution for State
- Accused in Person