

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 299 OF 2017S

STATE

VS

TARAIASI WAQA RABUKU

Counsels : Mr. E. Samisoni for State
Mr. Rabo Matebalavu for Accused
Hearings : 6 May, 2019.
Sentence : 10 May, 2019.

SENTENCE

1. On 6 May 2019, in the presence of his counsel, the accused pleaded guilty to the following counts in the following information:

"Count 3

Statement of Offence

DAMAGING PROPERTY: *Contrary to section 369 (1) of the Crimes Act 2009.*

Particulars of Offence

TARAIASI WAQA RABUKU, ILAITIA SARAI and LORIMA KOROITAMANA with another on the 25th September, 2017 at Sports City, Suva in the Central Division, in the company of each other, willfully and unlawfully damaged the car bumper and right front door of vehicle registration number LT 2924 by throwing stones at the said vehicle, the damages valued at \$500.00, the property of BERENADO ULUILAKEBA.

Count 4

Statement of Offence

RESISTING ARREST: *Contrary to section 277 (a) of the Crimes Act 2009.*

Particulars of Offence

TARAIASI WAQA RABUKU on the 25th September, 2017 at Suva in the Central Division, resisted arrest whilst being arrested by police officer namely D/Cpl 3169 PAULA KAIKAI".

2. The prosecution then presented the following summary of facts in court:

Accused: (A1) Taraiasi Waqa Rabuku, 28 years, unemployed of Kinoya.

Complainants: (PW1) Berenado Uluilakeba, 45 years old, taxi driver of Nadawa.

(PW2) D/Cpl 3169 Paula Kaikai, 35 years old, police officer of Flagstaff.

On 25 September, 2017 between 8am-8.15am, PW1 was driving taxi registration number LT 2924 along Grantham Road, facing towards the junction of Laucala Bay Road near to the entrance of Damodar City. PW1 followed A1 and three other accomplices in his taxi as they ran towards Telau Street. A1 and his three accomplices started throwing big stones at PW1's taxi as he drove behind them. This caused damage to PW1's taxi. PW1 then got off his taxi and ran after A1 and his three accomplices.

PW1 was then assisted by PW2 who arrived at the scene. PW2 announced to A1 that he was a police officer and attempted to arrest A1. A1 then resisted the arrest of PW2 by throwing punches at PW2 as he tried to flee. PW2 managed to arrest A1 and he escorted him to the Raiwaqa Police Station. Later on, after questioning A1, PW2 found out that his name was Taraiasi Waqa Rabuku.

A1 was charged with Damaging Property and Resisting Arrest thereafter.

A1 made nil admissions to either of the offences in his Record of Interview dated 25 September, 2017.

On 6 May, 2019, in the presence of his counsel, A1 voluntarily pleaded guilty to both offences as charged".

3. "Damaging Property", contrary to section 369 (1) of the Crimes Act 2009 carried a maximum sentence of 2 years imprisonment. The tariff is a sentence between 3 months to 12 months imprisonment. Serious cases would attract sentences in the upper range, while less serious cases would attract sentences in the lower end of the scale. In some less serious cases, non-custodial sentence may be appropriate: **State v Baleinabodua**, Criminal Case No. 145 of 2010S, High Court, Suva (23 March 2012).
4. "Resisting Arrest", contrary to section 277 (a) of the Crimes Act 2009, carried a maximum penalty of 5 years imprisonment. No tariff was provided to the court, but in my view, a suitable tariff would be a sentence of 3 months to 3 years imprisonment. Serious cases would attract sentences in the upper range, and less serious cases, the lower end of the scale. The final sentence will depend on the aggravating and mitigating factors.
5. In this case, the aggravating factors, were as follows:
 - (i) A complete disregard for people's property rights. The complainant was lawfully driving his taxi to earn himself some money. By throwing big stones at the complainant's taxi, the accused obviously disregarded his property rights.
 - (ii) Resisting being lawfully arrested. It was obviously wrong for the accused to resist being arrested by police officer, Corporal Paula Kaikai. Resisting arrest by punching a police officer is a serious matter.
6. The mitigating factors, were as follows:
 - (i) At the age of 30 years, this is your first offence;
 - (ii) You pleaded guilty to the offence, and thus saved the court's time;
 - (iii) You had spent 17 months in custody, while awaiting trial.
7. I had carefully looked at your case in its totality. I had carefully considered the aggravating and mitigating factors. You are a first offender. You pleaded guilty and thus saved the court's time. You had been remanded in custody for a total of 17 months. In my view, you

had already served your sentence while been remanded in custody, and there is no need for further punishment.

8. Because of the above, on count no. 3 (damaging property), I convict and discharge you. On count no. 4 (resisting arrest), I convict and discharge you.
9. You have 30 days to appeal to the Court of Appeal.



Solicitor for the State
Solicitor for the Accused

: Office of the Director of Public Prosecution, Suva.
: Mr. Rabo Matebalavu, Barristers & Solicitor, Suva.



Salesi Temo
JUDGE