

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO.: HAC 114 OF 2018**

**THE STATE**

**-v-**

- 1. MATAIYASI NAVUGONA**
- 2. KEVERIELI DUIGIGIDIGO WAQA**

**Counsel:** Ms. W. Elo for Prosecution  
1st Accused is in Person  
Mr. L. Qetaki for 2nd Accused

**Date of Judgment :** 29 March 2019  
**Date of Sentence:** 28 May 2019

**SENTENCE**

1. **Mataiyasi Navugona and Keverieli Duigigidio Waqa**, you were jointly charged with Aggravated Robbery contrary to section 311(1)(a) of the Crimes Act 2009. The information reads as follows:

Statement of Offence

**AGGRAVATED ROBBERY:** contrary to section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence

**MATAIYASI NAVUGONA** and **KEVERIELI DUIGIGIDIGO WAQA** on the 11<sup>th</sup> day of March, 2018 at Kinoya in the Central Division, in the company of each other robbed, Reapi Kawanikailekutu of \$249 in case cash, the property of Reapi Kawanikailekutu.

2. **Mataiyasi Navugona**, you appeared in court and pleaded not guilty to the charge. Thereafter you absconded and failed to appear in court on the date assigned for trial. The bench warrant issued by this court to arrest you could not be executed. The court proceeded to trial in your absence when it was satisfied that you were deliberately absconding court proceedings and that your presence cannot be secured in due course. At the ensuing trial you were found guilty and convicted as charged.
3. After the judgment was pronounced, you were arrested and brought before this court. You were given an opportunity to exercise the right to consult a legal practitioner. You waived the right to a legal practitioner and opted to file the mitigation in person. You now come before this court for sentence.
4. **Keverieli Duigigidio Waqa**, you participated at the trial and were defended by a counsel. You were found guilty and convicted. You also come before this court for sentence.
5. The facts of the case were that the complainant was running a car wash at Kinoya. On the 11<sup>th</sup> of March, 2018, The complainant was at the said 'car wash' with her co-worker and her one year old daughter. In the morning, both of you approached the room of the 'car wash' and pulled open the grill door. You forcefully entered the room and took the days' cash collection from the cashier, three mobile phones and fled the scene in a taxi when the complainant was yelling for help in fear.

- 6 Aggravated Robbery is punishable by 20 years' imprisonment.
7. The tariff depends on the nature and circumstances of the robbery. The tariffs are as follows:
- Street mugging: 18 months to 5 years' imprisonment (*Raqauqau v State* [2008] FJCA 34; AAU0100.2007 (4 August 2008).
- Home invasion: 8 - 16 years' imprisonment (*Wise v State* [2015] FJSC 7; CAV0004.2015 (24 April 2015).
- spate of robberies: 10 -16 years' imprisonment (*Nawalu v State* [2013] FJSC 11; CAV0012.12 (28 August 2013)
8. In assessing the objective seriousness of your offending, I looked at culpability of your offending and the harm caused to the complainant. In selecting the starting point, the court must strike a delicate balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of each person who is to be sentenced.
9. Although the offence was committed during a home invasion, it was not a night time attack. You committed this offence under the influence of alcohol and the offence was opportunistic. No weapon was used. No physical harm was caused to the complainant. For these reasons, I would select a starting point of 6 years, which is under prescribed tariff.
10. In *Wise* (supra), Gates CJ (as he then was) at p [26] enunciated the following factors that would enhanced the sentence:
- (i) offence committed during a home invasion.
  - (ii) in the middle of the night when victims might be at home asleep.

- (iii) carried out with premeditation, or some planning.
- (iv) committed with frightening circumstances, such as the smashing of windows, damage to the house or property, or the robbers being masked.
- (v) the weapons in their possession were used and inflicted injuries to the occupants or anyone else in their way.
- (vi) injuries were caused which required hospital treatment, stitching and the like, or which come close to being serious as here where the knife entered the skin very close to the eye.
- (vii) the victims frightened were elderly or vulnerable persons such as small children.

11. Both of you share the following aggravating features on an equal footing. The offence was committed during a home invasion. You robbed the complainant when she was with her one year old child. She and her co-worker were pregnant and vulnerable. I add 1 year to the to the above mentioned starting point.
12. You have filed separate mitigating submissions and begged for lenient sentences. I have considered the mitigation submissions filed by you and your counsel.
13. Mathaiasi, you are 27 years of age and married. You are a father of 1 year old daughter. You earn a living as a construction worker and look after your elderly parents and your family. **You will be given a discount for your clean record and youth.** You had been in remand for **nearly a year** and the remand period will be separately discounted in coming to your final sentence. I deduct your sentence by 2 years for mitigation and the remand period to arrive at a sentence of 5 years' imprisonment. Having considered your rehabilitation potential as a young and first offender, I fix a non- parole period of 4 years.

14. **Waqa**, you are 28 years of age. You are married and a father of a 5 year old daughter. You are a construction worker. You are a **first offender**. You have been in remand for nearly 1 year. The remand period will be separately discounted. For the mitigating features, I deduct 2 years and for the remand period I give a further discount of one year to arrive at a sentence of 4 years' imprisonment. Having considered your rehabilitation potential as a young and first offender, I fix a non-parole period of 3 years.

15. The courts have a duty to deter this kind of anti-social behaviour on innocent members of the public and safeguard their propriety rights. Potential offenders should be sent a clear message. The primary purposes of this punishment are deterrence and denunciation. I have also considered the rehabilitation potential of each of you as young offenders.

16. **Summary**

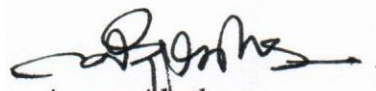
**Mataiyasi Navugona - 5 years' imprisonment with a non-parole period of 4 years.**

**Keverieli Duigigidio Waqa, - 4 years' imprisonment with a non-parole period of 3 years.**

17. 30 days to appeal to the Court of Appeal.

AT Suva  
On 28 May 2019



  
Aruna Aluthge  
Judge

**Counsel: Office of the Director of Public Prosecution for Prosecution  
Legal Aid Commission for 2nd Accused**