

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

**CRIMINAL CASE NO.: HAC 248 OF 2018**

**STATE**

**-v-**

- 1. JOHN ISAAC**
- 2. SERA CAVE NAIVALURUA**

**Counsel:                    Mr. Z. Zunaid & Ms. S. Lodhia for Prosecution**  
**Mr. J. Dinati for Accused**

**Dates of Trial                :        27,28,29,30 May 2019**  
**Date of Summing Up:       31 May 2019**

**SUMMING UP**

Ladies and Gentleman Assessor:

1. We have now reached the final phase of this case. The law requires me, as the Judge who presided over this trial to sum up the case to you. Each one of you will then be called upon to deliver your separate opinion, which will in turn be recorded. As you listened to the evidence in this case, you must also listen to my summing up of the case very carefully and attentively. This will enable you to form your individual opinion as to the facts in accordance with the law with regard to the innocence or guilt of the accused person.
2. I will direct you on matters of law which you must accept and act upon.
3. On matters of facts however, which witness you consider reliable, which version of the facts to accept or reject, these are matters entirely for you to decide for yourselves. So, if I express any opinion on the facts of the case, or if I appear to do so, it is entirely a matter for you whether to accept what I say, or form your own opinions.

4. In other words you are the judges of fact. All matters of fact are for you to decide. It is for you to decide the credibility of the witnesses and what parts of their evidence you accept as true and what parts you reject.
5. The counsel for Prosecution and the Defence made submissions to you about the facts of this case. That is their duty as the counsel. You may properly take into account their arguments when evaluating the evidence. It is a matter for you to decide which version of the facts to accept, or reject.
6. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I deliver my judgment.
7. On the matter of proof, I must direct you as a matter of law that accused person is innocent until he is proven guilty. The burden of proving his guilt rests on the Prosecution and never shifts.
8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find an accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty. However, the doubt must be reasonable and not be based on mere speculation.
9. Your opinions must be solely and exclusively upon the evidence which you have heard in this court and upon nothing else. You must disregard anything you might have heard or read about this case, outside of this court room. Your duty is to apply the law as I explain it to you to the evidence you have heard in the course of this trial. This summing-up is not evidence. Statements, arguments, questions and comments by the counsel are not evidence either. A thing suggested by a counsel during a witness' cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as being true.
10. Your duty is to find the facts based on the evidence and apply the law to those facts. Use your common sense and approach the evidence with detachment and objectivity. Do not get carried away by emotion.
11. You will not be asked to give reasons for your opinions. Your opinions need not be unanimous although it is desirable if you could agree on them. I am not bound by your opinions. But I will give them the greatest weight when I deliver my judgment.
12. In assessing the evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole.

13. In evaluating evidence, you should see whether the story relayed in evidence is probable or improbable; whether the witness is consistent in his or her own evidence or with his or her previous statements or with other witnesses who have given evidence. It does not matter whether that evidence was called for the Prosecution or for the Defence. You must apply the same tests and standards in applying them.
14. Another relevant aspect in assessing truthfulness of a witness is his or her manner of giving evidence in court. You have seen how the witnesses' demeanor in the witness-box when answering questions. How did they conduct themselves in court? In general, what was their demeanor in court? But, please bear in mind that many witnesses are not used to giving evidence and may find court environment distracting.
15. In this case the Prosecution and the Defence have agreed on certain facts. The agreed facts are part of evidence. You should accept those agreed facts as accurate and truth.
16. The agreed facts of this case are that:
  1. John Isaac and Sera Naivalurua are married, and reside at Rokara Road, Khalsa Road, Valelevu.
  2. In June 2018 at 131 Domain Road, Suva the following items were missing from the property:
    - (i) 65" inch Hachi TV screen
    - (ii) HISENCE Metallic Large Fridge
    - (iii) Round dining table and 4 chairs
    - (iv) 2 English chairs
    - (v) Black leather autumn chair
    - (vi) Sharp Microwave Oven
    - (vii) Sony Bhravia Stereo set
    - (viii) White plates
    - (ix) Backeret stainless steel pots
    - (x) Carved table
    - (xi) 4 x chairs
  3. On the 5<sup>th</sup> June 2018, the accused persons with another took a 65" inch Hachi TV screen and a Sharp Microwave Oven from 131 Domain Road, Suva.
  4. On the 8<sup>th</sup> June 2018, the accused persons with another took a HISENCE Metallic Large Fridge, Round dining table and 4 chairs, 2 English chairs, Black leather

autumn chair, Sony Bhravia Stereo set, White plates, Backeret stainless steel pots, Carved table and 4 x chairs from 131 Domain Road, Suva.

5. The above items except for the 65"inch Hachi TV screen were recovered from the residence of both the accused persons at Rokara Road, Khalsa Road, Valelevu.
  - The search list dated 12/6/18 voluntarily signed by both the accused persons is agreed and tendered by consent.
6. The recovered items were then photographed by PC Mosese Tasimai on 12 June 2018.
  - The photographic booklet Photo Job No. 261/18 is tendered by consent.

17. The accused are jointly charged with two offences namely Aggravated Burglary and Theft on four counts; The information is as follows:

### **COUNT ONE**

#### *Statement of Offence*

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

#### *Particulars of Offence*

**JOHN ISAAC AND SERA CAVE NAIIVALURUA** together with another on the 5<sup>th</sup> June 2018 at, Suva in the Central Division, in the company of each other entered into the premises of ASHLA SINGH as trespassers with intent to commit theft of ASHLA SINGH's property.

### **COUNT TWO**

#### *Statement of Offence*

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

#### *Particulars of Offence*

**JOHN ISAAC AND SERA CAVE NAIIVALURUA** together with another on the 5<sup>th</sup> June 2018 at, Suva in the Central Division, in the company of each other STOLE 1X 65 INCH Hitachi TV flat screen valued at \$3500.00, 1x sharp brand Microwave Oven valued at \$400.00 and a toaster, all to the total value of \$4000.00 the property of ASHLA SINGH with the intention to deprive ASHLA SINGH of the above properties.

### COUNT THREE

#### *Statement of Offence*

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

#### *Particulars of Offence*

**JOHN ISAAC AND SERA CAVE NAIIVALURUA** together with another on the 8<sup>th</sup> June 2018 at, Suva in the Central Division, in the company of each other entered into the premises of ASHLA SINGH as trespassers with intent to commit theft of ASHLA SINGH's property.

### COUNT FOUR

#### *Statement of Offence*

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

#### *Particulars of Offence*

**JOHN ISAAC AND SERA CAVE NAIIVALURUA** together with another on the 8<sup>th</sup> June 2018 at, Suva in the Central Division, in the company of each other stole 1x Hisense Metallic refrigerator valued at \$2000.00, 1 x Simpson washing machine valued at \$1000.00, a round dining table and 4 chairs valued at \$1200.00, 2x English chairs valued at \$1500.00, 1x black autumn leather chair valued at \$1500.00, assorted white plates valued at \$300.00, Bakeret Stainless steel pots valued at \$600.00, Sony brand stereo valued at \$2000.00, 4x chairs valued at \$200.00, carved table valued at \$1500.00, and 4x chairs \$200.00 all to the total value of \$11,800.00 the property of ASHLA SINGH with the intention to deprive ASHLA SINGH of the above properties.

18. I will now deal with the elements of Aggravated Burglary.
19. Aggravated Burglary is an aggravated form of burglary. When a person commits a Burglary in the company of one or more other persons it becomes an Aggravated Burglary.
20. The offence of Burglary is defined in section 312(1) of the Crimes Act ...A person commits a burglary if he or she enters or remains in a building as a trespasser with intent to commit theft of a particular item of property in the building.
21. The prosecution must prove beyond reasonable doubt the following elements:

- (i) the accused
- (ii) entered or remained in the building
- (iii) as a trespasser
- (iv) with intent to commit theft

22. A trespasser is a person who enters and remains in a building without the owner's permission. In other words, that person enters and remains in the building without any lawful authority, thus she or he becomes a "trespasser".
23. Accordingly, in order to prove the 1st and 3rd counts of Aggravated Burglary, the prosecution must establish that
- a. JOHN ISAAC AND SERA CAVE NAIVALURUA together with another entered into the house of Ashla Singh on the 5th and the 8th of June 2018 as trespassers.
  - b. When they entered that building their intention was to commit theft of a particular items of property kept in that house and that was their common intention.
24. The intention of each accused is a central issue here. No one can look inside their minds. So you are supposed to examine the evidence in relation to their conduct and ask yourselves whether you are sure beyond reasonable doubt that the accused entered the Ashla's house to commit theft of a particular item or property kept in that house.
25. The offence of burglary becomes aggravated burglary only when a person commits burglary in the company of one or more other persons. This brings in an additional element to be proved by the prosecution.
26. The 2<sup>nd</sup> and 4<sup>th</sup> counts are on Theft. A person commits theft if that person;
- a. dishonestly;
  - b. appropriates the property belonging to another;
  - c. with the intention of permanently depriving the other of that property.
27. The element 'dishonestly' is about the state of mind of the accused. So is the element, 'intention to permanently deprive'. Inferences may be drawn from the conduct of the accused with regard to an accused's state of mind.
28. 'Appropriation of property' means taking possession or control of the property without the consent of the person to whom it belongs. At law, property belongs to a person if that person has possession or control of the property.

29. An offence may be committed by one person acting alone or by more than one person acting together with the same criminal purpose. In this case, the Prosecution says that the accused committed the offence in the company of each other. I must explain to you the liability of a number of people who commit a crime together. If several people decide to commit an offence together, and all of them participate and assist each other in doing it, each of them is guilty of the crime that is committed. This is so, even though individually, some of them may not actually do the acts that constitute the offence. The offenders' agreement to act together need not have been expressed in words. It may be the result of planning or it may be a tacit understanding reached between them on the spur of the moment. Their agreement can be inferred from the circumstances.
30. Those who commit a crime together may play different parts to achieve their purpose. The Prosecution must prove that the accused took some part in committing the crime. If you are sure that the offence of Aggravated Burglary was committed by more than one person and that the accused acted together to commit that offence and took some part in that offence, you should find the accused guilty of the offence of Aggravated Burglary.
31. The Prosecution says that the accused were involved with each other in the commission of the crime. In view of this allegation it is convenient to deal with their cases together in the one trial. However, they are still entitled to have their charges considered separately. I direct you that you must consider the case against each accused separately. In doing this you must carefully distinguish between the evidence against one accused and the evidence against the other. You must not, for instance, supplement the evidence against one accused by taking into account evidence referable only to another.
32. Police interviewing officers read the record of caution statement of each accused. I am now going to direct you as to how you should approach caution statements in evidence in this case. The caution interview of a particular accused can only be used in the case relating to him or her and not evidence against the other. As a matter of law, nothing in that caution interview can be regarded as evidence against other accused person. However, you can compare the caution interviews of each accused to test the consistency for you to be satisfied as to where the truth lies.
33. The accused do not challenge the admissibility or truthfulness of their respective caution interviews. They are relying on the explanations given in the interviews. It is for you to assess what weight should be given to answers given by the accused in their respective caution statements.
34. Accused persons in their respective caution statements, while admitting the taking and recent possession of stolen property from No. 131, Domain Road, deny having had any dishonest intention and have advanced an explanation as to how those

items came into their possession. Exercising their right to remain silent, they opted not give evidence in support their explanations and denials in their respective caution statements. Therefore, what they had told police would be considered in law as out of court statements which are inherently weak evidence in that they are neither given under oath nor tested in uncross-examination. For these reasons, you may think that their explanations and denials do not have the same weight that you may attach to admissions in their caution statements. However, it is your duty to consider the caution statements as a whole and other evidence led in trial in deciding where the truth lies. If you are not sure, for whatever reason, that the explanations and denials of the accused are true, you may reject them. If, on the other hand, you are sure that they are true, you may rely on them.

35. Proof of the elements of these offences could be established only through evidence. Evidence can be from direct evidence that is the evidence of a person- that is what witnesses saw, heard or perceived by his/her senses, as well as documentary evidence for example the photographs tendered in evidence. You should, in addition, consider circumstantial evidence that is the evidence that is not direct but you can put proved factors together and make some inferences and come to conclusions.
36. The Prosecution in this case relies on circumstantial evidence to prove that the accused persons had the dishonest criminal intention and that there is no other reasonable explanation than that they had that intention. The law on circumstantial evidence is that if, on considering a series of pieces of evidence, you are satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused, and there is no other reasonable explanation for the circumstances which is consistent with the accused's' innocence, then you may find the accused guilty of the offence charged.
37. The Prosecution in this case particularly relies on an inference that is generally drawn by courts arising out of unaccounted recent possession of stolen property. The law is that if, recently after the commission of the crime, a person is found in possession of the stolen goods, that person is called upon to account for the possession, that is, to give an explanation of it, which is not unreasonable or improbable. The strength of the inference, which arises from such possession, is in proportion to the shortness of the interval which has elapsed from the time of the offence. If the interval is short, the presumption is so strong, that it almost amounts to proof; because the reasonable inference is that the person must have stolen the property and committed the offence incidental thereto, which is burglary in this case. If an explanation is given which may be true, it is for you decide on the whole evidence whether the accused is guilty or not; that is to say, if you think that the explanation may reasonably be true, the accused is entitled to an acquittal, because the Prosecution has not discharged the *onus* of proof imposed upon it of satisfying



you beyond reasonable doubt. That *onus* never changes, it always rests on the Prosecution.

38. I will now deal with the summary of evidence in this case. In doing this, I do not propose going through all the evidence. It should still be fresh in your minds. If I refer to only some aspects of a witness's evidence it does not mean that the rest is unimportant. You must weigh up and assess all the evidence in coming to your decision in this case.

### **Case for prosecution**

#### **PW.1 Ashla Marina Singh**

39. Witness Ashla said that, in early June 2018, her partner, Mr. Hazelman, was away in Geneva for over two weeks and she was staying at home in Lami. They had another house at No 131 Domain Road which was not occupied at that time. They had asked her family friend Ratu Josva Tabakaucoro to keep an eye on the house.
40. On 11<sup>th</sup> day of June 2018, she got a call from her husband who was travelling back from Geneva to inform her that the house at 131 Domain Road had been broken into.
41. She immediately went to 131 Domain Road. When she got there, the police were already there with Ratu Joseva. She saw her house being ransacked and damaged. She found that her household items listed in the agreed facts had been stolen. She recorded a statement with police giving a list of items that were missing based on her recollection.
42. On the 12<sup>th</sup> of June 2018, she was called by the police and asked to come and identify the items that had been recovered. She went and identified the stolen items. Except 65 inch screen TV and washing machine, all other missing items had been recovered. When a booklet of photographs (PE1) was shown, she identified photographs of the items stolen from her house. She said that the money depicted in photographs 24-28 is not her property.
43. She denied that a person by the name of Seta alias Atunaisa Balewai was staying at 131 Domain Road as the caretaker in the month of June 2018. She said that she could not say who broke into No. 131 Domain Rd. because she was not a witness to the break in.

#### **PW 2 - Ratu Joseva Tabakaucoro**

44. Ratu Joseva said that during the month of June 2018, he was asked by Mr. Hazelman to look after his property at 131 Domain Road for a period of two weeks whilst he was away overseas.
45. He went to the property on the 5<sup>th</sup> June 2018. He did not go into the main house but only to a side room which is a music room. He did not notice anything unusual. On the 11<sup>th</sup> of June 2018, he again went to 131 Domain Road and saw that the household items including tables, chairs and washing machine were missing. He saw a big hole on the back door. The items in the kitchen and sitting room had gone missing. He found the back grills ripped and pulled out and the louvers removed. He then called the police and attempted to call Mr. Hazelman.
46. Under cross examination, when he was referred to his statement given to police, Ratu Joseva confirmed that he did not go to the property on the 8<sup>th</sup> and that particular point of his statement is not correct.

### **PW 3- Tawase Delasau**

47. Witness Tawase said that on, 11<sup>th</sup> of June 2018, he came to Suva from Vanua Levu to look for a van and had a sleepover at Sera and John Isaac's place at Rokara. Sera is his wife's sister. He saw some household items, a fridge, TV, table, gas stove, and a radio in their house. John Isaac told him that he bought those household items through a buy and sell, an app on facebook that is used to sell items. On the 12<sup>th</sup> of June 2018, after breakfast he came down to Samabula to check on a van and, when he returned back in the afternoon, only Sera's kids were there. John and Sera were not there and also the items were also no longer there at home.
48. He was told by the kids and also by the neighbours that those items were taken by police officers. He recognised the fridge, the TV, the gas stove, the table, the radio, the settee, when he was shown the photographs in PE 1 as the same items that he saw at John Isaac's house earlier.
49. Under cross examination he denied having heard from John that those items had been given to them by one Seta for safe keeping. Under re-examination, Tawase confirmed that John had never told him that those items were being kept at his house for safe keeping for one Seta.

### **PW 4 - DC Peni**

50. DC Peni said that he interviewed the 1st accused John Isaac for three days from 12<sup>th</sup> to 14<sup>th</sup> of June, 2018 at the Totogo Police Station. He tendered the record of caution interview of the 1st accused (PE2) and read it into evidence. He further said that he cautioned the accused and gave his rights as reflected in the interview notes.

On the 14th June, 2108, during the caution interview, he went with the 1st accused for a scene reconstruction. The 1st accused showed him the place where the truck was parked and the house where they removed the items from.

51. DC Peni said that all the answers recorded in the caution interview were given by the 1st accused and that he did not make up any of those answers. He also said that the 1st accused was not forced or threatened to give those answers.
52. Under cross examination, DC Peni admitted that he was part of the investigating team but he did not investigate about the person named Seta. He further said that there was no person named Seta as such. Under re-examination, DC Peni said that he was tasked only to conduct the interview of the 1st accused and the investigation was done by the investigating officer DC Livai.

#### **PW 5 -DC Livai**

53. DC Livai said that when he was based at Totogo Police Station, he was instructed to conduct the investigation in to a burglary at a government quarters at Domain Road. The complaint had been lodged by one Ratu Joseva on the 11th of June, 2018. He rushed to the crime scene at 131 Domain Road where Ratu Joseva and the owner of property, Ms. Hazelman were already present. During the investigation into the house, he found that the household items had been removed and the house damaged. Upon an inquiry, the people working at a nearby construction site informed that one career from Suva market came on two separate days with a fair lady and a man who is dark in complexion and loaded the household items into the career. Based on this information, his team managed to locate the career driver who showed the house at which the items were unloaded which is located at Rokara in Valelevu.
54. Ms. Hazelman gave a list of items that had been removed from her house and also recorded a statement. He prepared a search warrant and, on the 12th June, 2018, raided the house at Rokara. The house raided was being occupied by a couple whom he later identified as the accused. They found the suspected property listed in the search list in accused's house. The accused persons admitted that the items in the search list are in their house. He called the complainant Ratu Joseva to come and identify those items. Complainant came and positively identified the items as being the property stolen from Mr. Hazelman's house. A list of items (PE3) was prepared and took all the items into police custody and photographed. The recovered items were taken to the Totogo Police Station and later released to the complainant. The currency notes taken from accused's possession were later released to the accused after being satisfied that they did not form part of proceeds of crime. DC Livai recognised the booklet of photographs taken of the property recovered from accused's house. The accused were taken into custody and their statements recorded.

55. DC Livai said that apart from being the investigating officer, he conducted the caution interview of the 2nd accused and also charged the 1st accused. He conducted the caution interview of the 2nd accused at the Totogo Police Station from 12th to 14th June, 2018, in the presence of the witnessing officer WDC Kesa. The witness said that the 2nd accused was cautioned and not threatened or forced to give the answers. 2nd accused did not complain of anything. All the answers were given by the 2nd accused. He said that he did not make up any of those answers. The record of interview was tendered (PE4) and read into evidence.
56. DC Livai further said that since the accused on his arrest and also at the caution interview had mentioned about a person named Seta, they made every effort to locate this person at the three addresses given by the accused but they could not find such a person. The telephone number given had been diverted. Upon an examination of the telephone call history of the accused, no such number was found. The only name given to police was 'Seta' and the accused failed to give the full name of this person. He said that this Seta was an imaginary person.
57. Under cross examination, DC Livai denied that he failed to conduct a thorough investigation into Seta. He said that until he came to give evidence, he was not informed that this Seta is also known as Atuneisa Buleiwai. He denied that the 2nd accused, after being released from remand, had approached him to give the real name of this Seta. He admitted that the police found the accused to be truthful in their claim that the money found in their house was raised for Rokara Women's Association. He admitted that both the accused in their respective caution interviews had claimed that they were only assisting Seta in safe keeping of his property without having any knowledge that the same had been stolen. He did not agree that the accused had fully corroborated each other in their respective caution interviews.
58. Under re-examination DC Livai admitted that Ritesh, the driver of the career, had revealed the involvement of a third person in moving the property from the house at Domain Road.
59. That was the case for the Prosecution. At the close of the Prosecution's case you heard me explain to the accused what their rights were in defence and how they could remain silent and say that the Prosecution had not proved the case against them to the requisite standard or they could give evidence in which case they would be cross-examined.
60. The accused elected to exercise their rights to remain silent. That is their right under the Constitution. You must not hold against the accused for exercising their constitutional right. You must not think that they remained silent because they are

guilty. The burden is always on Prosecution. The Defence called two witnesses to support their claim in the caution interview. You should consider the evidence presented by two witnesses using the same tests you had used to test the credibility of Prosecution's witnesses and give it such weight as you deem appropriate.

### **Case for Defence**

#### **DW 1 -Tokasa Mona**

61. Tokasa said that she came to court to assist John and Sera in their case. She had worked in a hairdressing salon with Sera for 5 to 6 years and has been her very best friend since then.
62. On the 5<sup>th</sup> of June 2018 she could recall an iTaukei guy sitting outside the saloon awaiting Sera's arrival. This man told her that he wants to move his items to Sera's house. He told her that his name is Seta.
63. Under cross-examination, Tokasa said that she did not want to see her best friend going to jail for this matter. She admitted that, before coming to court, she had discussed about this case with Sera. She said that Seta came to the saloon on the 4<sup>th</sup> and not on the 5<sup>th</sup> of June, 2018. She admitted that, in June 2018, she was aware that Sera was charged for this matter. Sera had told her that she had nothing to do with this crime and Seta was the one who did all this. When the court questioned, Tokasa said that Sera did not tell her at any time that it was this Seta who had committed this offence. She said she had never spoken to Sera about this incident.

#### **DW 2- Lepani Viriva**

64. Lepani said that he is residing at Kenan Street in Narere. He knew Seta, whose real name is Atunaisa Balewai and he is also known as Jook. Seta is his cousin. Seta had been staying at his place for a couple of years and is no longer staying with them. After Seta came back from prison in February 2019, committing a burglary, his father never accepted him back at home because he steals things from his house. Last year, he was caught in one case and went to prison. Lepani said that he met this Seta even last week. He showed the court a photograph of Seta from his phone. He said that he took this photograph last month when they were having a lovo. He came to know of this case around last week when the Defence Counsel Dinati came looking for Atunaisa.
65. Under cross examination, Lepani said that he was not aware of this case until the lawyer approached him. The Counsel did not explain what Seta's role was in this case. Seta was staying with him for five years schooling in Suva. He didn't question the lawyer as to why does he had to come and give evidence in this case.

66. That is the case for Defence.

### **Analysis**

67. There are no eye witnesses to these alleged burglaries and thefts. The Prosecution relies on circumstantial evidence to prove the charges. The Prosecution invites you to draw the inference as to recent possession of stolen property that I have explained to you earlier and come to the conclusion that the accused, acting together with another person burgled the house at No. 131 Domain Road and stole the property belonging to Ms. Hazelman.
68. There is no dispute in this case that both accused went with another person to the house at No.131 Domain Road on the 5th and 8th of June 2018 and removed the items listed in the agreed facts and that those items were in the possession of the accused on the 11th June 2018, 3 to 5 days after the alleged thefts and burglaries. There is also no dispute that the property found in the possession of the accused is stolen property in this case. Therefore, the only issue is whether the accused have given an explanation which is not unreasonable or improbable.
69. Both accused opted to remain silent and did not give evidence under oath. The only evidence available in this regard is the explanations they had given to police in their respective caution statements. Both accused have told police that they were only assisting one Seta in good faith to relocate the property from the house at No. 131 Domain Rd, which they believed to be the property of Seta.
70. Prosecution says that the accused have lied to police to cover up their involvement in these offences. Prosecution does not deny the involvement of a third person in the commission of these offences. However they deny that this third person is Seta. They say that Seta is an imaginary person introduced to cover up the real identity of the third person who was complicit in committing these offences.
71. Defence called two witnesses to establish that Seta is a real person and also to show that Seta's real name is Atunaisa Buleiwai. Prosecution says that the witnesses for Defence are not reliable and they cannot be relied upon. They also say that no link is established between Seta referred to by the accused in their respective caution statements and Atunaisa Buleiwai who is the cousin of witness Lepani.
72. Having taken into consideration the evidence as a whole, if you think that the explanation given by the accused may reasonably be true, the accused are entitled to be found not guilty, because the Prosecution has not discharged the *onus* of proof imposed upon it of satisfying you beyond reasonable doubt of each accused's guilt. That *onus* never changes; it always rests on the prosecution.

73. If you are satisfied that the explanation the accused have offered is untrue, you may infer guilty knowledge and find the accused guilty on each count. If, however, the explanation offered is one which leaves you in doubt whether the accused knew the property was stolen, then the case has not been proved, and, therefore, the opinion should be Not Guilty.
74. That concludes my summing up of the law and the evidence in this particular trial. We have now reached the stage where you must deliberate together and form your individual opinions on whether the charge has been proved against the accused. On your return you will be asked to separately state in Court whether each accused is guilty or not guilty on each count.
75. Your possible opinions would be:
- 1<sup>st</sup> Accused  
Count 1- Aggravated Burglary - Guilty or Not Guilty?  
Count 2- Theft - Guilty or Not Guilty?  
Count 3- Aggravated Burglary - Guilty or Not Guilty?  
Count 4- Theft - Guilty or Not Guilty?
- 2<sup>nd</sup> Accused  
Count 1- Aggravated Burglary - Guilty or Not Guilty?  
Count 2- Theft - Guilty or Not Guilty?  
Count 3- Aggravated Burglary - Guilty or Not Guilty?  
Count 4- Theft - Guilty or Not Guilty?
76. Would you please now retire to consider your opinions? When you have made your decisions would you please advise the Court clerk and the Court will reconvene to receive your opinions?
77. Any redirections?

  
Aruna Aluthge  
Judge

The seal of the High Court of Fiji is circular, featuring a central emblem with a crown and two figures. The text "HIGH COURT OF FIJI" is written around the top inner edge, and "SUVA" is at the bottom. Two stars are positioned on the left and right sides of the inner circle.

**AT SUVA**  
**31<sup>st</sup> May, 2019**

**Solicitors: Office of the Director of Public Prosecution for State  
MIQ Lawyers for Defence**