

NAIOKO KAMI with another on 09 February 2019, at Navua in the Central Division, robbed **MERESEINI TIKOIMERIKA** of her Samsung J5 mobile phone worth FJ 600.00 and immediately before robbing **MERESEINI TIKOIMERIKA** used force on her.

2. You have freely and voluntarily pleaded guilty to the charge when you were represented by a counsel. You understood the consequence of the guilty plea and the sentencing tariff for offence you have committed. I am satisfied that the guilty plea is informed and unequivocal and entered freely and voluntarily.
3. You agreed the following summary of facts when it was read to you in court. The facts agreed satisfy all the elements of the offence of Aggravated Robbery. You are found guilty and convicted as charged.
4. The facts you agreed are that:

Summary of Facts

- I. *The accused in this matter is Naioko Kami (DOB 18/04/99), a 19 year old labourer of Vakacegu Settlement, Navua.*
- II. *The victim in this matter is Mereseini Tikoimerika, a 31 year old sales girl who resides at Togoru, Navua.*
- III. *At about 0200 hours on 09 February 2019 the accused, together with another, had jointly and unlawfully intruded into the rented premises of Mereseini Tikoimerika at Togoru Navua whilst she slept.*
- IV. *At the said material times, the accused and another had entered into Mereseini Tikoimerika's home through the kitchen window after the said another person had removed 03 louver blades from her kitchen window. Mereseini Tikoimerika awoke upon hearing intruders in her*

home and she confronted one of them who was the said another person.

- V. *Mereseini Tikoimerika had her Samsung J5 mobile in her hand and she struggled with the said another person who grabbed her neck. During this time the accused fled Mereseini Tikoimerika's home whilst she struggled with the said another person. The said another person was able to grab her said mobile phone and he then also fled from her home as Mereseini Tikoimerika mobile phone and he then also fled from her home as Mereseini Tikoimerika had been shouting and had managed to rouse her neighbours help.*
- VI. *The matter was reported to the Navua Police Station and Mereseini Tikoimerika was medically examined at about 0925 hours on 09 February 2019. The medical examination showed that Mereseini Tikoimerika had suffered bruising to her left and right forearms and neck and pain as a result of struggling with the said another person (attached : medical report of Mereseini Tikoimerika dated 09/02/19).*
- VII. *The accused was arrested and interviewed under caution on 10th February 2019. The accused made voluntary admissions Q & A 30 – 55) that on 09/02/19, after dinner, he met Alusio Elder who told the accused to accompany him to the house of a girl (who works at Courts) at Togoru, Navua to get something from her. The accused went along with Alusio Elder who unknown to the accused, had a razor blade in his hand which Alusio Elder used to cut the wire netting on the house window. After cutting the net Alusio Elder removed 03 louver blades and left it inside a drain beside the house. Alusio Elder went inside and beckoned the accused to join him which the accused did. The accused and Elder were inside the house when the lady (Mereseini Tikoimerika) was awake on answering a call on her phone. When the lady came towards the kitchen the accused says he ran outside through the main door. When the accused was outside he heard the lady screaming however the accused says he didn't see what transpired between the lady and Alusio Elder. Soon after wards Alusio Elder bolted from the*

house and hid in some bushes. The accused followed Alusio Elder and went with him to Vakacegu after which he went his own way home. The accused also took part in scene reconstruction however Mereseini Tikoimerika's phone was not recovered as it was taken by Alusio Elder (attached: Cautioned interview of Naioko Kami dated 10/02/19).

VIII. The accused was charged with one count of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act 2009. The accused has nil priors.

5. The maximum sentence prescribed for Aggravated Robbery is 20 years' imprisonment.
6. The tariff for Aggravated Robbery committed in a home invasion ranges from 8–16 years' imprisonment (*Wise v State* [2015] FJSC 7; CAV0004.2015 (24 April 2015)).
7. In assessing the objective seriousness of your offending, I look at the maximum sentence prescribed for offence, the degree of culpability and the harm caused to the complainant. Your culpability is less, when compared with that of your accomplice. You have aided the principal offender to enter the house but you did not plan the robbery or assist the main offender to use force or cause injuries to the complainant. Having considered the objective seriousness of your offending, I start your sentence with a starting point of 8 years, at the bottom end of the tariff.
8. 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.

9. You took part in a night time invasion with another but; most of the aggravating features discussed above are not applicable to you. You entered a house of a vulnerable victim when she was asleep in the middle of night. It would have been a dreadful experience for her, having long lasting psychological effects. These factors aggravated your offending. I increase your sentence by 2 years for aggravating factors.


10. Your counsel filed a helpful written submission for mitigation and begged for a lenient sentence. I must specially thank the State Counsel, Mr. Kumar, for filing a helpful and fair minded submission to assist the court in coming to a reasonable sentence that will fit the circumstances of the offence and the offender. I appreciate his remarks that the counsel from both sides must always be duty bound in their first duty to court so that the court may not fall into any foreseeable error. As a responsible State Counsel, he has highlighted not only the aggravating features, but also some of the mitigating features that should properly be considered by the court.

11. In mitigation, your counsel has informed the court that you are 19 year old construction worker earning a weekly income of \$150. Although your personal circumstances are of little mitigating value, you have other compelling mitigation factors placed before this court. You have no previous convictions and you maintained a clear record until you committed this offence. You are a first and young offender. You have entered an early guilty plea at the first available

opportunity and have been extremely remorseful of your actions. You have promised not to reoffend and you beg for a second chance to rehabilitate yourself. You seek mercy of this court. I consider your early guilty plea as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charge at a very early stage of the proceedings. You have also saved the victim from attending court and giving evidence of a traumatic experience that would have been a bitter experience for her.

12. You have spent only three days in remand. The remand period will be discounted separately from your sentence. A one third reduction is also allowed for the early guilty plea. The deduction allowed in total is 4 years. Now your final sentence is 6 years' imprisonment.
13. The courts have a duty to denounce and deter this kind of anti-social behaviour that will necessarily instill fear in innocent people. These kinds of offences will undoubtedly cause panic and eventually affect the general public as a whole. A serious crime has been committed and the sentence must necessarily reflect the plight of the victim, without jeopardizing your chances of rehabilitation. The primary purpose of the punishment is deterrence, both special and general.
14. Your conduct after the offence and your remorseful attitude in court manifested by the early guilty plea indicate that you are a suitable candidate for rehabilitation. In selecting a non- parole period, I considered your previous good character and the less culpability of the offending on your part. For these reasons, I do not fix a non-parole period to promote rehabilitation.
15. Taking all these factors into account, I sentence you to 6 years' imprisonment without a non-parole period.




Aruna Aluthge
Judge

AT Suva

On 7th June, 2019

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