

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 017 OF 2020**

**BETWEEN** : STATE

**AND** : AKUILA TUBUNA

**Counsel** : Mr S Komaibau for the State  
Ms R Nabainivalu for the Accused

**Date of Hearing** : 3 June 2020

**Date of Sentence** : 5 June 2020

**SENTENCE**

- [1] The offender is a 34 year old farmer of Nasinu village, Tailevu. The victim is also a farmer and from the same village.
- [2] On 26 December 2019, the offender torched the dwelling house of the victim in rage after learning of an extramarital affair that his wife had with the victim in the past. The offender has pleaded guilty to arson contrary to section 362(a) of the Crimes Act.
- [3] The offender was drunk when the incident occurred. He confronted his wife about her extramarital affair. When the wife admitted to an affair with the victim, the offender got angry, poured kerosene in an empty container and went straight to the victim's house. He knew the victim was not at home that night. He entered the house and set it on fire with the kerosene he had brought with him. When the victim learnt of the fire, he arrived at the scene to see his home burned to the ground.
- [4] The offender confessed to the crime under caution following his arrest.

- [5] The maximum penalty prescribed for arson is life imprisonment. The tariff is between 5 to 12 years' imprisonment on conviction after trial (*Nakato v State* [2018] FJCA 129; AAU74.2014 (24 August 2018)).
- [6] In the present there are some strong mitigating factors. The offender pleaded guilty early. He is genuinely remorseful and has saved court's time and resources. For his guilty plea I give him a one third discount. The other strong mitigating factor is that he is a first time offender. The commission of the offence was an impulsive reaction to a provocative news that his wife and the victim had an affair in the past. No planning was involved in the commission of the offence.
- [7] An aggravating factor is that the victim lost his home and all his personal effects in the fire. Another aggravating factor is that the offender was drunk when he committed the offence.
- [8] Fortunately, no one was physically harmed by the offender's conduct. But the gravity of the offence is measured by the actual conduct of the offender. Burning down someone's home is a serious offence. The courts' duty is to denounce such conduct and pass a sentence that has an effect of deterrence, both personal and general, after balancing the aggravating and mitigating factors.
- [9] Finally, a downward adjustment is made to reflect the six months the offender was in custody on remand.
- [10] After taking all these matters into account I sentence the offender to 3 years' imprisonment with a non-parole period of 18 months. Suspension of sentence is inappropriate due to the seriousness of the offence.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

**Solicitors:**

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused