

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 225 of 2018**

**STATE**

**V**

**RUPENI LILO**

**Counsel** : Ms. Bhavna Kantharia for the State  
Ms. Aarti Prakash with Ms. Manisha Singh for the Accused

**Dates of Trial** : 27-30 April 2020

**Summing Up** : 6 May 2020

**Judgment** : 8 May 2020

**Sentence Hearing** : 21 May 2020

**Sentence** : 9 June 2020

## **SENTENCE**

[1] Rupeni Lilo, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged, with the following offences:

### **COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**RUPENI LILO with another**, on the 29<sup>th</sup> day of April 2018, at Nabua, in the Central Division, entered into the dwelling house of **JONE KELO** as trespassers, with intention to commit theft therein.

**COUNT 2**

*Statement of Offence*

**THEFT**: Contrary to Section 291 (1) of the Crimes Act 2009.

*Particulars of Offence*

**RUPENI LILO with another**, on the 29<sup>th</sup> day of April 2018, at Nabua, in the Central Division, dishonestly appropriated 1 x Ingeo Circular Saw valued at \$165.00 and 2 x sheets of interior ply boards valued at \$45.14; all to the total value of \$210.14, the property of **JONE KELO** with the intention of permanently depriving **JONE KELO** of his properties.

- [2] You pleaded not guilty to the above mentioned charges and the ensuing trial was held over 4 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the said two charges.
- [4] Having reviewed all the evidence, this Court decided to accept the unanimous opinion of the Assessors and accordingly found you guilty and convicted you of the two charges.
- [5] In support of their case, the prosecution called the complainant, Jone Kelo, witness John Naibuka Junior, who was an eye witness to the incident, and Acting Sergeant Lorini Chan. The Caution Interview Statement made by you has been tendered to Court as Prosecution Exhibit **PE1**.
- [6] You exercised your right to remain silent. During the cross examination of prosecution witness Acting Sergeant Lorini Chan, the defence tendered to Court the Search List (pertaining to the search conducted at your house), as Defence Exhibit **DE1**.
- [7] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

[8] I have duly considered the above factors in determining the sentence to be imposed on you.

[9] In terms of Section 313 (1) of the Crimes Act, *“A person commits an indictable offence (of Aggravated Burglary) if he or she-*

*(a) Commits a burglary in company with one or more other persons; or*

*(b) .....”*

The offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act as follows: *“A person commits an indictable offence (which is triable summarily) 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”.*

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

[10] It has been accepted that the tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: ***State v. Mikaele Buliruarua*** [2010] FJHC 384; HAC 157.2010 (6 September 2010); ***State v. Nasara*** [2011] FJHC 677; HAC 143.2010 (31 October 2011); ***State v. Tavualevu*** [2013] FJHC 246; HAC 43.2013 (16 May 2013); ***State v. Seninawanawa*** [2015] FJHC 261; HAC 138.2012 (22 April 2015); ***State v. Seru*** [2015] FJHC 528; HAC 426.2012 (6 July 2015); ***State v. Drose*** [2017] FJHC 205; HAC 325.2015 (28 February 2017); and ***State v. Rasegadi & Another*** [2018] FJHC 364; HAC 101.2018 (7 May 2018).

[11] The Court of Appeal in **Leqavuni v. State** [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary is between 18 months to 3 years.

[12] This Court has been consistently following the tariff of 18 months to 3 years imprisonment for Aggravated Burglary: Vide **State v. (Venasio) Cawi & 2 others** [2018] FJHC 444; HAC 155.2018 (1 June 2018); **State v. (Taione) Waqa & 2 others** [2018] FJHC 536; HAC 92.2018 (20 June 2018); **State v. Pita Tukele & 2 others** [2018] FJHC 558; HAC 179.2018 (28 June 2018); **State v. (Taione) Waqa & 2 others** [2018] FJHC 995; HAC 92.2018 (17 October 2018); **State v. (Maika) Raisilisili** [2018] FJHC 1190; HAC 355.2018 (13 December 2018); **State v. (Taione) Waqa & 2 others** [2018] FJHC 1209; HAC 92.2018 (18 December 2018); **State v. Michael Bhan** [2019] FJHC 661; HAC 44.2019 (4 July 2019); **State v. Etika Toka** HAC 138.2019 (1 November 2019); **State v. Vakacavuti** HAC337.2018 (7 November 2019); **State v. Vakacavuti** [2019] FJHC 1088; HAC338.2018 (7 November 2019); **State v. Peniasi Ciri and Another** [2020] FJHC 63; HAC14.2019 (6 February 2020); **State v. Maikeli Turagakula and Another** [2020] FJHC 101; HAC416.2018 (19 February 2020) and **State v. (Sachindra Sumeet) Lal & Another** [2020] FJHC 147; HAC71.2019 (26 February 2020).

[13] In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[14] In **Ratusili v. State** [2012] FJHC 1249; HAA011.2012 (1 August 2012); His Lordship Justice Madigan proposed the following tariff for the offence of Theft:

“(i) For a first offence of simple theft the sentencing range should be between 2 and 9 months.

(ii) Any subsequent offence should attract a penalty of at least 9 months.

(iii) Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.

(iv) Regard should be had to the nature of the relationship between offender and victim.

(v) Planned thefts will attract greater sentences than opportunistic thefts.”

[15] Since the theft in this case was consequent to you and the other accused entering the dwelling house of the complainant as trespassers, this cannot be considered as theft simpliciter. Therefore, it is my opinion that the appropriate tariff in this case should be in the range of 2 months to 3 years imprisonment for the offence of Theft.

[16] In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

[17] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence Rupeni, I commence your sentence at 18 months imprisonment for the first count of Aggravated Burglary.

[18] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Rupeni, I commence your sentence at 6 months imprisonment for the second count of Theft.

[19] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You trespassed into a residential premises thereby paying scant regard to the property rights and privacy of the complainant, the owner of the said property.
- (iii) You trespassed into the complainant’s property during day time whilst the property was vacant and under construction.
- (iv) You are now convicted of multiple offending.

[20] In mitigation you have submitted as follows:

- (i) That the total value of the stolen items was only FJ\$210.14.
- (ii) That the 2 sheets of interior ply boards, which were stolen by you, was valued at FJ\$45.14, and was returned to the complainant the day following the Aggravated Burglary and Theft.

[21] Rupeni, you are said to be 35 years of age. You are married but separated from your wife. You have three children – the eldest being 8 years old, the second 6 years and the youngest 3 years old. You are said to be residing at Munda Lane in Nabua with your mother and three children.

[22] You are said to be a carver and also a farmer. You plant dalo, cassava and ginger in Naitasiri, earning approximately \$200 per week. You are said to be the sole breadwinner of your family, taking care of your three children and your elderly mother.

[23] Unfortunately, these are all personal circumstances and cannot be considered as mitigating factors.

[24] Rupeni, considering the aforementioned aggravating factors, I increase your sentence by a further 2 years. Now your sentence for count one would be 3 years and 6 months imprisonment. Your sentence for count two would be 2 years and 6 months imprisonment.

[25] Considering the aforesaid mitigating factors, I deduct 2 years from your sentences. Now your sentence for count one would be 1 year and 6 months imprisonment. Your sentence for count two would be 6 months imprisonment.

[26] Rupeni as per the Previous Convictions Report filed by the State you have one previous conviction recorded against your name. On 14 February 2012, you were convicted by the Magistrate's Court of Suva for one count of Assault Occasioning Actual Bodily Harm. You were bound over in the sum of FJ\$500.00. Although, I concede that that was not an offence of a similar nature (not a property offence), you still cannot be considered as a person of previous good character and no further concessions could be given to you by virtue of this fact.

[27] In the circumstances, your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 1 year and 6 months imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act-6 month's imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your final total term will be 1 year and 6 months imprisonment.

[28] Section 24 of the Sentencing and Penalties Act reads thus:

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*

[29] You were in remand custody for this case from 30 May 2018, the date of your arrest, until 14 June 2018, the day on which you were granted bail by this Court. That is a period of about 16 days. Thereafter, you were remanded into custody on 8 May 2020,

the day on which you were found guilty and convicted for this case. That is a period of one month. Accordingly, you have been in custody for a period of over one and a half months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of one and a half months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

**[30]** In the circumstances, your final sentence would be 1 year and 4½ months imprisonment.

**[31]** Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

*(a) does not exceed 3 years in the case of the High Court; or*

*(b) does not exceed 2 years in the case of the Magistrate's Court.*

**[32]** Taking all factors into consideration, I order that you serve a further 4½ months of your term of 1 year and 4½ months imprisonment in custody. The balance term of 1 year imprisonment is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.

**[33]** You have 30 days to appeal to the Court of Appeal if you so wish.



A handwritten signature in black ink, appearing to read "Riyaz Hamza".

**Riyaz Hamza**

**JUDGE**

**HIGH COURT OF FIJI**

**AT SUVA**

Dated this 9<sup>th</sup> Day of June 2020

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Suva.**  
**Solicitors for the Accused** : **Office of the Legal Aid Commission, Suva.**