

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL JURISDICTION]**

**CASE NO: HAC. 129 of 2019**

**BETWEEN** :

**STATE**

**AND** :

**1. ORISI QIOLEVU**  
**2. ISEI YACAKURU**

*Counsel*

*Mr. A. Kumar for State*

:

*Mr. T Varinava for the 1<sup>st</sup> Accused*

*Ms. J. Manueli for the 2<sup>nd</sup> Accused*

*Hearing on* :

*01<sup>st</sup> of July 2020*

*Sentence* :

*10<sup>th</sup> of July 2020*

**SENTENCE**

1. Mr. Orisi Qiolevu and Mr. Isei Yacakuru, both of you have freely and voluntarily pleaded guilty to the counts of aggravated burglary and theft at the very first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.
2. You were charged as follows;

## COUNT 1

### *Statement of Offence*

Aggravated Burglary: contrary to section 313(1) (a) of the Crimes Act 2009.

### *Particulars of Offence*

Orisi Qiolevu and Isei Yacakuru, on the 02<sup>nd</sup> day of August, 2019 at Nadala, Nadarivatu, in the Western Division, entered into the shop of Timaima Raluwai as trespassers, with intent to commit steal from therein.

## COUNT 2

### *Statement of Offence*

Theft: contrary to section 291 of the Crimes Act 2009.

### *Particulars of Offence*

Orisi Qiolevu and Isei Yacakuru, on the 02<sup>nd</sup> day of August, 2019 at Nadala, Nadarivatu, in the Western Division, dishonestly appropriated 7 Benson & Hedges packets containing 10 cigarettes each, 2 \$7.00 INKK recharge cards, 2 \$7.00 Vodafone recharge cards, 2 \$3.00 Digicel recharge cards, 5 \$1.00 INKK recharge cards, 2 packets of Fine Fare cookies, 4 cans of Ocean Blue tin fish and cash of \$35.00, the properties of Timaima Raluwai, with the intention of permanently depriving the said Timaima Raluwai, of the said properties.

3. The summary of facts filed and read over by the state and unequivocally admitted by you states that;

*The first accused, Orisi Qiolevu, 22 years old, farmer of Nadala Village, Nadarivatu and the second accused Isei Yacakuru, 24 years old, farmer of Nadala Village, Nadarivatu are jointly charged with one count of aggravated burglary contrary to section 313 (1) (a) of the Crimes Act, 2009 and one count of theft contrary to section 291 of the Crimes Act, 2009.*

*Incident*

*On the 2<sup>nd</sup> of August, 2019, between 7.00 pm and 9.00 pm, the first and second accused planned to break into the shop of the complainant Timaima Raluwai, 34 years old, businesswoman of Nadala Village, Nadarivatu.*

*The first and second accused waited for the complainant and her family to go to church. The first and second accused went to the shop of the complainant where the second accused removed 3 louver blades and went inside the shop. The first accused waited outside and acted as the lookout.*

*The second accused when he was inside the shop, brought a carton and packed 7 x Benson & Hedges packets containing 10 cigarettes each (BH 10), 2 x \$7.00 Inkk recharge cards, 2 x \$7.00 Vodafone recharge cards, 2 x \$3.00 Digicel recharge cards, 5 x \$1.00 Inkk recharge cards, 2 packets of Fine Fare cookies, 4 cans of Ocean Blue tin fish and cash of \$35.00. The second accused after packing the items then took the carton and passed it outside to the first accused. The total values of the stolen items were \$154.80.*

*The first and second accused then left the shop and went towards the second accused's house where they hid some of the items near the road. They ate one can of Ocean Blue tin fish and smoked four rolls of cigarettes from a stolen packet of BH 10.*

*The matter was reported to Police and the first and second accused persons were arrested. They were caution interviewed and both admitted committing the offences for which they are charged in their respective caution interviews.*

4. I find the alleged two counts proved by the said summary of facts, as both of you have unequivocally admitted the above Summary of Facts. Accordingly, I convict both of you of the two offences of Aggravated Burglary and Theft.
  
5. Section 4 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. I have duly considered these factors in determining the sentence to be imposed on you.

6. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' of imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.
7. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow His Lordship Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as the said gives effect to the intention of the legislature, best.  
As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).
8. The two offences that both of you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 ("Sentencing and Penalties Act") states;  
  
*17. "If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them."*
9. The aggravating factors present in common are that this was a pre-planned invasion and the fact that there is much prevalence of this type of offences in the

society. This type of offences has increased due to the leniency they are dealt with and the society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.

10. The mitigating factors submitted are that they are very young offenders and also are remorseful. In addition they seek an opportunity to rehabilitate themselves. They have no previous convictions or any other pending cases. They are first time offenders.

11. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 30 months for the mitigating factors inclusive of the shown remorse and the co-operation with police. Now your sentences are an imprisonment term of 4 1/2 years.

12. You have pleaded guilty at the first available opportunity and I will award the maximum possible discount of 1/3 for that. Therefore your final sentences are 3 years of imprisonment to each of the accused. I will fix non parole period at 2 years, as for section 18 of the Sentencing and Penalties Act. Accordingly your Final Sentences would be;

Orisi Qiolevu - 3 Years of Imprisonment with a non-parole period of 2 years.

Isei Yacakuru - 3 Years of Imprisonment with a non-parole period of 2 years.

13. You both have been in remand since 03<sup>rd</sup> of August 2019. That is about 10 months and a week. I deduct that period from your final sentences of which the remainder, you'd have to serve will be;

1<sup>st</sup> accused- 2 years 1 month and 3 weeks, with a non-parole period of 1 year 1 month and 3 weeks, and;

2<sup>nd</sup> accused- 2 years 1 month and 3 weeks, with a non-parole period of 1 year 1 month and 3 weeks.

14. Taking into consideration the section 26 of the Sentencing and Penalties Act and the fact that you are first time offenders, I think it is appropriate to suspend the 25 months and three weeks of your imprisonment for a period of 3 years. The consequences of a suspended term will be explained to you by the Court Clerks.
  
15. You have 30 days to appeal to the Court of Appeal if you so desire.



A handwritten signature in black ink, appearing to read "Chamath S. Morais".

**Chamath S. Morais**

**JUDGE**

*Solicitors for the State : Office of the Director of Public Prosecutions, Lautoka.*

*Solicitors for the Accused : Legal Aid Commission, Lautoka.*