

# IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 148 of 2019

[CRIMINAL JURISDICTION]

STATE

V

VILIAME GUKISUVA

**Counsel** : Ms. S. Lodhia for the State  
Ms. S. Daunivesi for the Accused

**Hearing on** : 28 – 30 July 2020

**Summing up on** : 30 July 2020

**Judgment on** : 31 July 2020

**Sentenced on** : 10 August 2020

## SENTENCE

1. Viliame Gukisuva, you were charged with the offences of aggravated burglary and theft. After trial, you were found guilty of the two offences as charged. You were convicted accordingly on 31/07/20.
2. Your charges reads this;

### **COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**VILIAME GUKISUVA** on the 16<sup>th</sup> day of April, 2019 at Tacirua in the Central Division, in the company of another, entered into the dwelling house of **SADHNA DEVI** as trespassers, with intent to commit theft therein.

**COUNT 2**

*Statement of Offence*

**Theft:** contrary to Section 291 (1) of the Crimes Act, 2009.

*Particulars of Offence*

**VILIAME GUKISUVA** on the 16<sup>th</sup> day of April, 2019 at Tacirua in the Central Division, in the company of another, dishonestly appropriated \$60 cash, 1x Samsung brand S6 mobile phone, 1x RIUO brand tablet, 1x Samsung brand J1 mobile phone, 1x wrist watch and 1x school bag, the properties of **SADHNA DEVI** with intention of permanently depriving **SADHNA DEVI** of her properties.

3. The evidence in this case revealed that, on 16<sup>th</sup> April 2019, you broke into the complainant's (PW1) house around 3.00am with another while the complainant, her husband, her two children and her mother-in-law were sleeping and stole \$60 cash, one Samsung S6 mobile phone, one tablet, one Samsung J1 mobile phone, one wrist watch and one school bag. The total value of the stolen items according to the complainant was about \$2498. The complainant was awake at the time the two of you were inside her house.
4. Your counsel has submitted that you are 42 years old; that you were in a defacto relationship when you were arrested for this matter; and that you have a young daughter. You had left school after completing year 8. Before you were arrested for this case, you were self-employed.
5. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be a term of imprisonment within the

range of 6 years to 14 years. [See *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]

6. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
7. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.
8. In the case of *State v Chand* [2018] FJHC 830; HAC44.2018 (6 September 2018), Morais J observed thus;

12. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in *Brewster* 1998 1 Cr App R 220 observed at 225:

*“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely*

*from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism."*

9. You have broken into the complainant's house around 3.00am while the complainant and her family were in the house. Given the time you had selected to break in to this house and the fact that you resided in the same area, it could be assumed that you knew very well that the occupants were there inside the house when you entered the house to commit the offences. You have therefore created a frightful situation for the complainant and her family. The other family members apart from the complainant were relatively lucky as they were fast asleep during the intrusion. The complainant was not. She woke up when you were inside her bedroom. However, even for the others in the family, to wake up early morning to find out that the house had been burgled and to see their items scattered would have been a frightening experience. There is no doubt that your conduct had left the complainant and her family members with a sense of violation and insecurity in their own house. They may have to live with that for a considerable period of time.
10. Therefore this offence you have committed should be considered more serious than a burglary that is committed at a time the occupants were not there in the relevant building as pointed out by Lord Bingham CJ in *Brewster* (supra). These circumstances will be regarded as an aggravating factor.
11. The value of the items stolen is also substantial and you have damaged the sitting room door of the relevant house. These will also be taken into account as aggravating factors.

12. You antecedent report includes 14 previous convictions where 8 of them are property related offences. However, all those offences have been committed 10 years before the dates of offences relevant to this case. Thus, you have maintained a clean record for about 10 years before you committed the two offences. Therefore, for the purpose of sentencing you in this case, I will not consider you as a person who is having previous convictions and you will be given a discount for previous good behaviour. This would be the only mitigating factor in your favour.
13. The prosecutor has requested this court to consider declaring you a habitual offender in terms of section 11 of the Sentencing and Penalties Act.
14. Section 11 of the Sentencing and Penalties Act reads thus;
  11. – (1) *A judge may determine that an offender is a habitual offender for the purposes of this Part –*
    - (a) *when sentencing the offender for an offence or offences of the nature described in section 10;*
    - (b) *having regard to the offender's previous convictions for offences of a like nature committed inside or outside Fiji; and*
    - (c) *if the court is satisfied that the offender constitutes a threat to the community.*
15. The offence you have committed in relation to this case is an offence that comes within the purview of section 10 of the Sentencing and Penalties Act. However, as I have highlighted above, your last conviction was recorded 10 years before you have committed the offences relevant to this case. Even though you have quite a number of convictions on your record, I am not persuaded that you should be regarded a threat to the community at this stage mainly for the reason that you have been able to maintain a clean record for the past 10 years. Therefore, I am not inclined to declare you as a habitual offender.
16. I would select 07 years as the starting point of your aggregate sentence for the two offences you have committed.

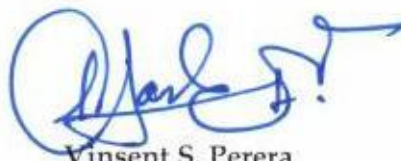
17. I would add 03 years for the aggravating factors and would deduct 02 years in view of the mitigating factor alluded to above. Now your final sentence is an imprisonment term of 08 years. I would fix your non-parole period at 5 years in terms of the provisions of section 18 of the Sentencing and Penalties Act.
18. It is submitted that you were arrested for this matter on 16/04/19. Accordingly, you have been in custody for a period of 01 year, 03 months and 24 days. The said period shall be regarded as a term already served by you in terms of the provisions of section 24 of the Sentencing and Penalties Act.
19. In the result, you are sentenced to a term of 08 years imprisonment with a non-parole period of 5 years. Considering the time spent in custody, the time remaining to be served is as follows;

Head Sentence – 06 years; 08 months; and 06 days

Non-parole Period – 03 years; 08 months; and 06 days

20. Thirty (30) days to appeal to the Court of Appeal.



  
Vincent S. Perera  
JUDGE

**Solicitors;**

**Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused**