

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 92 of 2020

STATE

V

- 1. PITA MATAKA**
- 2. VILIAME DROU**

Counsel : Ms. P.K. Lata for the State.
: Ms. S. Ali [LAC] for both the Accused.

Date of Submissions : 17 September, 2020
Date of Sentence : 17 September, 2020

SENTENCE

1. Both the accused persons are charged with the following offences as per the information filed by the Director of Public Prosecutions dated 28th July, 2020:

COUNT 1

Statement of Offence

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

Particulars of Offence

PITA MATAKA on the 29th day of April, 2020, at Rakiraki in the Western Division, in the company of others, entered into the

dwelling house of **JUITA KELETO**, as a trespasser, with intent to damage his property and commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

PITA MATAKA on the 29th day of April, 2020 at Rakiraki in the Western Division, dishonestly appropriated (stole) 4 x Glyphosate 480, the property of **JUITA KELETO** with the intention of permanently depriving **JUITA KELETO** of the said properties.

COUNT 3

Statement of Offence

DAMAGING PROPERTY: Contrary to section 369 (1) (a) of the Crimes Act 2009.

Particulars of Offence

PITA MATAKA on the 29th day of April, 2020 at Rakiraki in the Western Division, wilfully and unlawfully damaged the louver blades and kitchen utensils, the property of **JUITA KELETO**.

COUNT 4

Statement of Offence

CRIMINAL TRESPASS: Contrary to section 387 (4) of the Crimes Act 2009.

Particulars of Offence

VILIAME DROU on the 29th day of April, 2020 at Rakiraki in the Western Division, entered by night and without lawful excuse the dwelling house of **JUITA KELETO**.

2. On 12th August, 2020 the first accused pleaded guilty to the third count of Damaging Property contrary to section 369 (1) (a) of the Crimes Act and the second accused pleaded guilty to the fourth count of Criminal Trespass contrary to section 387 (4) of the Crimes Act in the presence of their counsel.
3. On 3rd September, 2020 both the accused persons admitted the summary of facts read to them in the presence of their counsel. The brief summary of facts is as follows:
4. On 29th April, 2020 at about 7.30pm the complainant heard a vehicle park outside his house on the driveway. The complainant heard both the accused swear at him, he quickly gathered his family and escaped to the jungle. As the complainant was leaving he heard the louvers breaking and the doors of his house being forcefully opened. The complainant reported the matter to the Rakiraki Police Station from the jungle by calling from his mobile phone.
5. Paula Kubu (PW3) went to the complainant's house to check because he heard swearing. When Paula reached the complainant's house he saw the first accused in the complainant's house. Paula told the first accused to get out of the house, when Paula entered the house he saw broken louver blades scattered on the floor.
6. Both the accused persons were arrested and caution interview, they admitted committing the offences as charged.
7. After considering the summary of facts read by the state counsel which was admitted by both the accused persons this court is satisfied that the accused persons have entered an unequivocal plea of guilty on their own free will.

8. This court is also satisfied that the accused persons have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offences of damaging property and criminal trespass.
9. In view of the above, this court finds the first accused guilty for one count of damaging property and the second accused guilty for one count of criminal trespass and as a result both the accused persons are convicted accordingly.
10. Both counsel filed written sentence and mitigation submissions for which this court is grateful.
11. Counsel for the accused persons presented the following personal details and mitigation:

Accused One

- a) The accused is 32 years of age;
- b) He is a first offender;
- c) Has pleaded guilty at the earliest opportunity;
- d) Cooperated with the police
- e) Is a Farmer who earns about \$150.00 per week;
- f) Married with 2 young children;
- g) Wife is currently 6 months pregnant;
- h) He is the sole bread winner of the family;
- i) Also looks after his elderly mother;
- j) Is remorseful and regrets what he has done.

Accused Two

- a) The accused is a first offender and 25 years of age;
- b) Pleaded guilty at the earliest opportunity;
- c) Cooperated with the police;
- d) Married with 4 young children;
- e) Is a Farmer who earns about \$200.00 per week;
- f) Sole bread winner of the family and also looks after his elderly mother;
- g) He is remorseful of his actions, seeks forgiveness of the court.

AGGRAVATING FACTORS

12. The following aggravating factors are obvious:

First Accused

- a) The first accused damaged the properties of the complainant without any regard to the rights of the owner by entering his house.

Second Accused

- a) The second accused had no regard for the privacy of the complainant and entered his house undeterred.

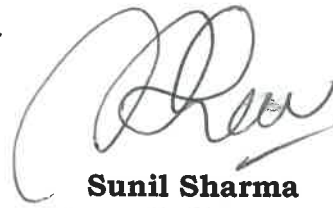
TARIFF

13. The maximum penalty for the offence of damaging property is 2 years imprisonment. The maximum penalty for the offence of criminal trespass is imprisonment for 1 year. The tariff for damaging property is a sentence between 3 months to 12 months imprisonment *State v*

Baleinabodua [2012] HAC 145 of 2010 (21 March, 2012). The tariff for criminal trespass by night is from 1 month to 9 months imprisonment (*Ravuwai vs State [2007] FJHC 55*).

14. For the first accused bearing in mind the objective seriousness of the offence committed I take 3 months imprisonment as the starting point of the sentence. For the aggravating factors I increase the sentence by three months, the interim sentence is 6 months imprisonment for the mitigating factors, good character and early guilty plea I reduce the sentence by 3 months. The final sentence is 3 months imprisonment. The accused was not remanded in custody.
15. For the second accused bearing in mind the objective seriousness of the offence committed I take 3 months as the starting point of the sentence. For the aggravating factors I increase the sentence by three months, for the mitigating factors, good character and early guilty plea I reduce the sentence by 3 months imprisonment. The final sentence is 3 months imprisonment. The second accused was remanded in custody for 2 months. The final sentence is 1 month imprisonment.
16. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment. Considering the fact that both the accused pleaded guilty at the earliest opportunity, has shown genuine remorse, cooperated with police, young age, and that they take responsibility of their actions this court takes into account rehabilitation over and above deterrence.
17. In summary the first accused is sentenced to 3 months imprisonment which is suspended for 1 year and the second accused is sentenced to 1 month imprisonment which is suspended for 1 year. The meaning of suspended sentence is explained to both the accused persons.

18. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

17 September, 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for both the Accused persons.

