

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 149 of 2020

[CRIMINAL JURISDICTION]

STATE

V

1. ISIKELI RATU NANOVO
2. KAITIVI ALOSIO
3. KAFOA DION
4. KOROI TIKOMAIIGILADI

Counsel : Mr. E. Samisoni for the State
Ms. T. Kean for 1st Accused
Ms. N. Mishra for 2nd & 4th Accused
Ms. S. Daunivesi for 3rd Accused

Date of Sentence : 18 September, 2020

SENTENCE

1. Isikeli Ratu Nanovu, Kaitivi Alosio, Kafoa Dion and Koroi Tikomaiigiladi you have pleaded guilty to the charges produced below and were convicted as charged accordingly;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

KAITIVI ALOSIO, KAFOA DION and KOROI TIKOMAIIGILADI, between the 24th day of April, 2020 and the 2nd day of May, 2020, at Raiwai in the Central Division, in the company of another, entered into the premises of **SOHED HUSSEIN**, as trespassers, with intent to commit theft therein.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

KAITIVI ALOSIO, KAFOA DION and KOROI TIKOMAIIGILADI, between the 24th day of April, 2020 and the 2nd day of May, 2020, at Raiwai in the Central Division, in the company of another, dishonestly appropriated (stole) 3 x wall fans, 2 x electric water kettle, 1 rice cooker, 4 x pairs of shoes, 1 x USP Tablet, 1 x sound system speaker, 1 x WIFI Modem, 1 x frying pan, 1 x iron, 1 x pull chopper, 1 x sandwich maker, 1 x man trimmer, 1 x black bag, 1 x red t-shirt, 1 x white collar t-shirt, 1 x black round neck, 1 x brown long neck t-shirt, 1 x green t-shirt, 1 x skull shape music box, 1 x dumbbell, the properties of **SOHED HUSSEIN** with the intention of permanently depriving **SOHED HUSSEIN** of the said properties.

THIRD COUNT

Statement of Offence

RECEIVING STOLEN PROPERTY: contrary to Section 306 (1) of the Crimes Act, 2009.

Particulars of Offence

ISIKELI RATU NANOVU between the 24th day of April, 2020 and 2nd day of May, 2020, dishonestly received stolen propertied namely 1 x long pants, 3 x t-shirts, 1 x Wifi Modem and 1 x wall fan grey in color, knowing or believing the properties to be stolen.

2. You have admitted the following summary of facts;

The Complainant is Sohed Hussein ("PW1") 20 years, student of Block 6 Flat 2, Raj Moti Lal.

The Accused are:

- A1 - Isikeli Ratu Nanovu ("A1") 26 years, unemployed of Block 4 Flat 7, Raj

Moti Lal, Raiwai;

- *A2 – Kaitivi Alosio (“A2”) 18 years, unemployed of Block 5 Flat 5 9, Raj Moti Lal, Raiwai;*
- *A3 – Kafoa Dion (“A3”) 19 years, unemployed of Block 2 Flat 3, Raj Moti Lal, Raiwai;*
- *A4 – Koroi Tikomaiigiladi Coleman (“A4”) 20 years, unemployed of Flat 6 Block 1, Raj Moti Lal, Raiwai.*

On 02/05/20 at about 10.30am, Samsun Nisha (“PW2”) 58 years, self-employed of Khalsa Road, Tacirua East received a call from PW1’s mother informing him about a recent break in, at a flat which is occupied by PW1.

PW1’s brother namely Zuhaeez Hussein (“PW3”) 23 years, engineer of 148 Sawau, Bayoiew Heights, had gone by to check on PW1’s flat while PW1 was away and as he entered he noticed that the house had been ransacked. They checked the flat and they found the following items that been stolen:-

- *3 x wall fans valued at \$60.00 each;*
- *2 x electric water kettle valued at \$40.00 each;*
- *1 x rice cooker valued at \$80.00;*
- *4 x pairs of shoe valued at \$150.00 each;*
- *1 x USP Tablet valued at \$300.00;*
- *1 x sound system speaker valued at \$200.00;*
- *1 x WIFI modem valued at \$50.00;*
- *1 x frying pan valued at \$200.00;*
- *1 x iron valued at \$50.00;*
- *1 x pull chopper valued at \$15.00;*
- *1 x sandwich maker valued at \$60.00;*
- *1 x man trimmer valued at \$50.00;*
- *1 x black bag valued at \$30.00 NZD (\$45.00 FJ);*
- *1 x red shirt valued at \$50.00;*
- *1 x white collar t-shirt valued at \$30.00;*
- *1 x black round neck valued at \$30.00;*
- *1 x brown long neck valued at \$180.00;*
- *1 x green t-shirt valued at \$25.00;*
- *1 x skull shape music box valued at \$40.00; and*
- *1 x dumbbell valued at \$50.00;*
- *Total value of properties stolen is \$1861.00 FJD.*

Some of the above items were then knowingly received by A1 as those that were stolen by A2, A3 and A4 during the time of the offending.

Later, on 08/05/20, PW1 was called to the Police Station where he identified the following recovered properties as those having belonged to him which had been

stolen from hi flat:-

- 1 x electric kettle smart appliance;
- 1 x pair of canvas PUMA; 1 x red shirt valued at \$50.00;
- 1 x white collar t-shirt valued at \$30.00;
- 1 x black round neck valued at \$30.00;
- 1 x brown long neck valued at \$180.00;
- 1 x green t-shirt valued at \$25.00;
- 1 x skull shape music box valued at \$40.00; and
- 1 x dumbbell valued at \$50.00.

The above properties were seized from some of the Accused themselves and others from whom these properties were sold to them by the respective Accused persons ("searchlists attached herewith):-

- a) Avikali Qalolo ("PW4")
- b) Josh Lawrence ("PW5"); and
- c) Poseci Baleinavinaka ("PW6").

All the accused persons were arrested and thereafter caution interviewed. A2 to A4 all admitted to their involvement in the unlawful entering into PW1's flat before stealing the above listed properties only some of which were recovered and seized later by the Police.

A1 who was also arrested admitted to having seen the other three Accused persons coming out of PW1's flat with four stripe bags and a plastic bag containing some items in it, some of which he had later received from the other Accused persons ("All copies of their respective caution interviews are attached herewith").

All accused persons have nil pc's.

SUPPLEMENTARY SUMMARY OF FACTS

Further to the Summary of Facts read out and admitted by the accused persons on 10th August 2020, both parties agree to the following:

1. That the following items were stolen by the accused persons amounting to the total noted in table 1.1 below:

Table 1.1

	<i>Property</i>	<i>Quantity</i>	<i>Total Value (\$)</i>
1.	Wall Fan	3	60.00
2.	Electric Kettle	2	40.00
3.	USP Tablet	1	30.00
4.	Sound system speaker	1	20.00

5.	WIFI Modem	1	50.00
6.	Frying Pan	1	200.00
7.	Iron	1	50.00
8.	Pull Chopper	1	15.00
9.	Sandwich Maker	1	60.00
10.	Man Trimmer	1	50.00
11.	Black Bag	1	45.00
12.	Red t-shirt	1	50.00
13.	White collar t-shirt	1	30.00
14.	Black round neck t-shirt	1	30.00
15.	Brown long pants	1	80.00
16.	Green t-shirt	1	25.00
17.	Skull shaped music box	1	40.00
18.	Dumbbell	1	50.00
19.	Rice Cooker	1	80.00
20.	Assorted shoes	4 pairs	150.00
	Total value of items stolen		<u>\$2215.00</u>

2. That the following properties were recovered by police amounting to the total in table 2.1 below:

Table 2.1

	Property	Quantity	Total Value (\$)
1.	Wall Fan	1	60.00
2.	Electric Kettle	1	40.00
3.	Man Trimmer	1	50.00
4.	Black bag	1	45.00
5.	Red t-shirt	1	50.00
6.	White collar t-shirt	1	30.00
7.	Black round neck t-shirt	1	30.00
8.	Brown long pants	1	80.00
9.	Green t-shirt	1	25.00
10.	Blue t-shirt	1	50.00
11.	Skull shaped music box	1	40.00
12.	Dumbbell	1	50.00
13.	Assorted shoes	1pairs	150.00
	Total value of items recovered		<u>\$700.00</u>

3. The accused persons restituted the complainant to compensate for the items stolen,

in the total value of \$600.00. A copy of the statutory declaration of the complainant confirming the same is attached. The breakdown of restitution paid from each accused persons as follows:

1.	<i>Isikeli Nanovu (A1)</i>	\$50.00
2.	<i>Kaitivi Alusio (A2)</i>	\$120.00
3.	<i>Kafoa Dion (A3)</i>	\$130.00
4.	<i>Koroi Tikomaiigiladi (A4)</i>	\$300.00
	Total Value	<u>\$600.00</u>

3. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]
4. 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.
5. The offence of receiving stolen property contrary to section 306(1) of the Crimes Act carries a maximum sentence of 10 years. In view of the provisions of section 307 of the Crimes Act where the offence of theft and the offence of receiving stolen property have been identified as alternative offences to each other, it is logical for the same tariff to be applied for both offences. Therefore, the sentencing tariff for the offence of receiving stolen property should be a term of imprisonment between 4 months and 3 years.
6. 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.”

7. The offences Kaitivi Alosio, Kafoa Dion and Koroi Tikomaiigiladi are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the 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. Isikeli Ratu Nanovu, you are 26 years old and single. You have been a salesman before you were arrested for this matter. You live with your 04 year old son and younger sister.

9. Kaitivi Alosio, you are 19 years old. You live with your grandmother and your uncle. You intend to continue with your education.
10. Kafoa Dion you are 19 years old. You were employed as a labourer before you were arrested for this matter.
11. Koroï Tikomaiigiladi you are 20 years old. You live with your parents. You intend to pursue further studies.
12. The value of the property stolen as agreed is \$2215, which is substantial. The summary of facts discloses that Isikeli Ratu Nanovu knew about the other three who were young offenders committing the offences of burglary and theft. Thereafter he received a share from the stolen items. Therefore, I find it appropriate to consider the value of the items stolen as an aggravating factor in relation to Isikeli Ratu Nanovu. Accordingly, the value of the items stolen will be regarded as a common aggravating factor.
13. In addition to the fact that the four of you have entered an early guilty plea, I would consider the following as your mitigating factors;
 - a) You are first offenders;
 - b) There is partial recovery and a further amount of \$600 has been paid to the complainant;
 - c) You are remorseful; and
 - d) You have cooperated with the police.

Sentence of Kaitivi Alosio, Kafoa Dion and Koroï Tikomaiigiladi

14. I would select 06 years as the starting point of the aggregate sentence of each of you. I would add 01 year in view of the value of the items.

15. I would deduct 03 years in view of the above mitigating factors from the sentence to be imposed on each one of you. Now the sentence is 04 years imprisonment. In view of your early guilty plea, I would grant each one of you, a discount of one-third. Accordingly, the final sentence is 02 years and 08 months (after deducting 1 year and 4 months).
16. I would fix the non-parole period of each of you at 02 years in terms of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered the circumstances of the offending and your personal circumstances in determining the non-parole period.
17. Each of you have spent about 04 months and 09 days in custody. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act. I would order that 04 months should be regarded as time served.
18. Accordingly the time remaining to be served is as follows;

Head sentence - 02 years and 04 months

Non-parole period - 01 year and 08 months

Sentence of Isikeli Ratu Nanovu

19. Considering all the circumstances of the offending, the mitigating factors and the early guilty plea, I would sentence you to a term of 06 months imprisonment. Given the time you have spent in custody, it would be regarded that you have spent 04 months of that term.

20. In the result,

Isikeli Ratu Nanovu - You are sentenced to an imprisonment term of 06 months. In view of the time spent in custody, time remaining to be served is 02 months

Kaitivi Alosio, Kafoa Dion and Koroi Tikomaiigiladi -

You are sentenced to an imprisonment term of 02 years and 08 months with a non-parole term of 02 years. In view of the time spent in custody, time remaining to be served is;

Head sentence - 02 years and 04 months

Non-parole period - 01 year and 08 months

21. Considering the fact that you are first offenders and especially the partial restitution, I have decided to suspend your sentence. Accordingly, the sentence imposed on all of you shall be suspended for a period of 03 years.

22. The court clerk will explain you the effects of a suspended sentence.

23. Accordingly, you will be released today. You are thoroughly warned and advised to hereafter abide by the laws of this country and to lead a good life.

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



Vinsent S. Perera

JUDGE

Solicitors;

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