

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 136 of 2020

STATE

V

1. SAKEASI SERU

2. JOSEVATA YAQONA

Counsel : Ms. Sheenal Swastika with Mr. Setefano Komaibaba for the State  
Ms. Lice Manulevu for the 1<sup>st</sup> Accused  
Ms. Sokoveti Daunivesi for the 2<sup>nd</sup> Accused

Sentence Hearing : 2 September 2020

Sentence : 18 September 2020

### SENTENCE

[1] Sakeasi Seru and Josevata Yaqona, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged, with the following offences:

#### COUNT 1

##### *Statement of Offence*

**BURGLARY:** Contrary to Section 312 (1) of the Crimes Act 2009.

##### *Particulars of Offence*

**SAKEASI SERU**, on the 22<sup>nd</sup> day of April 2020, at Vatukalo, Ovalau, in the Eastern Division, entered into the storeroom of **THE WATER AUTHORITY OF FIJI**, as a trespasser with the intention to commit theft.

## COUNT 2

### *Statement of Offence*

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

### *Particulars of Offence*

**SAKEASI SERU**, on the 22<sup>nd</sup> day of April 2020, at Vatukalo, Ovalau, in the Eastern Division, dishonestly appropriated 12 x 1 Litre bottles of Glyphosate (sealed), 5 x brass settle guns, 3 x female socket (2 inch), 7 x brass stop cork (½ inch), 3 x brass stop cork (1 inch), 5 x push locks, 4 x T-joints, 3 x Reducing socket (1 inch x ½), 1 x 500g Adhesive PVC Glue, 1 x Rake with handle, 2 x digging forks, 2 x garden spades, the property of **WATER AUTHORITY OF FIJI**, with the intention of permanently depriving the said **WATER AUTHORITY OF FIJI** of the said property.

## COUNT 3

### *Statement of Offence*

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

### *Particulars of Offence*

**SAKEASI SERU AND JOSEVATA YAQONA**, on the 23<sup>rd</sup> day of April 2020, at Vatukalo, Ovalau, in the Eastern Division, entered into the storeroom of **THE WATER AUTHORITY OF FIJI**, as trespassers with the intention to commit theft.

- [2] On 28 May 2020, the DPP filed the Information and Disclosures relevant to the case and the matter was adjourned for plea.
- [3] On 30 June 2020, you both were ready to take your pleas. Sakeasi you pleaded guilty to the three counts in the Information; while Josevata you pleaded guilty to count 3. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge/s against you and the consequences of your pleas.
- [4] The Summary of Facts were filed in Court on 17 August 2020. On the same day the Summary of Facts were read out and explained to you both and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the three counts in the Information, and found the three counts proved on the Summary of Facts agreed by you. Accordingly, Sakeasi, I found you guilty on your own plea and I convicted you of the three counts as charged; and Josevata, I found you guilty on your own plea and convicted you of count 3 as charged.
- [5] I now proceed to pass sentence on the two of you.

[6] The Summary of Facts filed by the State was as follows:

**BRIEF FACTS:**

First Accused : Sakeasi Seru, 24 years old, farmer of Vatuloka, Levuka.  
Second Accused : Josevata Yaqona, 23 years old, farmer of Vatuloka, Levuka.  
Complainant : Tevita Tabaiwalu, 28 years old, WAF Engineer of Levuka.

**FACTS:**

On the 23<sup>rd</sup> day of April 2020 at around 8.00 p.m. one Tevita Tabaiwalu was standing outside his quarters when he heard loud noises coming from the store room situated downhill. Tevita walked towards where the noise was coming from; as Tevita approached the Depot store room; he noticed a light which he had suspected to be shining from a mobile phone, which was being shun inside the dark store room.

Tevita headed back to his quarters and called his brother (using a mobile phone) namely Watisoni and his friend namely Elia. Tevita informed Watisoni and Elia to walk down and check the Depot storeroom while he gets the vehicle.

Tevita drove his vehicle downhill towards the company's depot storeroom, he parked his car at the front of the storeroom in order to shoot his vehicles front light towards the storeroom. During this time Elia and Watisoni were standing behind the storeroom in order to catch the accused person if they had tried to escape.

As Tevita stood there, there were no signs of any light or any movement from the WAF storeroom. After a while a voice called out saying "Nite", this was Sakeasi Seru (1<sup>st</sup> Accused) from Vatukalo. Tevita could recognize him from the light coming from the vehicle which was shooting directly towards Sakeasi and Josevata's face.

Tevita instructed both of the accused to leave the premises and also put back the items which they had with them.

After instructing both of the accused to leave the premises, Tevita left with Watisoni and Elia and made their way back to the quarters as it was nearly 8.00 p.m. at night (the curfew time). Then early the next morning, Tevita went to the village headman of Vatukalo Village to inform them about the fact that he saw both the accused at their WAF depot.

Thereafter, Tevita rang the WAF Manager/Levuka namely Apisalome Taito and informed him about the alleged incident.

At around 9.00 a.m. the WAF manager namely Apisalome Taito visited the storeroom and they noticed that some of the items were missing. Apisalome noticed that the following items were missing:

1. 12 x 1 Litre bottles of Glyphosate (sealed),
2. 5 x brass settle guns,

3. 3 x female socket (2 inch),
4. 7 x brass stop cork (½ inch),
5. 3 x brass stop cork (1 inch),
6. 5 x push locks,
7. 4 x T-joints,
8. 3 x Reducing socket (1 inch x ½)
9. 1 x 500g Adhesive PVC Glue,
10. 1 x Rake with handle,
11. 2 x digging forks,
12. 2 x garden spades.

The matter was reported to the police and upon investigation, it was discovered that both the accused persons had entered into the storeroom by entering from the ceiling. The police officers arrested both of the accused persons, and recovered all of the stolen items from the farm of Sakeasi Seru. The items were recovered from Sakeasi Seru's farm which was located 2 kilometers from the Depot overlooking St. John Cawaci.

### **Caution Interview of Sakeasi Seru**

Sakeasi Seru had admitted in his caution interview that he had first entered into the WAF storeroom a day prior (22/04/2020), before he entered into it again the on (23/04/2020) whereby he was caught with Josevata Yaqona (2<sup>nd</sup> Accused).

Sakeasi Seru admitted that he had stolen the above mentioned items (without any help from Josevata Yaqona) on 22/4/2020.

Sakeasi Seru admitted in his caution interview that, on the 22<sup>nd</sup> day of April 2020; the first accused person namely Sakeasi Seru entered into the WAF storeroom (alone) by climbing onto a shelf which enabled him to reach an opening through the ceiling. Sakeasi entered through the ceiling and crawled towards another opening which led to the Water Authority of Fiji (WAF) storeroom.

Once Sakeasi managed to enter inside the storeroom, he stole the above mentioned items by packing it inside a white sack.

Sakeasi took the white sack with the above mentioned items inside it and hid it inside the WAF garage, as it was after 7.00 p.m. and the police were patrolling the streets as the COVID9 curfew was in place.

After doing so, the accused person left and headed straight home. On the next day, the accused went to the WAF storeroom and picked up the white sack with the items inside it and took the items to his farm.

The accused Sakeasi stole the abovementioned items. However, on the next day 23/04/2020, Sakeasi Seru informed Josevata Yaqona (2<sup>nd</sup> Accused) to accompany him to the storeroom to steal some premix and other items.

Both the accused had entered through the WAF storeroom by entering through the ceiling. As they were refilling the premix into their gallon, they heard a vehicle approaching the building whereby Tevita approached them and caught them in the act.

#### Caution Interview of Josevata Yaqona

Josevata admitted in the caution interview that he was in the depot in the company of Sakeasi Seru to refill the benzene premix and admitted in question 32 that the ceiling was already open and they just crawled into the ceiling towards the storeroom where the premix was kept.

Josevata admitted that he only participated in trying to steal the premix from the storeroom. However; he does not know anything about the fact that Sakeasi had stolen the above mentioned items a day prior to this alleged incident which was on (22/04/2020).

The matter was reported to the police whereby both of the accused were arrested and interviewed under caution whereby they admitted to all the offence."

- [7] Sakeasi and Josevata, you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [8] 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.

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

[10] 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 Burglary in terms of Section 312 (1) of the Crimes Act carries a maximum penalty of 13 years imprisonment.

[11] It has been held that the tariff for the offence of Burglary is the same as the tariff for Aggravated Burglary, which is between 18 months to 3 years imprisonment.

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

[13] 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).

[14] 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.

[15] 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. (Talone) 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); *State v. (Sachindra Sumeet) Lal & Another* [2020] FJHC 147; HAC71.2019 (26 February 2020); *State v. (Rupeni) Lilo* [2020] FJHC 401; HAC225.2018 (9 June 2020); *State v. (Taniela) Tabuakula* [2020] FJHC 464; HAC106.2020 (23 June 2020); *State v.*

*(Eric Male) Robarobalevu* [2020] FJHC 630; HAC102.2020 (6 August 2020); and *State v. (Usaia) Delai* [2020] FJHC 631; HAC7.2020 (6 August 2020).

[16] 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.

[17] In *Ratusill 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.”*

[18] Since the theft in this case involved assorted property, and was consequent to you, Sakeasi, entering into the premises of a Commercial Statutory Authority as a trespasser, this cannot be considered as theft simpliciter. Furthermore, this was a pre-planned theft. 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.

[19] 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.”*

[20] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offences Sakeasi, I commence your sentences at 18 months imprisonment for the first count of Burglary and the third count of Aggravated Burglary.

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

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

[23] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) The two of you trespassed into a Commercial Statutory Authority thereby paying scant regard to the property rights and privacy of the owners of the said property.
- (iii) I find that there was some degree of pre-planning on your part in committing these offences.
- (iv) Sakeasi you are now convicted of multiple offending.

[24] In mitigation you have submitted as follows:

- (i) That you both are first offenders and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) That you both fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions and assured Court that you will not re-offend.
- (iv) All of the stolen items taken by you, Sakeasi, had been recovered.
- (v) That you both entered guilty pleas at the earliest opportunity during these proceedings.

[25] Sakeasi, considering the aforementioned aggravating factors, I increase your sentences by a further 4 years. Now your sentences for counts one and three would be 5 years and 6 months imprisonment. Your sentence for count two would be 4 years and 6 months imprisonment.

[26] Josevata, considering the aforementioned aggravating factors, I increase your sentence by a further 3 years. Now your sentence for count three would be 4 years and 6 months imprisonment.



[27] Sakeasi and Josevata, I accept that you are both persons of previous good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. I also acknowledge the fact that all of the stolen items had been recovered. Accordingly, considering the mitigating factors, I deduct 2 years and 6 months from your sentences. Sakeasi, now your sentences for counts one and three would be 3 years imprisonment. Your sentence for count two would be 2 years imprisonment. Josevata, now your sentence for count three would be 2 years imprisonment.

[28] I accept that you both entered guilty pleas at the earliest opportunity during these proceedings. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 12 months each for counts one, two and three.

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

Count 1- Burglary contrary to Section 312 (1) of the Crimes Act-2 years' imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –1 year imprisonment.

Count 3- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act-2 years' imprisonment.

I order that all three sentences of imprisonment to run concurrently. Therefore, your final total term will be 2 years' imprisonment.

[30] In the circumstances, Josevata your sentence is as follows:

Count 3- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act-1 year imprisonment.

[31] The next issue for consideration is whether your sentences should be suspended.

[32] 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.*

- [33] Sakeasi, you are 24 years of age [Your Date of birth is 27 January 1996]. You are said to be a farmer by occupation. However, in 2017 you enrolled as a student in Trade Diploma in Agricultural Husbandry Programme at the Fiji National University. You had to temporarily suspend your studies due to your current medical condition.
- [34] Sakeasi, you were hospitalised from 1 July 2020 till 25 July 2020, during which time you have been diagnosed with sigmoid colon and terminal ileum volvulus. A major surgery had been performed on you on 3 July 2020, which had resulted in resection of a part of your small and large intestines. It is said that you are still recovering from your surgery and it would take a period of at least six months for optimal recovery. It has been recommended that during this period you require good family support and nutrition.
- [35] Josevata, you are 23 years of age [Your date of birth is 14 August 1997]. You are said to be residing at Vatukalo Village in Levuka. You are self-employed, whereby you plant yaqona for sale, earning an average of \$500.00 per week. You are said to be in a de-facto relationship, and have a son who is now 4 months old. You are the sole breadwinner of your family.
- [36] Sakeasi and Josevata, you have both admitted to the Summary of Facts and taken full responsibility for your actions. You say you understand that what you did was wrong and regret your actions.
- [37] Sakeasi, you were arrested for this case around 24 April 2020 and remanded into custody. You were granted bail by this Court on 3 August 2020. Therefore, you have been in remand custody for this case for over 3 months.
- [38] Josevata, you were arrested for this case around 24 April 2020 and remanded into custody. You have been in remand custody since that day. Therefore, you have been in remand custody for this case for nearly 5 months.
- [39] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

*"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence."*

- [40] In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:

*"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."*

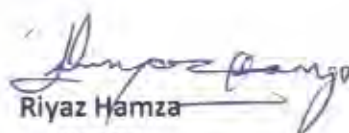
- [41] I have considered the following circumstances:

- You are both relatively young offenders;
- You both have been of previous good character;
- You both have fully cooperated with the Police;
- You both have accepted responsibility for your conduct;
- You both submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You both have assured Court that you will not re-offend;
- All of the stolen items have been recovered in this case;
- You both entered guilty pleas at the earliest opportunity in these proceedings;
- Sakeasi you have spent over 3 months in remand custody for this case; Josevata, you have spent nearly 5 months in remand custody for this case; and
- Sakeasi, you are now recovering after a major surgery. It is said that it would take a period of at least six months for optimal recovery.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentences.

- [42] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 5 years.
- [43] In the result, Sakeasi your final sentence of 2 years imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.
- [44] In the result, Josevata your final sentence of 1 year imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.
- [45] You have 30 days to appeal to the Court of Appeal if you so wish.



  
 Riyaz Hamza  
 JUDGE  
 HIGH COURT OF FIJI

AT SUVA

Dated this 18<sup>th</sup> Day of September 2020

Solicitors for the State :  
 Solicitors for the 1<sup>st</sup> and 2<sup>nd</sup> Accused:

Office of the Director of Public Prosecutions, Suva.  
 Office of the Legal Aid Commission, Suva.