

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO.: HAC169 OF 2020

STATE

-v-

- 1. TEVITA TAWAKE TOKA**
- 2. TEMO TUIRABE**

Counsel: Ms. B. Kantharia for State
Ms. Ruci Nabainivalu for 1st Accused Ms. S. Daunivesi for 2nd Accused

Date of Sentence: 18 September 2020

SENTENCE

1. Mr. Tevita Tawake Toka and Mr. Temo Tuirabe, you were jointly charged with one count of Aggravated Burglary and one count of Theft. The information read as follows:

COUNT 1

Statement of Offence

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

Particulars of Offence

TEVITA TAWAKE TOKA AND TEMO TUIRABE in the company of each other, on the 29th day of May, 2020 at Nasasa, Navua in the Central Division, entered into the dwelling house of **KUSHAL DATT** as a trespasser, with the intention to commit theft therein.

COUNT 2

Statement of Offence

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

Particulars of Offence

TEVITA TAWAKE TOKA AND TEMO TUIRABE on the 29th day of May, 2020 at Nasasa, Navua in Central Division, in the company of each other, dishonestly appropriated 1 x 50 inch flat screen Panasonic TV, 3 pieces food processor- Breville brand, 1 x Puma bag, 4 x tarpaulin, 1 x purple coloured blanket, 1 x pink coloured comforter, assorted cooking pots and spoons (stainless steel) and 1 x cooking burner, the properties of **KUSHAL DATT** with the intention of permanently depriving **KUSHAL DATT** of his properties.

2. Both of you pleaded guilty to the above charges on your own free will. You understood the consequence of the guilty pleas and the sentencing tariffs for each offence. I am satisfied that the guilty pleas are informed and unequivocal and entered freely and voluntarily.
3. The following summary of facts was read to you in Court.
 - I. The complainant – Ronila Mishra (hereinafter known as PW1 is 31 years old f Lot 71, Biau Drive, Cunningham Stage 2, Economic Officer.
 - II. PW1 resides at Nasasa Road, Navua and beside his house is his uncle – Kaushal Datt’s house who is in New Zealand for the past 2 months, so he takes care of the uncle’s house.
 - III. On Friday 29th May, 2020 at 6.30am PW1 left home for work at Suva and had securely locked his house and then went around his uncle’s house and found everything alright. Nobody was home during the day.
 - IV. PW1 returned home at 6.30pm and when he got out of his car he noticed the light of one room of his uncle’s house was switched on. PW1 went to his house and got the keys to the uncle’s house and upon entering the house saw all 3 rooms were scattered.

- V. PW1 went to the kitchen area and saw the back wooden window was forced opened and the timbers which he had nailed on top of it were lying down on the ground.
- VI. He then suspected that someone had broken into the house and stolen things from inside. He then called the police.
- VII. The Police arrived with tracker dogs and checked the house and PW1 then called his uncle in New Zealand and informed him about the break-in and asked him about the items in his house.
- VIII. Then upon checking around the house PW1 found the following items missing, not in the place where it was and there could be more items missing which he was not aware of-
 - i. 1 x 50 inch flat screen Panasonic TV;
 - ii. 3 pieces food processor Breville brand;
 - iii. 1 x black puma bag;
 - iv. 4 x blue tarpaulin;
 - v. 1 x purple coloured blanket;
 - vi. 1 x pink coloured comforter;
 - vii. Assorted cooking pots and spoons (stainless steel);
 - viii. 1 x cooking burner.
- IX. While PW1 was still inside the house checking what else was missing, the police managed to track the place where the stolen items were hidden and brought the same to him.
- X. PW1 checked the items and verified the same as missing from the house. PW1 identified the items by their brand and labeling in the pots.
- XI. K-9 team arrived at the scene led by POC 5685 Aminio –PW2 and PC 6539 Valevau. PW3 with the tracker dog namely K9 Baxel. The officers initiated the tracking process with K9- Baxel who then followed the track from behind PW1's uncle's house where entry into the house was gained.
- XII. The officers followed K9-Baxel towards the bushes behind the PW1's uncle's house that led to the recovery of the stolen items hidden in the bushes and K9 –Baxel then followed track leading to the neighbour's house belonging to one Temo Tuirabe Snr where the officers got information that A2 was not home and that he was drinking with one Tevita Tawake and others.

- XIII. Upon questioning one Asenaca Dewa-PW4, 18 years old, student of Nasasa Road, Navua who is A2's cousin sister, she stated that in the day she saw A1 and A2 taking a pinch bar and scarf and she felt suspicious.
- XIV. PW4 went to check but could not see anything but later she saw A1 trying to cover his face and running out from the back of the neighbour's house.
- XV. Police carried out investigations and found both A1 and A2 in Nasasa in drunken stage and they were arrested and taken to the Navua Police Station.
- XVI. On Saturday 30/5/20 both A1 and A2 were interviewed under caution and they both admitted to the alleged offence of breaking into PW1's uncle's house and stealing items.
- XVII. A1 and A2 both drank with Naibuka Daunitoko- PW5 on the day of the alleged incident and A1 told him that he together with A2 broke into the neighbour's house and stole TV which he will sell to Pete and who has given him \$100 from which he got the drink.
- XVIII. Petero Cakacaka's statement was recorded who stated that A1 on 29/5/20 approached him to buy tarpaulin from him belonging to this aunty who is married to a European as he wanted to drink. He stated that he took A1 to buy 6 bottles of Fiji Gold and dropped him at the main road near his house. The drinks cost him \$42 but he did not get any tarpaulin in return. He stated that he did not give him any money.

- 4. The caution interviews given by you to the police were attached to the summary of facts and the relevant confessions therein were read to you in Court. You admitted the truthfulness of the caution interviews. I am satisfied that the facts agreed by you satisfy all the elements of each offence you are charged with. You are found guilty and convicted on each count as charged.
- 5. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) of the Crimes Act is an imprisonment term of 17 years and the maximum punishment for Theft is an imprisonment term of 10 years.
- 6. The sentencing 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) and in *State v Tukele -* [2018] FJHC 558; HAC179.2018 (28 June 2018) and endorsed by the Court of Appeal in *Legavuni v. State* [2016] FJCA 31; AAU 106.2014 (26 February 2016).

7. The sentencing tariff for Theft ranges from 4 months to 3 years' imprisonment: *Waga v State* [HAA 17 of 2015].
8. You were convicted on each count based on the same facts. Therefore, I would impose an aggregate sentence for each of you in terms of section 17 of the Sentencing and Penalties Act (SPA).
9. You have committed serious offences. These offences are most frequent in Fiji and they threaten the property rights of innocent people. In assessing the objective seriousness of your offending, I take into consideration the degree of culpability in your offending and the loss caused to the complainant. Both of you are on an equal footing as far as the culpability level is concerned although Temo has played comparatively a lesser role in the offending. All the stolen items were recovered by police and handed back to the complainant. Having considered all these factors, I start the sentence with a starting point of 24 months' imprisonment.
10. The value of property stolen is considerably high. Although joint enterprise in the offending is subsumed in the offence, it involves a degree of pre-planning. The door of the house was forced open. These features aggravate your offence. I add 12 months for the aggravating features to reach 36 months.
11. I would consider the mitigating circumstances filed by your counsel separately.

TEVITA TAWAKE

12. *Tawake*, you are a married farmer, 31 years of age. You entered early guilty pleas at the first available opportunity. You have promised not to re-offend and you beg for a second chance to rehabilitate. You seek mercy of this court. You have cooperated with police in the

investigations. All the stolen items have been recovered. I consider the early guilty pleas as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charges at a very early stage of the proceeding. You have spent approximately 42 days in remand. You had an active previous conviction in a trespass case when you committed these offences. Therefore, you will not receive any discount for clear record. I deduct 12 months for the mitigation and the remand period to arrive at a sentence of 24 months' imprisonment.

13. For the past 10 years, you have been convicted only for a misdemeanour in a trespass case and that was in 2010. You still have a chance of rehabilitation. However, compared to Temo, you are a mature person and played a greater role in the offending. Therefore, your chances of rehabilitation should be rightly balanced with other sentencing purposes, specially, denunciation and deterrence. A partially suspended sentence is warranted in your case hence I suspend 18 months of your sentence for a period of 2 years.

TEMO TUIRABE

14. *Temo*, you are 19 years of age and a student at Fiji National University. You entered early guilty pleas at the first available opportunity. You have saved time and resources of court by pleading guilty to the charges at a very early stage of the proceedings. You repent that you took a wrong decision due to peer pressure. You are a first and young offender. You seek mercy of this court. You have promised not to re-offend and you beg for a second chance to rehabilitate. You have cooperated with police at the investigation. You have spent 42 days in remand. I deduct 18 months for the mitigation and the remand period to arrive at a sentence of 18 months' imprisonment.
15. Rehabilitation of young and first offenders should be promoted. You are young and first offenders having a good potential of rehabilitation. Correction centers do not always correct young offenders. The primary purpose of this punishment is rehabilitation. I have taken into consideration your potential for rehabilitation in view of your youth and the clean record. A total suspended sentence is warranted in your case. Taking into consideration the early guilty pleas, genuine remorse, nature and value of goods stolen, age and clear record, I suspend your sentences for a period of 2 years.

SUMMARY

16. Mr. Tevita Tawake Toka, you are sentenced to 24 months' imprisonment. You are to serve only 6 months in the Correction Centre and the balance 18 months to be suspended for a period of 2 years.
Mr. Temo Tuirabe, you are sentenced to 18 months' imprisonment to be suspended for a period of 2 years.
17. These lenient sentences are imposed in the hope that you will not come back to court after committing an offence. If you are convicted of any offence in the next two years, the suspended sentence may be activated.
18. 30 days to appeal to the Court of Appeal.



Aruna Aluthge
Judge

At Suva

18 September 2020

Counsel: Office of the Director of Public Prosecution for State
Legal Aid Commission for Defence