

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 48 of 2020**

**STATE**

**V**

1. **A. T** [Juvenile One]
2. **E. N** [Juvenile Two]
3. **RATU MELI NAUREU**

**Counsel** : Mr. A. Kumar for the State.  
: Ms. V. Narara for both the Juveniles.  
: Ms. N. Turaga for and on behalf of the  
Social Welfare Department.

**Date of Hearing** : 24 September, 2020  
**Date of Punishment/Sentence:** 25 September, 2020

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**PUNISHMENT / SENTENCE**

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*(The names of both the Juveniles are suppressed they will be referred to as "A.T" and "E.N" respectively)*

1. Both the juveniles are charged with the accused by virtue of the following information filed by the Director of Public Prosecutions dated 2<sup>nd</sup> July, 2020:

**COUNT ONE**

***Statement of offence***

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

***Particulars of Offence***

A.T, E.N and RATU MELI NAUREU, between the 1<sup>st</sup> day of January, 2020 and 21<sup>st</sup> day of February, 2020 at Malomalo Village, Sigatoka in the Western Division, in the company of each other, entered as trespassers into the dwelling house of TIMOCI KUMASEWA, with the intent to commit theft.

**COUNT TWO**

***Statement of offence***

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

***Particulars of Offence***

A.T, E.N and RATU MELI NAUREU, between the 1<sup>st</sup> day of January, 2020 and 21<sup>st</sup> day of February, 2020 at Malomalo Village, Sigatoka in the Western Division, in the company of each other, dishonestly appropriated (stole) 1 x diving torch, 1 x electric drill and 4 rolls of barbed wire, the property of TIMOCI KUMASEWA, with the intention of permanently depriving TIMOCI KUMASEWA of the said property.

2. On 28<sup>th</sup> August, 2020 both the juveniles and the accused pleaded guilty to both the above counts in the presence of their counsel. Thereafter on 21<sup>st</sup> September, 2020 both the juveniles and the accused admitted the summary of facts read by the State Counsel as follows:

*The complainant in this matter is Timoci Kunasewa, 46 years old, Farmer of Malomalo Village, Sigatoka. (Hereinafter PW1).*

*The Juveniles in this matter are:*

1. *A.T, 16 years old, student of Malomalo Village, Sigatoka. (hereinafter Juv 1)*
2. *E.N, 16 years old, student of Malomalo Village, Sigatoka. (hereinafter Juv 2)*

*The Accused in this matter is Ratu Meli Naureu, 18 years old, unemployed of Malomalo Village, Sigatoka. (Hereinafter A1)*

*On 21<sup>st</sup> February, 2020, PW1 had received a phone call from one Josese that his house in the village had been broken into and some items were stolen from therein. On the above date and time, PW1 was staying at Lawai village as he had been sick and was recovering. PW1 was informed that 1 x diving torch, 1 x electric drill and 4 rolls barbed wire were stolen from his home. PW1 was also informed that some youths had tried to sell the electric drill to one Bete of Volivoli village but Bete refused to buy it as there was no charger attached to the electric drill.*

*PW1 reported the matter to the Police and upon investigations, the two juveniles and the accused were arrested and interviewed under caution. Juv 1, Juv 2 and A1 made the following admissions in their caution interview:*

- i) *Caution Interview of A.T ( Juv 1)*
  - a) *Juv 1 admitted to taking the 4 rolls of barbed wire (Q&A 22) from the kitchen of PW1's house and hid it on the beach (Q&A 25).*
  - b) *Upon being asked about the missing drill and torch, Juv 1 admits to entering the house of PW1 on 11/02/20. (Q&A 29).*
  - c) *The copy of caution interview of juvenile one is attached herewith and marked "Annexure A".*
- ii) *Caution Interview of E.N (Juv 2)*
  - a) *Juv 2 states in his caution interview that Juv 1 and he were roaming around in the night when they met A1 around midnight.*

- b) *Juv 1, Juv 2 and A1 planned to complete the mission of uplifting the barbed wires from PW1's house.*
- c) *The copy of caution interview of Juvenile two is attached herewith and marked "Annexure B".*

*(iii) Caution Interview of Ratu Meli Naureu Derenalagi (A1)*

- a) *Accused 1 in his caution interview admits to have jointly committed the offence with Juv 1 and Juv 2.*
- b) *The copy of caution interview of the accused is attached herewith and marked "Annexure C".*

*The two juveniles and accused were charged with 1 count of Aggravated Burglary and Theft. The Police had recovered during the investigations the electric drill and 4 rolls of barbed wire belonging to PW1. The said recovered items were also positively identified by PW1 as the item which was stolen from his home.*

3. After the matter was reported to the police both the juveniles and the accused were arrested, caution interviewed and charged.
4. After considering the summary of facts read by the State Counsel which was admitted by both the juveniles and the accused and upon reading their caution interviews this court is satisfied that both the juveniles and the accused have entered an unequivocal plea of guilty on their own freewill.
5. This court is also satisfied that both the juveniles and the accused 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 aggravated burglary and theft which both the juveniles and the accused admitted committing in the company of each other.
6. In view of the above, this court finds both the juveniles guilty as charged. In respect of the accused his counsel is asking this court to consider

section 16 of the Sentencing and Penalties Act and not enter a conviction against the accused since he wishes to pursue a career as a professional rugby player overseas.

7. Unfortunately, there is nothing placed before the court that would allow this court to exercise its discretion in this regard. The fact that the accused is playing rugby for a club in Malomalo and that he wishes to play rugby in New Zealand because a relative is helping him to secure a rugby club is not sufficient information for a conviction not to be entered. As I see it, the accused is unemployed who is contemplating a career move into professional rugby but without any evidence to show the authenticity of this information to join a rugby club in New Zealand is not a compelling reason for a conviction not to be entered considering the seriousness and the circumstances of the offences committed. The accused is found guilty and convicted as charged.
8. Both counsel filed sentence and mitigating submissions for which this court is grateful.
9. The learned counsel for both the juveniles and the accused presented the following mitigation:

Juvenile one – A.T

- a) The juvenile is 16 years of age, a young and first offender;
- b) He resides with his uncle and grandmother after his parents separated;
- c) He is a Year 12 student;
- d) Pleading guilty at the earliest opportunity;
- e) Co-operated with the police;
- f) Substantial recovery of stolen items;
- g) Remorseful and seeks the court's forgiveness.

### Juvenile two- E.N

- a) The juvenile is 16 years of age, a young and first offender;
- b) He resides with his parents;
- c) He is a Year 10 student;
- d) Pleaded guilty at the earliest opportunity;
- e) Co-operated with the police;
- f) Substantial recovery of stolen items;
- g) Remorseful and seeks the court's forgiveness.

### Accused – Ratu Meli Naureu

- a) The accused is a first offender;
- b) Unemployed;
- c) He was 18 years of age at the time of the offending;
- d) Looked after by his uncle after his mother died and his father remarried;
- e) Promises not to reoffend;
- f) Pleaded guilty at the earliest opportunity;
- g) Sincerely remorseful and seeks forgiveness and mercy of the court;
- h) Substantial recovery of stolen items;
- i) Co-operated with the police.

### **TARIFF**

10. The maximum penalty for the offence of aggravated burglary is 17 years imprisonment. The accepted tariff is a sentence between 18 months to 3

years imprisonment (see *Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).

11. For the offence of theft the maximum penalty is 10 years imprisonment.
12. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
  - (i) *For the 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.”*
13. Both the juveniles fall under a special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as young persons which prescribes the maximum punishment for young persons at 2 years imprisonment.

### **AGGRAVATING FACTORS**

The following aggravating factors are obvious in this case:

a) **PLANNING**

The facts show a degree of planning by both the juveniles and the accused which they also admitted in their caution interviews. They were bold and undeterred.

b) PREVALNCE OF THE OFFENCE

The offences committed are very prevalent nowadays that people are reluctant in leaving their properties unattended.

c) NIGHT TIME INVASION

All three entered the property of the complainant in the middle of the night to avoid detection.

**SOCIAL WELFARE REPORT**

14. As per the order of this court the Social Welfare Department conducted a home assessment and interviews before compiling a pre-punishment report for both the juveniles.
15. The Social Welfare Department recommends the following for both the juveniles that:
- a) The juveniles be given a non-custodial punishment; and
  - b) The juveniles be put under probation.

**PARENTAL SUPPORT**

16. The mother/ uncle of both the juveniles were in court. They have pledged their support, guidance and supervision for their son/ nephew. They also assure the court that he will play a more active role in the life of the juveniles. The juveniles also take responsibility of their actions, they are remorseful and they promise not to be in conflict with the law again.

The parents and uncle of both the juveniles have (as part of their commitment) agreed to be bonded in respect of the good behaviour of the juveniles in the sum of \$300.00 each.



17. Section 17 of the Sentencing and Penalties Act states:
- “If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*
18. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate punishment for the two offences.
19. Considering the objective seriousness of the offences committed I select 18 months imprisonment (lower range of the tariff) as the aggregate punishment of both the offences. For the aggravating factors I increase the punishment by 2 ½ years. The interim punishment now stands at 4 years imprisonment. For the early guilty plea, mitigation, and the remand period of 16 days the interim punishment is reduced by 2 years and 2 months.
20. The final aggregate punishment for the two offences is 1 year and 10 months imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
21. In *State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)*, Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:
- “[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been*

*perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:*

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

22. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment term or a suspended punishment.
23. The juveniles are young persons as per the Juveniles Act, they are of good character, isolated offences were committed by them, they are 16 years of age, pleaded guilty at the earliest opportunity, are genuinely remorseful, cooperated with police and they take full responsibility of their actions. These special reasons render immediate imprisonment term inappropriate.
24. Both the juveniles with parental and family guidance, supervision and support have a bright future ahead of them hence an imprisonment term will not augur well for their future, the juveniles have been in police custody and/or at the Fiji Juvenile and Rehabilitation Centre which is in itself an adequate and appropriate punishment, an experience that will remind them

to keep away from trouble. This court has taken into account rehabilitation **over and above deterrence.**

25. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
26. Let me remind both the juveniles that leading a life within the boundaries of criminal activities do not assist it only takes a person deeper and deeper into a world of uncertainty and misery. The society does not condone such activities and this court also denounces such behaviour.
27. This is an opportunity for both the juveniles to stop entering the world of uncertainty and lead a happy life with their parents and family. The only reason why the punishment is below the usual penalty regime is because the Juveniles Act imposes a limit on the punishment of young persons.
28. In summary both the juveniles are given a punishment of 1 year and 10 months imprisonment as an aggregate punishment for both the offences which is suspended for 3 years. The effect of suspended sentence is explained. The following orders are to take effect immediately.

### **ORDERS**

- a) The juveniles are given a punishment of 1 year and 10 months imprisonment each as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;
- b) Both the juveniles are put under probation of the Social Welfare Department for two years;

- c) The mother/uncle of both the juveniles are to sign a good behaviour bond on behalf of the juveniles in the sum of \$300.00 each. Furthermore, the mother/uncle of both juveniles are to pay a compensation to the complainant in the sum of \$30.00 each within 21 days from today payable at Sigatoka Magistrate's Court;
- d) The Social Welfare Department is to immediately arrange for the counseling of both the juveniles in the presence of their mother/ uncle with the view of assisting them in keeping out of peer group influence and to engage in education and training;
- e) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of both the juveniles;
- f) It is the responsibility of the mother /uncle of both the juveniles to ensure that the juveniles obey any directions given by the Social Welfare Department;
- g) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department.

### **ACCUSED**

29. Considering the objective seriousness of the offending I select 18 months imprisonment (lower range) as the aggregate sentence of both the offences. For the aggravating factors I increase the sentence by 3 years. The interim sentence of imprisonment now stands at 4 ½ years imprisonment. For the early guilty plea, mitigation, and the remand period of 5 months and 7 days the interim sentence is reduced by 2 years.

30. The final aggregate sentence for the two offences is 2 ½ years imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspended the final sentence since it does not exceed 3 years imprisonment.
31. The accused is a first offender of comparatively good character, isolated offences committed, he was 18 years of age at the time, pleaded guilty at the earliest opportunity, was remorseful, cooperated with police and takes responsibility for his actions. I consider these special reasons as rendering immediate imprisonment term inappropriate.
32. The accused has been in remand for 5 months and 7 days which is in itself an adequate and appropriate punishment, an experience that will remind him of his misdeeds and act as a motivation to keep away from trouble. This court has taken rehabilitation over and above deterrence and retribution.
33. In summary, the first accused is sentenced to 2 ½ years imprisonment as an aggregate sentence for both the offences which is suspended for 3 years. The effect of suspended sentence is explained to the first accused.
34. 30 days to appeal to Court of Appeal.



**Sunil Sharma**  
**Judge**

**At Lautoka**

25 September, 2020

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**