

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

CASE NO: HAC. 195 of 2019

BETWEEN : **STATE**

AND : **1. RUPENI INOKE NAULI KUNABULI**
2. JONETANI NATARO NAIROGE (J)
3. SEREMAIA NAITAU MATAI JNR (J)
4. SAKIUSA MATANATABU (J)
5. KELEVI NIMA

Counsel : *MS. P.K. Lata for State*
: *Ms. V. Narara for the 1st Accused, 2nd & 3rd Juveniles*
: *Ms. E. Radrole for the 4th Juvenile & 5th Accused*

Hearing on : *25th September 2020*
Sentence : *16th October 2020*

SENTENCE

1. The Accused (1st and 5th) and the Juveniles (2nd, 3rd and 4th) all have pleaded guilty to the counts of Aggravated Burglary and Theft and also in addition the 1st 2nd & the 3rd have pleaded guilty to a count of Damaging Property and the 1st has also pleaded guilty to four counts of Breach of Bail Conditions. You all pleaded guilty voluntarily at the first opportunity. I am satisfied and convinced that you have pleaded so, unequivocally and having understood the consequences of such a plea.

2. You were charged as follows;

COUNT 1

Statement of Offence

Aggravated Burglary: contrary to section 313(1) (a) of the Crimes Act 2009.

Particulars of Offence

Rupeni Inoke Naului Kunabuli, Jonetani Nataro Nairoge, Seremaia Naitau Matai Jnr, Sakiusa Matanatabu & Kelevi Nima between the 24th and the 25th day of August 2019, at Sigatoka, in the Western Division, in the company of each other, broke and entered into the Coral Coast Bread Shop, as trespassers with intent to commit theft.

COUNT 2

Statement of Offence

Theft: contrary to section 291(1) of the Crimes Act 2009.

Particulars of Offence

Rupeni Inoke Naului Kunabuli, Jonetani Nataro Nairoge, Seremaia Naitau Matai Jnr, Sakiusa Matanatabu & Kelevi Nima between the 24th and the 25th day of August 2019, at Sigatoka, in the Western Division, dishonestly appropriated (stole) assorted recharge cards, cigarettes, 1 x CCTV decoder, 1 x J2 Samsung mobile phone, 3 x wrist watches, 24 x gas lighters, 2 dozen oxford corned beef cans, cash of \$65.00 and coins of \$300.00, the property of Coral Coast Bread Shop with the intention of permanently depriving Coral Coast Bread Shop 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

Rupeni Inoke Naului Kunabuli, Jonetani Nataro Nairoge, Seremaia Naitau Matai between the 24th and 25th day of August 2019, at Sigatoka, in the Western Division, unlawfully and willfully damaged a CCTV decoder, the property of Coral Coast Bread Shop.

COUNT 4

Statement of Offence

Breach of Bail Condition: contrary to section 26(1) & (2) of the Bail Act 2002.

Particulars of Offence

Rupeni Inoke Naului Kunabuli, between the 24th and 25th day of August 2019, at Sigatoka, in the Western Division, whilst being released on bail by Lautoka High Court vide HAC 26/19 and Sigatoka Magistrate Court CF 3/19, without reasonable cause, breached his bail condition by re-offending when ordered by court not to re-offend.

COUNT 5

Statement of Offence

Breach of Bail Condition: contrary to section 26(1) & (2) of the Bail Act 2002.

Particulars of Offence

Rupeni Inoke Naului Kunabuli, between the 24th and 25th day of August 2019, at Sigatoka, in the Western Division, whilst being released on bail by Lautoka High Court vide HAC 26/19, without reasonable cause, breached his bail condition by not complying with his curfew orders which was for him to stay indoors from 7.00 pm to 6.00 am daily.

COUNT 6

Statement of Offence

Breach of Bail Condition: contrary to section 26(1) & (2) of the Bail Act 2002.

Particulars of Offence

Rupeni Inoke Naului Kunabuli, between the 03rd day of June 2019 and 6th day of September 2019, at Sigatoka, in the Western Division, whilst being released on bail by the Lautoka High Court vide HAC 26/19, without reasonable cause, breached his bail condition by not reporting at the Sigatoka Police Station when ordered by the court to report at the Sigatoka Police Station every Monday and Friday.

COUNT 7

Statement of Offence

Breach of Bail Condition: contrary to section 26(1) & (2) of the Bail Act 2002.

Particulars of Offence

Rupeni Inoke Naului Kunabuli, on the 16th day of September 2019 at Sigatoka, in the Western Division, whilst being released on bail vide Sigatoka Magistrate Court CF 3/19 absconded bail by failing to appear at the Sigatoka Magistrates Court.

3. State has submitted the following as the Summary of Facts;
1. Complainant is Ifroz Khan (hereafter PW1), 39 years, businessman of Kadrakulu, Sigatoka.
 2. Accused 1 is Rupeni Inoke Naului Kunabuli (hereafter A1), 18 years, bulk boy of BL Naidu of Yavulo Village, Sigatoka.
 3. Juvenile 1 is Jonetani Nataro Nairogo (hereafter J1), 17 years, farmer of Yavulo Village, Sigatoka.
 4. Juvenile 2 is Sakiusa Matanatabu (hereafter J2), 15 years, student of Rakirakilevu Settlement, Sigatoka.
 5. Juvenile 3 is Seremaia Naitau Matai Jnr (hereafter J3) 15 years, student of Yavulo Village, Sigatoka.
 6. Accused 2 is Kelevi Nima (hereafter A2) 18 years, student of Laselase Settlement, Sigatoka.

On the 25th of August 2019 at about 6.00 am, PW1 found the back door of his shop broken and the following items stolen:

| | |
|----------------------------|----------|
| Vodafone Recharge cards | \$708.00 |
| Ink Recharge cards | \$260.00 |
| Digicel Recharge cards | \$330.00 |
| CCTV decoder | \$800.00 |
| J2 Samsung mobile phone | \$249.00 |
| Cigarettes | \$330.00 |
| 2 x kids smart wrist watch | \$112.00 |
| 1 x white wrist watch | \$120.00 |
| 24 piece gas lighter | \$ 72.00 |
| 2 dozen oxford corned beef | \$ 92.40 |

| | |
|--------------|--------------------------|
| Cash | \$ 65.00 |
| Coins | <u>\$300.00</u> |
| Total | <u>\$3,438.40</u> |

A1 was arrested and interviewed whereby he admitted breaking into the Coral Coast Bread Shop with his friends. A1 also admitted pulling out the CCTV decoder from the shop. He admitted stealing the above items from the shop. They shared the stolen items at a graveyard at Yavulo Village. A1 had admitted all these from questions 64 to 102 of Record of Interview. A1 also admitted breaching his bail conditions for another pending matter in court. He admitted to re-offending, breaching curfew hours, not reporting to Sigatoka Police Station and absconding bail from questions 141 to 159 of his record of interview.

J1 was arrested and interviewed whereby he admitted that he was a lookout while his accomplices broke into the Coral Coast Bread Shop. He also assisted his accomplices to steal the items from inside the shop. They shared the stolen items between themselves at a graveyard at Yavulo Village. J1 also admitted taking the hard drive out of the CCTV decoder and throwing it in the bush. J1 has admitted all these from question numbers 114 to 141 of the record of interview.

J2 was arrested and interviewed whereby he admitted that he had broken the tube light of the shop and was a lookout while his other accomplices broke into the shop. They shared the stolen items between themselves at a graveyard at Yavulo Village. J2 has admitted all these from question numbers 48 to 58 of his record of interview.

J3 was arrested and interviewed whereby he admitted that he was the one who used the pinch bar to break the door of the shop and then was keeping a lookout while his accomplice went inside the shop. They then took the stolen items to Yavulo cemetery to share between themselves. J3 also admitted throwing away the CCTV decoder in a bush. J3 admitted to all these from question number 48 to 97 of his record of interview.

A2 was arrested and interviewed whereby he admitted that he was a lookout while his accomplices broke into the shop. After the break in they went to Yavulo cemetery to share the stolen items within

themselves. A2 admitted to all these from question number 100 to 144 of his record of interview.

A1's house was searched and J2 Samsung mobile phone was recovered from his home. A2 voluntary gave one of the stolen wrist watch to the Police.

4. The said Summary of facts were read over and explained to you. You having understood the same agreed them to be true and correct.
5. I find that the above summary of facts supports all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict each of you as charged.
6. Section 4 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. I have duly considered these factors in determining the sentence to be imposed on you.
7. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years' imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act. The offence of Damaging Property under section 369 carries a maximum of 2 years of imprisonment. The offence of Breach of Bail conditions contrary to section 26 of the Bail Act (as amended by Act No. 28 of 2012) states that;
 - (1) *"A person who has been released on bail and who fails without reasonable cause to surrender to custody, or otherwise without reasonable cause, breaches any condition of bail imposed by Court, commits an offence and is liable on conviction to a fine of \$2,000 or 12 months imprisonment, or both."*
8. The accepted tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I

prefer to follow His Lordship Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as it gives effect to the intention of the legislature, best.

As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

The maximum punishment for Damaging Property is 2 years of imprisonment and the sentencing tariff is 3 – 12 months of imprisonment. (**Anaiasa Naqialawa v state** [2017] FJHC 484)

As for each offence of Breach of Bail conditions, the well accepted tariff is from a non-custodial sentence to 9 months of imprisonment. (**Ratu v State** [2019] FJHC 111; HAA89.2018 (21 February 2019))

9. The offences you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

17. *“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.”*

10. The aggravating factors present in your case are that this was a pre-planned invasion and some of the stolen properties were not recovered. Further, these types of offences have increased due to the leniency they are dealt with and society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.

11. Their mitigating factors are;
- i. all of you were very young at the time this alleged offence was committed.
 - ii. None of you have any previous convictions as for material before me.
 - iii. All of you pleaded guilty at the first available opportunity.
 - iv. You have co-operated with the police, said to be remorseful and seek leniency and forgiveness from the court.

v. The 2nd to 5th have voluntarily made a payment of \$ 500.00 each to the complainant.

12. For the 1st Accused, I will select 8 years as the starting point of your aggregate sentence. For the 2nd and 3rd (1st and 2nd Juveniles) I will select 7 years as the starting point of your sentence. For the 4th and 5th (3rd Juvenile and the 2nd Accused) I would select 6 years as the starting point of your aggregate sentence. Each of your sentences, I would enhance by 12 months due to the aggravating factors mentioned above and deduct 24 months from the 1st and 30 months each from others in consideration of the mitigating factors. Now your sentences are;

| | | |
|--|---|--------------------------------|
| 1 st Accused | - | 78 months of imprisonment |
| 1 st and 2 nd Juveniles | - | 66 months of imprisonment each |
| 3 rd juvenile & 2 nd Accused | - | 54 months of imprisonment each |

13. You have pleaded guilty at the very first opportunity and I will award the maximum discount of 1/3 for that. Therefore your final sentences are;

| | | |
|--|---|--------------------------------|
| 1 st Accused | - | 54 months of imprisonment |
| 1 st and 2 nd Juveniles | - | 44 months of imprisonment each |
| 3 rd juvenile & 2 nd Accused | - | 36 months of imprisonment each |

14. Section 30 (3) of the juvenile's Act prevents me from sentencing a Juvenile for more than 2 years. Therefore the final terms of the 3 juveniles will be limited to 24 months of imprisonment.

15. The 1st Accused has been in remand 28 days and I will deduct 1 month for that. The 5th (2nd Accused) has been in remand for 12 days and I will deduct ½ a months in lieu of that. Therefore the remainder you will have to serve would be;

| | | |
|---|---|--------------------------------|
| 1 st Accused | - | 53 months of imprisonment |
| 1 st , 2 nd & 3 rd Juveniles | - | 24 months of imprisonment each |
| 2 nd Accused | - | 35 ½ months of imprisonment |

16. The 1st Accused's term of imprisonment should be operative concurrently with any other sentence he is serving and a non-parole period of 30 months is set thereto.

17. Now I will proceed to consider the provisions of section 26 of the sentencing and penalties Act in regards to the rest. In consideration of all the material before me I

decide to suspend the sentences of the 1st & 2nd Juveniles for a term of 04 years and the sentence of the 3rd juvenile and the 2nd Accused for a period of 03 years.

18. The consequences of a committal of another offence within the operational period of the said suspended term will be explained to you by the clerks.
19. All of you have 30 days to appeal to the Court of Appeal if you so desire.



Chamath S. Morais
JUDGE



At Lautoka

Solicitors for the State : *Office of the Director of Public Prosecutions, Suva.*
Solicitors for the Accused : *Legal Aid Commission, Suva.*