

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 234 of 2020**

**STATE**

**V**

**JOJI KOTOBALAVU**

**Counsel** : Ms. Wakesa Elo for the State  
Ms. Aarti Prakash for the Accused

**Sentence Hearing** : 10 December 2020

**Sentence** : 17 February 2021

**SENTENCE**

[1] Joji Kotobalavu, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

**COUNT 1**

***Statement of Offence***

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

***Particulars of Offence***

**JOJI KOTOBALAVU**, on the 24<sup>th</sup> day of June 2020, at Ketei Village, Lau, in the Southern Division, in the company of others, entered into the premises of **KETEI WOMEN'S CLUB** as trespassers, with intent to commit theft therein.

## COUNT 2

### *Statement of Offence*

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

### *Particulars of Offence*

**JOJI KOTOBALAVU**, on the 24<sup>th</sup> day of June 2020, at Ketei Village, Lau, in the Southern Division, in the company of others, dishonestly appropriated (stole) 5 x containers containing cash total of \$1,011.80, 1 x Bucket containing \$220.00 cash and 1 x 4kg Plastic of Sugar, the properties of **KETEI WOMEN'S CLUB** with the intention of permanently depriving **KETEI WOMEN'S CLUB** of the said properties.

- [2] On 17 September 2020, the DPP filed the Disclosures relevant to the case, and the Information was filed on the 25 September 2020.
- [3] Joji, on 9 October 2020, you were ready to take your plea. On that day you pleaded guilty to the two counts against you in the Information. 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 charges against you and the consequences of your guilty plea.
- [4] Thereafter, the State filed the Summary of Facts. On 11 November 2020, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the respective counts in the Information, and found the two counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the two charges.
- [5] I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:

*"The Complainant is Laisani Sotia ("PW1") 36 years, Head Teacher of Ketei Primary School. The Accused is Joji Kotobalavu ("Accused") 20 years, farmer of Ketei Village, Totoya, Lau.*

*There is a canteen owned and operated by the Ketei Women's club which is located in the school compound which is headed by PW1. Sometimes in April, during the school holidays, Nunia Baravi ("PW2"), the canteen shopkeeper handed over the keys to the canteen to PW1 to operate during the school holidays.*

*On 25/06/20, PW1 opened the said canteen and noticed an empty container together with an empty plastic bag of sugar lying on the floor of the canteen. PW1 then looked*

around the canteen and noticed that the said canteen had been broken into. Upon closer look, PW1 noticed that the following items were now missing from the canteen:-

- 1) 1 x Bucket containing cash of \$220.00;
- 2) 1 x 4kg sugar valued at \$9.40c;
- 3) 1 x Incidental container containing \$591/80;
- 4) 1 x container containing \$193.00;
- 5) 1 x Telecard container containing \$180.00;
- 6) 1 x Brass cutter and wheel barrow container containing \$22.00; and
- 7) 1 x Cylinder container containing \$25.00.

The total value of the above amounted to that of \$1180.20.

The matter was reported to the police and an investigation was conducted. The Accused was arrested and caution interviewed where he fully admitted to his part in the commissioning of the offences.

The Accused in his caution interview stated:-

- That as far as the allegation is, he admits that they (he and his accomplice) broke into the Ketei Women's Club canteen and stole some cash and a packet of sugar **(Q/A 16)**.
- That they broke into the canteen on Wednesday night 24/06/20 around 11.00 pm **(Q/A 20)**;
- That the said canteen is located inside Ketei Primary School compound **(Q/A 21)**;
- That he forcefully pulled the wooden window and it opened and then he took out the roofing iron cutter and cut the chicken mesh wire which was attached on the window **(Q/A 22 – 23)**;
- After cutting the mesh wire they then folded the same so that it could open properly **(Q/A 24)**;
- The iron cutter is black and red and the same belonged to his father with his initials "IN" on it **(Q/A 25 – 30)**;
- His accomplice went in and he stayed outside the window to wait for his accomplice **(Q/A 36)**;
- His accomplice then handed him 6 containers and 1 bucket containing cash through the window where they then took it to an empty house near the seashore and shared the cash **(Q/A 37 – 40)**;
- He received \$400.00 and had spent the same because they had been really looking for money **(Q/A 41 – 45)**.

Consequently, the Accused was charged for 1 Count of Aggravated Burglary and 1 Count of **Theft**.

The Accused is a first offender."

[7] Joji, 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 sentence to be imposed on you.

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

[11] 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).

[12] 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.

[13] 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. (Taione) 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); **State v. (Usaia) Delai** [2020] FJHC 631; HAC7.2020 (6 August 2020); **State v Vakawaletabua** [2020] FJHC 645; HAC441.2018 (11 August 2020); **State v. (Sakeasi) Seru and Another** [2020] FJHC 770; HAC136.2020 (18 September 2020); **State v. (Kunal Edwin) Prasad** [2020] FJHC 785; HAC115.2020 (23 September 2020); **State v. (Emosi) Tabuasei** [2020] FJHC 994; HAC131.2020 (27 November 2020); **State v. LR and Others** [2020] FJHC 993; HAC133.2020 (27 November 2020); **State v. Lal and Another** [2020] FJHC 1024; HAC337.2019 (3 December 2020); **State v. Koroitawamudu and Another** [2020] FJHC 1055; HAC127.2020 (8 December 2020); and **State v. Koroi and Another** [2020] FJHC 1065; HAC270.2020 (10 December 2020).

[14] 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.

[15] In **Ratusili 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.”*

[16] Since the theft in this case involved property of a reasonably high value, and was consequent to you and your accomplice entering the premises of a primary school canteen as trespassers, this cannot be considered as theft simpliciter. 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.

[17] 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.”*

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

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

[20] The aggravating factors are as follows:

- (i) The frequent prevalence of these offences in our society today.

- (ii) You and your accomplice trespassed into the premises of a primary school canteen thereby paying complete disregard to the property rights of the school and the owners of the canteen.
- (iii) You and your accomplice trespassed into these premises in the late hours of the night.
- (iv) I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences. The roofing iron cutter, which belonged to your father, was brought by you from home to the scene of the crime.
- (v) You are now convicted of multiple offending.

**[21]** In mitigation you have submitted as follows:

- (i) That you are a first offender 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 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) It is submitted that you are seeking forgiveness for your actions and you say you are willing to reform.
- (v) You have agreed to compensate the complainant in the sum of \$400.00 (which you have admitted was your share of the stolen property) for the loss suffered by the Ketei Women's Club, if you are granted reasonable time to do so.
- (vi) That you entered a guilty plea at the first available opportunity.

**[22]** Considering the aforementioned aggravating factors, Joji I increase your sentences by a further 5 years. Now your sentence for count one would be 6 years and 6 months imprisonment. Your sentence for count two would be 5 years and 6 months imprisonment.

**[23]** Joji, I accept that you are a person of previous good character and that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and the fact that you are seeking forgiveness for your actions. I also wish to give credit to you for the fact that you have agreed to compensate the complainant in the sum of \$400.00 for the loss suffered by the Ketei Women's Club. Accordingly, considering these mitigating factors, I deduct 3 years and 6 months from your sentences. Now your

sentence for count one would be 3 years imprisonment. Your sentence for count two would be 2 years imprisonment.

**[24]** Joji, I accept that you entered a guilty at the first available opportunity during the course of 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 for count one. Since I propose to make your sentences concurrent I do not deem it necessary to grant you any further discount for count two in lieu of this factor.

**[25]** In the circumstances, Joji your sentences are as follows:

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

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

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

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

**[27]** 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.*

**[28]** Joji you are now 20 years of age and you will be turning 21 in 4 days [Your date of birth being 21 February 2000]. It is said that you have never lived with your parents and that you were raised by your maternal grandparents who have now passed away. Since June 2020 you are said to be residing with your paternal grandmother in Nasole, Nasinu. You are now said to be working at a Construction Company in Pacific Harbour



earning \$150.00 per week and with this income you are helping out with the expenses in the house.

[29] You have submitted that at the time of offending you had succumbed to peer pressure and committed the offences. You have further submitted that you committed these offences without comprehending the gravity of your actions.

[30] Joji upon your arrest for this case you had been in custody for a period of about 2 weeks. You were granted bail by the Chief Magistrate on 4 August 2020.

[31] 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.”*

[32] 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.”*

[33] I have considered the following circumstances:

- You are a young offender;
- You have been of previous good character;
- You have fully cooperated with the Police in this matter;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from this Court;
- You have assured Court that you will not re-offend and are willing to reform;
- You have agreed to compensate the complainant in the sum of \$400.00 (which you have admitted was your share of the stolen property) for the loss suffered by the Ketei Women’s Club;
- You entered a guilty plea at the first given opportunity during these proceedings;
- You have spent nearly 2 weeks in remand custody for this case.

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

- [34] 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 7 years.
- [35] In the result, your final sentence of 2 years imprisonment, is suspended for a period of 7 years. You are advised of the effect of breaching a suspended sentence.
- [36] In addition, in terms of Section 49 of Sentencing and Penalties Act I order that you pay a sum of \$400.00 in restitution to compensate the loss suffered by the Ketei Women's Club, the owners/operators of the canteen run at the Ketei Primary School. The said sum of money should be paid in full at the High Court Criminal Registry, Suva, on or before 30 April 2021.
- [37] Upon this sum of \$400.00 being deposited at the High Court Criminal Registry, Suva, the complainant in this case Mrs. Laisani Sotia, the Head Teacher of the Ketei Primary School or any other person duly authorized by the School, will be entitled to withdraw the said sum of money.
- [38] 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 17<sup>th</sup> Day of February 2021

**Solicitors for the State:**  
**Solicitors for the Accused:**

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