

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 297 of 2020

[CRIMINAL JURISDICTION]

STATE

V

1. IFEREIMI RATOKABULA KOROI

2. PAULA TUIBAU

Counsel : Mr. E. Elo for the State
Ms. A. Prakash for the 1st Accused
Ms. L. Manulevu for the 2nd Accused

Date of Sentence : 26 January, 2021

SENTENCE

1. Ifereimi Ratokabula Koroi and Paula Tuibau you have pleaded guilty to the charges produced below and were convicted as charged accordingly on 02/12/20;

FIRST COUNT

Statement of Offence

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

Particulars of Offence

IFEREIMI RATOKABULA KOROI & PAULA TUIBAU, on the 29th day of September, 2020 at Nasinu in Central Division, in the company of others, entered into the premises of **PENIANA SEASEAKULA** as

trespassers, with the intent to commit theft therein.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

IFEREIMI RATOKABULA KOROI & PAULA TUIBAU, on the 29th day of September, 2020, at Nasinu in the Central Division, in the company of others, dishonestly appropriated (stole) 1 x Nike Duffle Bag, a x Navy Blue Knapsack, 1 x set Speakers (logic tech 5.1) 1 x electric iron, 1 x First Aid Bag, 1 x Pair of Flip Flops, 1 x Samsung Mobile Phone, the properties of **PENIANA SEASEAKULA** with the intention of permanently depriving **PENIANA SEASEAKULA** of the said properties.

2. You have admitted the following summary of facts;

Accused 1: *The first accused in this matter is one Iferemi Ratokabula Koroi, 19 years, Unemployed, of Kalabu Housing Uci Place ("A1").*

Accused 2: *The second accused in this matter is one, Paula Tuibau, 20 years, Student, of Block 5 Flat 2 PRB Flat, Kalabu ("A2")*

On 29/09/20 at about 6.50am, PW1 left home with her husband for work. After 3pm that afternoon, she returned home from work and noticed that one of the doors to the room was open. PW1 recalled before having left home from work and noticed that one of the doors to the room was open. PW1 recalled before having left home they had locked all the doors to the room.

When PW1 entered the house, she saw all the rooms were in a mess and she later noticed that the following belongings were now missing:-

- 1) 1 x Red Nike Duffle Bag valued at \$150.00;*
- 2) 1 x Navy Blue knapsack;*
- 3) 1 x set of Speakers (logic tech) 5.1 valued at \$299.00;*
- 4) Electric iron valued at \$180.00;*
- 5) First Aid bag valued at \$20.00;*
- 6) 1 x Pair of Flip Flops valued at \$20.00; and*
- 7) 1 x Samsung Mobile Phone valued at \$150.00.*

The total value of the above items that were stolen amounted to \$799.00. The matter was reported to the Police and investigations were carried out.

During the investigations, a Police officer Rusiate Ramuatiqa (“PW2”) questioned a bystander Nemani Solikibau (“PW3”) 19 years, unemployed of Lot 13 Jale Street, about the incident and he informed the officers that whilst he was hanging out with his friends on the day of the incident, he saw the two Accused carrying the stolen bags out from PW1’s home.

The two Accused were arrested and brought into the station for questioning where the following was admitted to:-

ADMISSIONS BY A1:-

- *On 29/09/20 at about 1000hours, A1 entered into PW1’s house on the second floor towards the end of the new PRB Building (Q/A 23);*
- *He had entered the house with A2 and that he had entered first (Q/A 24 & 25);*
- *That he had used the fire escape ladder which is attached to the PRB Building and when he reached the second floor, he took out two louver blades before entering the said house first and waited for A2 (Q/A 26 – 28);*
- *When they both entered they began looking for items to take and stole PW1’s items before escaping through the fire escape again (Q/A 30 – 34).*

ADMISSIONS BY A2:-

- *Admits to breaking into PW1’s home with A2 and that entered through the back of the house through a window (Q/A 44 – 49);*
- *He had taken the bag from the sitting room and had packed the speakers before leaving again through the back window (Q/A 56 -58);*
- *Bags were shown to A2 and he confirmed that they were the same bags they had stolen from PW1’s house and that the bag and speakers were hidden by him at the lovo pit (Q/A 53 – 55).*

*Consequently, the two Accused were charged with 1 count of **Aggravated Burglary** contrary to section 313(1)(a) & (b) of the Crimes Act 2009 and 1 count of **Theft** contrary to section 291 of the Crimes Act 2009.*

3. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017) and *State v Naulu* [2018] FJHC 548 (25 June 2018)]

4. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
5. In the case of *State v Chand* [2018] FJHC 830; HAC44.2018 (6 September 2018), Morais J observed thus;

12. Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in *Brewster* 1998 1 Cr App R 220 observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organization, directed at objects of high value. Or the offence may be deliberately directed at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”

6. The two offences you are convicted of are founded on the same facts. Therefore, in view of the provisions of section 17 of the Sentencing and Penalties Act, I consider it appropriate to impose an aggregate sentence of imprisonment against you for the two offences you have committed.
7. Ifereimi Ratokabula Koroi, you are 19 years old. It is submitted that you intend enroll yourself at Monfort Boys Town. You live with your aunt.
8. Paula Tuibau, you are 20 years old. You intend to continue with your studies at Fiji National University. You live with your grandparents.
9. The value of the property stolen as agreed is \$799. I find it appropriate to consider the value of the items stolen as a common aggravating factor.
10. I am also mindful of the fact that items worth of \$449 have been recovered. This court was informed that Ifereimi Ratokabula Koroi had taken steps to pay \$210 and Paula Tuibau \$160 to the complainant as restitution.
11. In addition to the fact that the two of you have entered an early guilty plea, I would consider the following as your mitigating factors;
 - a) You are first offenders;
 - b) There is partial recovery and the value of the items not recovered has been reimbursed to the complainant;
 - c) You are remorseful; and
 - d) You have cooperated with the police.
12. I would select 06 years as the starting point of the aggregate sentence of each of you. I would add 01 year in view of the value of the items.
13. I would deduct 03 years in view of the above mitigating factors from the sentence to be imposed on each one of you. Now the sentence is 04 years imprisonment. In

view of your early guilty plea, I would grant each one of you, a discount of one-third. Accordingly, the final sentence is 02 years and 08 months (after deducting 1 year and 4 months).

14. I would fix the non-parole period of each of you at 02 years in terms of the provisions of section 18(1) of the Sentencing and Penalties Act. I have considered the circumstances of the offending and your personal circumstances in determining the non-parole period.
15. Ifereimi Ratokabula Koroi, you have spent a period 03 months and 25 days in custody in relation to this matter. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
16. In the result, you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole term of 02 years. In view of the time spent in custody, time remaining to be served is as follows;

Head sentence – 02 years; 04 months; and 05 days

Non-parole period – 01 year; 08 months; and 05 days


17. Paula Tuibau, you have spent a period of 03 months and 26 days in custody. The time you have spent in custody shall be regarded as a period of imprisonment already served by you in terms of section 24 of the Sentencing and Penalties Act.
18. In the result, you are sentenced to an imprisonment term of 02 years and 08 months with a non-parole term of 02 years. In view of the time spent in custody, time remaining to be served is as follows;

Head sentence – 02 years; 04 months; and 04 days

Non-parole period – 01 year; 08 months; and 04 days

19. Considering the fact that you are young first offenders and that the complainant has been compensated, I have decided to suspend your sentence. Accordingly, the remaining term of the sentence imposed on each of you shall be suspended for a period of 03 years.
20. The court clerk will explain you the effects of a suspended sentence.
21. Accordingly, you will be released today. You are thoroughly warned and advised to hereafter abide by the laws of this country and to lead a good life.
22. Thirty (30) days to appeal to the Court of Appeal.




Vinsent S. Perera
JUDGE

Solicitors;

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for both Accused