

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: HAC 036 OF 2022LAB**

**STATE**

**V**

**JOSEFA LEWAICEI**

**Counsels : Ms. E. Thaggard for State  
Ms. M. Besetimoala for Defence**

**Hearings : 15 and 16 August, 2022**

**Sentence : 22 August, 2022**

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**SENTENCE**

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1. On 15 August 2022, in the presence of his counsel, the following information was read over and explained to the accused:

***COUNT ONE***

***Statement of Offence***

**ARSON**: Contrary to Section 362 (a) of the Crimes Act 2009.

### ***Particulars of Offence***

**JOSEFA LEWAICEI** on the 19<sup>th</sup> day of January 2021 at Wailevu Village, Cakaudrove, in the Northern Division, wilfully and unlawfully set fire to the farm house of **MISAELE TURAGATANI**.

2. He said, he understood the charge and pleaded guilty to the same. The matter was adjourned to 16 August 2022 to enable the prosecution to present the summary of facts.
3. On 16 August 2022, the prosecution presented the summary of facts in court. Briefly, they were as follows. The complainant was 29 years old, and a farmer of Tunuloa, Cakaudrove. The accused was 40 years old and a farmer also of Tunuloa, Cakaudrove. The complainant's farm was 200 meters away from the accused's farm. The accused plants yaqona on his farm. On the 18<sup>th</sup> January 2021, the accused took three men to his farm to work in the same. On the morning of 19 January 2021, the accused went around his farm looking for his horse. He later found his horse laying down on the ground, with a huge cut on its back.
4. The accused was very angry when he saw the above. He suspected his neighbour, the complainant, as the person who injured his horse, as he was the nearest farmer to him. He then went to the complainant's farm house. He pushed open the door, got some gasoline from inside the farm house, poured the same on the house, and set the house on fire. The farm house was completely burn down and some of the complainant's properties (tents, chainsaws, digging fork, spray tank, primus, blue tarpaulin), worth a total of \$1,385, were destroyed in the fire. The matter was later reported to police. When caution interviewed by police on 5 July 2021, the accused fully admitted the arson.

5. The accused admitted the above summary of facts to the court. He also admitted the particulars of the arson offence in the information to the court. As a result of the above, the court found the accused guilty as charged, and it convicted him accordingly on the arson charge.
6. The prosecution submitted the accused was a first offender. In his plea in mitigation, the accused said he was 40 years old, married with 3 young children aged 4, 3 and 1½ years old. He said, he had another child on the way. He said, he is a farmer, earning about \$500 per month. He said, he is the sole bread winner. He co-operated with police investigation. He said, he committed the offence because he suspected the complainant was responsible for the cut to his horse. He was a first offender and pleaded guilty on the third call in the High Court. He said, he had reconciled with the complainant. He apologized to the court and ask for leniency from the court.
7. The Court of Appeal had established two different tariff for arson in Fiji. It was accepted that the maximum sentence for arson was life imprisonment (Section 362 of the Crimes Act 2009). In **Niko Lesu & Another v The State**, Criminal Appeal No. AAU 58/2011 (5 December 2014), the Court of Appeal said the established tariff for arson was 2 to 4 years imprisonment. In **Isikeli Nakato & Another v The State**, Criminal Appeals AAU 74/2014 and 84/2014 (24 August, 2018), the Court of Appeal said the tariff for arson should be 5 to 12 years imprisonment. Until the Supreme Court settled which tariff should be followed, the lower courts are at liberty to apply which binding tariff to apply to the case before them. Given the facts of this case, I will follow the **Niko Lesu** (supra) tariff, that is, 2 to 4 years imprisonment.
8. The aggravating factors in this case was the obvious disregard of the complainant's property rights. The mitigating factors were that he pleaded guilty early, was a first offender, he was provoked by someone injuring his horse, he had reconciled with the complainant. He also co-operated with the police investigation, and admitted the offence, when caution interviewed by police.

9. I start with a sentence of 2 years imprisonment. I add 1 year for the aggravating factor, making a total of 3 years imprisonment. For pleading guilty early and been a first offender, I deduct 1½ years imprisonment, leaving a balance of 1½ years imprisonment.
10. Mr Josefa Lewaicei, for committing arson against Mr. Misaele Turagatani, on 19 January 2021, at Wailevu Village, Cakaudrove in the Northern Division, I sentence you to 18 months imprisonment.
11. Pursuant to section 26 (1) of the Sentencing and Penalties Act 2009, from the above 18 months imprisonment, I suspend 12 months imprisonment for a period of 2 years, and the balance of 6 months imprisonment is to be served immediately forthwith.
12. Meaning of suspended sentence explained to the accused.
13. You have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for the State** : **Office of the Director of Public Prosecution, Labasa**  
**Solicitor for the Accused** : **Legal Aid Commission, Labasa**