

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

High Court Criminal Case No. HAC 291 of 2021

BETWEEN:

**STATE**

**vs**

**1. SIMELI VAKALOLOMA a.k.a ISIMELI LEDUA**

**2. MESAKE GAUNAVOU**

Counsel : Ms. Naidu M - for State  
Ms. Ratidara L - for 1<sup>st</sup> Accused  
Mr. Waqanivavalagi - for 2<sup>nd</sup> Accused

Date of Sentence : 14<sup>th</sup> September 2022

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**SENTENCE**

**1. SIMELI VAKALOLOMA and MESAKE GAUNAVOU** you were jointly charged on the following information with one count of Aggravated Burglary and one count of Theft, as below:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**Simeli Vakaloloma** and **Mesake Gaunavou with another** on the 15<sup>th</sup> day of July 2021, at Lami, in the Central Division, in the company of each other, broke into the dwelling factory of **PACIFIC MANUFACTURERS PTE LIMITED** as trespassers with intent to commit theft therein.

**COUNT 2**

*Statement of Offence*

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

*Particulars of Offence*

**Simeli Vakaloloma** and **Mesake Gaunavou with another** on the 15<sup>th</sup> day of July 2021, at Lami, in the Central Division, in the company of each other, dishonestly appropriated \$900.00 cash and 1 \* Cgate brand 1TB external hard drive, the properties belonging to **PACIFIC MANUFACTURERS PTE LIMITED** with the intent to permanently deprive **PACIFIC MANUFACTURERS PTE LIMITED** of the said items..

2. Two of you pleaded guilty on your own free will to the above mentioned counts represented by counsel in Court on 20/05/2022. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty pleas were informed and unequivocal and entered freely and voluntarily by the two of you.
3. You agreed to the following summary of facts, when they were read to you in Court on 10/08/2022.
4. **Summary of facts** are, as follows:
  - 1<sup>st</sup> Accused - Isimeli Ledua also known as Simeli Vakaloloma, 20 years old, farmer of Valenicina, Lami (hereinafter referred to as (“A1”).
  - 2<sup>nd</sup> Accused - Mesake Gaunavou, 19 years old, student of Valenicina settlement, Lami, (hereinafter referred to as A2”).

- The Complainant - Mitesh Kapadia, 45 years old, student of Valenicina Settlement, Lami (hereinafter referred to as “PW1”).
- PW2: D/Sgt Lasarusa, Police Officer at Lami Police Station.
- PW1 is the Manager Finance of Pacific Manufacturers Pte Limited.
- On the 15<sup>th</sup> of July 2021, PW1 called Lami Police Station and reported a matter, whereby someone had broken into PW1’s office and stole assorted items. PW1 at around 9.40am went into his office and discovered the alleged break-in. Police officers from Lami Police Station attended at the break-in scene and went over the CCTV footage which captured the whole scene.
- In the CCTV footage, it showed three suspects entering the building by opening an unlocked sliding window on the second floor of the building. Though the said window was closed, it was not securely locked.
- The incident happened on the 15<sup>th</sup> July 2020 in between 8.30pm – 11pm.
- On the night of the incident, A1 and A2 together with another proceeded towards the Wailada Industrial Area using a wooden boat through the Wailada waterway.
- A1, A2 and their accomplice reached the back of the Pacific Manufactures PTE Limited, all of them got off the boat, climbed the roof of Break Distributors Limited and crossed over to the roof of Pacific Manufacturers PTE Limited. A1, A2 and their accomplice managed to open one of the sliding windows which was not securely locked from inside and managed to gain access into the factory.
- Furthermore, upon entering the factory, A1, A2 and the other searched for things that they could steal. They managed to gain excess into the company safe and stole;
  - i. \$900.00
  - ii. 1 x Cgate brand 1TB external brand driver worth \$350.00
- After stealing the items, A1 and A2 and their accomplice got out of the building through another window which was facing the river side and fled the scene using the same wooden boat.
- Upon viewing the CCTV footage, PW2 positively identified A1 and A2 and thereafter both were arrested and escorted to Lami Police Station.
- During caution interviews held at the Lami Police station, both A1 and A2 admitted the commission of this offence.

5. At the very outset, this Court was convinced that the facts agreed by you satisfy all the elements of each offence you are charged with. Therefore, this Court convicted you for the offences charged with by the information in this matter. On considering the submission made by the prosecution in aggravation and your counsel in mitigation, now this matter is pending for sentencing.
6. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of Aggravated Burglary under **Section 313 (1) (a)** of the **Crimes Act of 2009** is an imprisonment term of 17 years and the maximum punishment for Theft under **Section 291** of the **Crimes Act 2009** is an imprisonment term of 10 years.
7. The accepted tariff for counts 1 and 2 depend on the nature and circumstances under which Aggravated Burglary and Theft were committed, and the consequences entailing the commission of the offences to the victims and the society at large.
8. This Court also recognizes that to address the head spinning rapidity of the increase of Burglaries and Robberies in our community, any punishment imposed by Court should have a reprehensible deterrent effect that could also send a profoundly strong signal to the community.
9. In imposing the appropriate punishment for your admitted guilt, this Court intends to follow the tariff regime pronounced for Aggravated Burglary in the case of **State v Seninawanawa [2015] FJHC548 925 June 2018**), where **Midigan J** stated:

*“The accepted tariff for aggravated burglary is a sentence between 18 months and 3 years, with three years being the standard sentence for burglary of domestic premises.”*
10. This tariff has been followed in several decided cases, i.e., **State v. Tavualevu [2013] FJHC 246**; HAC 43.2013 (16 May 2013); **State v. Drose[2017] FJHC 205**; HAC 325.2015 (28 February 2017); **State v. Rasegadi & Another [2018] FJHC 364**; HAC 101.2018 (7 May 2018) and **State v. Mudu [2020] FJHC 609**; HAC 116.2020 (30 JULY 2020).

11. In relation to the offence of Theft, this Court intends to follow the tariffs pronounced by **Midigan J** in the case of **Ratusili v State [2012] FJHC 1249; HAA011.2012 (1<sup>st</sup> August 20120**, where he stated:

*“From the cases then, the following sentencing principles are established:*

*(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.”*

12. In this matter, in considering the value of the items you had stolen and that it was stolen from a business establishment, this cannot be regarded as simple theft.

13. Considering the circumstances of this case, Court sees that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence for the two of you for Count 1 and 2. Two of you are similarly situated as far as the culpability level is concerned.

14. In assessing the objective seriousness of offending of the two of you in this matter, I considered the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant organization, which is in the nature of economic loss and the impact caused to the safety and security in operating a business in our community. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a Burglary that happened in a business establishment. I am very mindful that offences of this nature disturbs the development of trade activities in our community, which brings revenue to our economy. In this regard, the Courts have a duty to discourage and

deter this kind of anti-social behavior that makes conducting trade in our society unprofitable, discouraging potential entrepreneurs in venturing into trade activities. Having considered all these factors, I would pick a starting point of 24 months imprisonment against each of you.

15. In aggravation, prosecution highlights that you had pre-planned this offence, where you had trespassed into the property of **Pacific Manufacturers PTE Limited** in the night, with scant disregard to the property and privacy rights of the owners of the property.
  
16. In mitigation, your counsel has informed Court that you are first offenders and that you have maintained good characters before the involvement in this offence. However, I cannot grant your request to impose a non-custodial sentence in this case. I would like to highlight the sentiments of **Nawana J** in the case of *State v Tilalevu* [\[2010\] FJHC 258](#); HAC081.2010 (20 July 2010), where His Lordship said that;

*“I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as 'First Offender Syndrome' - where people would tempt to commit serious offences, once in life, under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule.”*

17. If this Court is to give credence to this “Fist Offender” phenomena, Court will send a wrong signal to the citizenry of this Country, where Court would inform every citizen that they could commit a crime for the first time with minimum repercussions. We should remember that a crime is a crime, regardless whether it is the first crime of the offender or the 10<sup>th</sup> crime. Our civilizations have detested crimes from the very inception.
  
18. Further, your counsel has informed the court that you have entered an early guilty plea and that you regret your action on the day in question. You have also been supportive to the police during investigations after your arrest. However, court is speculative in considering the early admission of guilt by you as a mark of genuine remorse. Your involvement in the

commission of this offense was caught in the CCTV footage and you were recognized by a prosecution witness who knew you. Court is compelled to view this early admission as somewhat of a damage control exercise that came at a time when you had no option but to admit to the commission of this offense. Nevertheless, by pleading guilty to the charge you have saved courts time and resources at a very early stage of the court proceedings.

19. For all these grounds in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence. As a result, **Simeli Vakaloloma** and **Mesake Gaunavou** you shall serve 16 months imprisonment, forthwith.
20. The prosecution brings to the attention of this Court that **Simeli Vakaloloma**, you are currently serving a jail<sup>i</sup> sentence of 10 months for another offence you had committed and **Mesake Gaunavou**, you are currently serving a jail sentence of 11 months for another offence you had committed. As a consequence, your counsel prays to this Court to impose a concurrent sentence, as per **Section 22(1)** of the **Sentencing and Penalties Act of 2009** to take effect with the sentence you are currently serving.
21. **Simeli Vakaloloma a.k.a Isimeli Ledua** and **Mesake Gaunavou**, you shall serve 16 months imprisonment, which should take effect forthwith concurrently with your serving sentence.
22. You have thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Justice Dr. Thushara Kumarage

**At Suva**

14<sup>th</sup> of September 2022

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**cc:** 1. *Office of Director of Public Prosecutions*  
2. *Office of Legal Aid Commission*