

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 95 of 2021**

**STATE**

**V**

- 1. INOKE DOMO**
- 2. METUISELA BECI**

**Counsel:** Mr. Unal Lal for the State  
Ms. Keli Vulimainadave for the Accused 1<sup>st</sup> Accused  
2<sup>nd</sup> Accused appears in person

**Sentence Hearing:** 25 July 2022 and 9 August 2022

**Sentence:** 23 September 2022

## **SENTENCE**

[1] Inoke Domo and Metuisela Beci, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

### **COUNT ONE**

#### ***Statement of Offence***

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

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

**INOKE DOMO** and **METUISELA BECI**, on the 14<sup>th</sup> August 2021, at Lautoka, in the Western Division, in the company of each other, entered the warehouse of **CHEER INDUSTRIES COMPANY LTD**, as trespassers, with intent to commit theft therein.

## COUNT TWO

### *Statement of Offence*

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

### *Particulars of Offence*

**INOKE DOMO and METUISELA BECI**, on the 14<sup>th</sup> August 2021, at Lautoka, in the Western Division, dishonestly appropriated 1 x Yatos power drill, 1 x Makita drill, 1 x Metre saw, 2 x router bit set and assorted tools, the properties of **CHEER INDUSTRIES COMPANY LTD** with the intention of permanently depriving **CHEER INDUSTRIES COMPANY LTD** of the said property.

- [2] On 15 October 2021, the DPP filed the Information in Court, while the Disclosures relevant to the case had been subsequently served on the Defence and filed in Court on 1 April 2022.
- [3] Inoke Domo and Metuisela Beci, on 1 April 2022, you were ready to take your pleas. On that day you both 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 6 June 2022, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty pleas 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 pleas 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:

*“Accused 1 in this matter is Inoke Domo, 25 years old, Labour Logging Company of Kaleli Settlement, Waiyavi Stage 1, Lautoka.*

*Accused 2 in this matter is Metuisela Beci, 35 years old, Glass and Mirror of Kaleli Settlement, Lautoka.*

*Complainant (PW1) in this matter is William Cheer, 59 years old, Manager of Cheer Industries Company of 43 Captain Withers Street.*

*On the 14<sup>th</sup> day of August, 2021, at around 4.00 a.m., Viliame Yabayaba (PW2) claims he was sitting outside their kitchen area whilst his wife, Ikinesi Nasemira (PW3) was*

*preparing her sales for the day. Whilst sitting outside, PW2 heard a 'heavy bang sound' which he claims originated from the warehouse belonging to Cheer Industries that is located just opposite their house.*

*PW2 began walking towards the warehouse's back gate entrance after becoming suspicious, and overheard some conversation. PW2 immediately turned his phone's torch on and saw A1 inside the bulk and A2 standing outside the back gate. He claims as soon as A1 saw PW2, he ran towards the main road and in that point in time, A1 was of the thought that A2 was standing at the back gate when in fact it was PW2, who heard A1 saying "Metui, Metui va cava na yaya sa set qo", meaning "Metui Metui where is some other items to bring it or.....". PW2 also claims that he positively identified A1 and A2 and claims that A2 was standing 4 metres away from him. He also states that when he confronted A1, he had a blue coloured basin which contained some tools left beside him. A1 after being confronted by PW2, ran towards the main road at Vesi Crescent.*

*PW2 also states that at about 10.00 a.m. on the same morning, he again saw A1 walking in front of the bulk and took the same blue coloured basin containing tools which he left behind. He took the same towards Kaleli Settlement.*

*In his statement, PW1 claims that when he arrived at his warehouse on August 16, 2021, he saw all of the rooms were scattered, items had been removed from their respective locations and were strewn over the floor, and the office tool room was open. He further states that after inspecting the warehouse, he discovered the following tools were missing:*

- 1. 1 x Yatos power drill valued at \$800.00;*
- 2. 1 x Makita drill valued at \$900.00;*
- 3. 1 x Mitre saw valued at \$1200;*
- 4. 2 x Router bit set valued at \$300.00; and*
- 5. Assorted hand tools valued at \$500.00.*

*All to a total value of \$3,700.00.*

*On the 18<sup>th</sup> of August, 2021, PW1 was called in to Police Station and was shown the following items which were recovered from A1's residence for identification; 1 x Makita Cordless Drill, 1 x Panasonic Cordless Drill, 1 x Ozito Glue Gun, 1 x AEG battery charger and 1 x Blue Basin. PW1 has positively identified the items to be his.*

*Both the accused were later arrested and interviewed under caution. They both admitted to the offence [Attached is a copy of the Record of Interview of A1 and A2]. They were later charged for the above offences [Attached is a copy of the Charge Statements]."*

- [7]** Inoke Domo and Metuisela Beci, 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); *State v. Koroi and Another* [2020] FJHC 1065; HAC270.2020 (10 December 2020); *State v. (Joji) Kotobalavu* [2021] FJHC 101; HAC234.2020 (17 February 2021); *State v. Nabou Junior* [2021] FJHC 172; HAC277.2020 (22 March 2021); *State v. Nabou Junior* [2021] FJHC 173; HAC277.2020 (22 March 2021); *State v. Lutunamaravu & Others* [2021] FJHC 191; HAC192.2020 (23 March 2021); *State v. (Aminiasi) Vakalala & Another* [2021] FJHC 195; HAC325.2020 (25 March 2021); *State v. Lal* [2021] FJHC 247; HAC337.2019 (5 October 2021); *State v. Kaibalauma and Another* [2021] FJHC 349; HAC59.2021 (1 December 2021); and *State v. Senikaboa and Others* [2021] FJHC 416; HAC237.2020 (17 December 2021); *State v. Prasad & Another* [2022] FJHC 70; HAC115.2020 (11 February 2022), *State v. Pita Nanumi* HAC77.2021 (14 June 2022); and *State v. Rafeale Tuibucabuca* HAC152.2019 (26 August 2022) and *State v. Cliff Douglas & Others* HAC011.2022 (20 September 2022).

[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 the two of you entering the warehouse of a business/commercial establishment, 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, Inoke Domo and Metuisela Beci, I commence your sentences 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, Inoke Domo and Metuisela Beci, I commence your sentences at 6 months imprisonment for the second count of Theft.

**[20]** Inoke Domo and Metuisela Beci, the aggravating factors in this case are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) The two of you trespassed into the premises of a business/commercial establishment thereby paying complete disregard to the property rights of the said establishment and its owners.
- (iii) I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences, since you had trespassed into the warehouse of the premises in the early hours of the morning.
- (iv) You committed these offences at a time the entire country was facing economic hardship due to the coronavirus pandemic.
- (v) You are now convicted of multiple offending.

**[21]** Inoke Domo and Metuisela Beci, in mitigation you have submitted as follows:

- (i) That you are both first offenders 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. You have promised not to re-offend.
- (iv) Some of the stolen items-the Makita cordless drill and the assorted hand tools-had been recovered.
- (v) Metuisela Beci, you have agreed to compensate the complainant in the sum of \$1500.00 for the loss suffered by the commercial establishment, if you are granted reasonable time to do so.
- (vi) That you entered a guilty plea at an early stage of these proceedings.

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

**[23]** Inoke Domo and Metuisela Beci, I accept that you are both first offenders 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 have promised not to re-offend. I also acknowledge the fact that some of the stolen items (to the value \$1,400.00) had been recovered. I also wish to give credit to you for the fact that Metuisela Beci has agreed to compensate the complainant in the sum of \$1500.00 for the loss suffered by the commercial establishment. Accordingly, considering these mitigating factors, I deduct 3 years and 6 months from your sentences. Now your sentences for count one would be 3 years imprisonment. Your sentences for count two would be 2 years imprisonment.

[24] Inoke Domo and Metuisela Beci, I accept that you entered a guilty at an early stage 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, Inoke Domo and Metuisela Beci, 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] Inoke Domo, you are now 26 years of age [Your date of birth being 27 September 1995]. You are said to be single and residing at Waiyavi, Lautoka with your mother and younger brother. You are said to be a Farmer by occupation.

[29] You have submitted that at the time of the offending, you were drunk and in wrong company. You have admitted that you were pressured to commit the offence. You have submitted that you are remorseful for your conduct and have promised not to re-offend.

[30] Metuisela Beci, you are now 36 years of age [Your date of birth being 13 February 1986]. You are said to be residing at Kaleli Settlement, Waiyavi Stage 1. You are said to be married but separated from your wife. You have one son who is 9 years old and who is residing with you and schooling at Lautoka Primary School. You are said to be a Carpenter by occupation and the sole breadwinner of your family.

[31] You have submitted that after your wife left you, you had started drinking, which was one of the reasons which led to committing this offence. You have submitted that you are remorseful for your conduct and have promised not to re-offend. You have also submitted that you are willing to compensate the complainant in the sum of \$1500.00 for the loss suffered by commercial establishment, if you are given reasonable time to do so.

[32] 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.”*

[33] 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.”*

[34] Inoke Domo, you can be considered as a relatively young offender. Metuisela Beci, at 36 years, you cannot be considered as a young offender. However, you both are first offenders with previous good character. You both have fully cooperated with the Police in this matter and you have accepted responsibility for your conduct. You have submitted that you are truly remorseful of your actions and promised not to re-offend. Metuisela Beci you have agreed to compensate the complainant in the sum of \$1500.00 for the loss suffered by the commercial establishment. You both entered a guilty plea at

an early stage during these proceedings. For these reasons, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentences.

[35] 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.

[36] In the result, Inoke Domo and Metuisela Beci, 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.

[37] In addition, in terms of Section 49 of Sentencing and Penalties Act, I order that Metuisela Beci you pay a sum of \$1500.00 in restitution to compensate the loss suffered by the Cheer Industries Company Limited. From this sum, \$300.00 to be deposited in the High Court Criminal Registry, Lautoka today. The balance sum of \$1200.00 should be paid in full at the High Court Criminal Registry, Lautoka, on or before 31 December 2022.

[38] Upon this sum of \$1500.00 being deposited at the High Court Criminal Registry, Lautoka, the complainant in this case Mr William Cheer, Manager, Cheer Industries Company Limited or any other person duly authorized by the company, will be entitled to withdraw the said sum of money.

[39] You have 30 days to appeal to the Court of Appeal if you so wish.

[40] I also make order that all the items which were recovered by the Police during the course of the investigations in this case, to be released forthwith to the complainant in this case Mr William Cheer, Manager, Cheer Industries Company Limited or any other person duly authorized by the company.



AT LAUTOKA

Dated this 23<sup>rd</sup> Day of September 2022

Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

**Solicitors for the State:**  
**Solicitors for the 1<sup>st</sup> Accused:**  
**Solicitors for the 2<sup>nd</sup> Accused:**

**Office of the Director of Public Prosecutions, Lautoka.**  
**Office of the Legal Aid Commission, Lautoka.**  
**2<sup>nd</sup> Accused appears in person.**