

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Criminal Case No: HAC 256 of 2022**

**STATE**

vs.

**SAIRUSI MATADRAU**

**Counsel:** Ms. M. Naidu for the State  
Mr. A. Waqanivalagi for the Accused

**Date of Sentence/Mitigation Submission:** 11<sup>th</sup> November, 2022

**Date of Sentence:** 16<sup>th</sup> November, 2022

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**SENTENCE**

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1. Your charge reads thus;

**COUNT ONE**

*Statement of Offence*

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

*Particulars of Offence*

**SAIRUSI MATADRAU**, with others between the 1<sup>st</sup> day of April, 2022 to the 7<sup>th</sup> of June, 2022 at Nasinu in the Central Division, in the company of each other unlawfully and willfully broke into **HANSONS SUPERMARKET WAREHOUSE**, as trespassers, with intent to commit theft.

## COUNT TWO

### *Statement of Offence*

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

### *Particulars of Offence*

**SAIRUSI MATADRAU**, with others between the 1<sup>st</sup> day of April, 2022 to the 7<sup>th</sup> of June, 2022 at Nasinu in the Central Division, in the company of each dishonestly appropriated;

- i. 3 x pallets Rewa powdered milk
- ii. 25 x bags of sugar
- iii. 2 x pallet 2 kg sugar
- iv. 101 x cartons Punjas ghee
- v. 150 x gallon of 20 liters Punjas oil
- vi. 5 x cartons of Golden Harvest powdered milk
- vii. 65 x cartons (65 x 12's 5 pack) of Maggie noodles
- viii. 2 carton Orchid toilet paper (20 x 10's)
- ix. 1 x pallet Punjas breakfast crackers (150 x 20 packets)
- x. 10 x cartons diaper (6 x 10)
- xi. 20 x 10kg FMF flour (20 bags)
- xii. 20 x 10 kg Jasmine rice (20 bags)
- xiii. 43 x cartons of Five Star condense milk

Properties belonging to **HANSONS SUPERMARKET** with intent to permanently deprive **HANSONS SUPERMARKET**.

## COUNT THREE

### *Statement of Offence*

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

### *Particulars of Offence*

**SAIRUSI MATADRAU**, with others between the 13<sup>th</sup> day of July, 2022 and 14<sup>th</sup> day of July, 2022 at Nasinu in the Central Division, in the company of each other unlawfully and willfully broke into **HANSONS SUPERMARKET** as trespassers with intent to commit theft.

## COUNT FOUR

### *Statement of Offence*

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

### *Particulars of Offence*

**SAIRUSI MATADRAU**, with others between the 13<sup>th</sup> day of July, 2022 and 14<sup>th</sup> day of July, 2022 at Nasinu in the Central Division, in the company of each dishonestly appropriated 230 bags of Crest Chicken assorted, the property belonging to **HANSONS SUPERMARKET** with intent to permanently **HANSONS SUPERMARKET**.

2. You have admitted the following summary of facts;
  1. **The Accused** – Sairusi Matadrau, 45 years old, employed at Hansons Supermarket of Omkar Road, Narere.
  2. **The Complainant**: Suresh Kant, 63 years old, Businessman and Owner of Hansons Supermarket of Lot 1 Matainikorovatu Road (hereinafter referred to as “**PW1**”).
  3. *Relationship: Nil.*

### **COUNT 1 & 2:**

#### Witnesses

- PW2** - Parmesh Maharaj, Supervisor at Hansons Supermarket
- PW3** - Rajnesh Prakash, General Supervisor at Hansons Supermarket
- PW4** - Krishen Nitesh Chand, Project Officer at PM's Office
- PW5** - Liping Xu, Owner of Korchei Investment Restaurant in Suva
- PW6** - Allan Navindra Prasad, Owner of Allan Investment Property Limited
- PW7** - Geeta Anjali Devi of Nasinu
- PW8** - Sumintra Devi of Nakasi
- PW9** - Abdul Rahim of Nakasi
- PW10** - Mahendra Prasad of Nakasi
- PW11** - Alvin Lal of Nasinu
- PW12** - Anuradha Singh of Nakasi

*PW13 - Bharat Lalji, Auditor of Punjas & Sons Ltd.*

*PW 14 - Koini Diraravuya, FMF Staff*

*PW15 - Taraivini Nailailai employed at Hansons Supermarket*

4. *On 1<sup>st</sup> April, 2022 to 7<sup>th</sup> June, 2022, PW2 (Supervisor at Hanson's) came for a routine check at the supermarket warehouse. PW2 informed PW1 whereby PW1 visited the warehouse and noticed that plenty of groceries and other supermarket items were stolen.*
5. *Stock take of all the items was conducted whereby PW1 found the following items missing from the warehouse:*
  - ii. *3 x pallet Rewa Powdered milk valued at \$28,080.00*
  - iii. *25 x bags of sugar valued at \$1,826.25*
  - iv. *2 x pallet 2 kg sugar valued at \$6,432.00*
  - v. *101 x carton Punjas Ghee valued at \$36,057.00*
  - vi. *150 x gallon of 20 litres Punjas Oil valued at \$14,449.50*
  - vii. *5 x cartons of golden harvest powdered milk (20 x 240 valued at \$3,148.80)*
  - viii. *65 x cartons (65 x 12's 5 pack) of Maggie noodles valued at \$2,535.00*
  - ix. *2 carton orchid toilet paper (20 x 10's) valued at \$1,820.00*
  - x. *1 x pallet Punjas breakfast crackers (150 x 20 packets) valued at \$1,950.00*
  - xi. *10 x cartons diaper (6 x 10) valued at \$1,335.00*
  - xii. *20 x 10kg FMF Flour (20 bags) valued at \$339.00*
  - xiii. *20 x 10 kg Jasmine Rice (20 bags) valued at \$379.80*
  - xiv. *43 x cartons of five star condense milk (48 x 43) valued at \$5,469.90*

***TOTAL: \$105, 351.95***
6. *Upon investigation, items were recovered from various witnesses and their statements are recorded.*
7. *PW4 stated that his vehicle was hired by one Sireli to do a job from Hansons Supermarket Warehouse. He stated that A1 was present at the scene with another and A1 had opened the steel gate and big shutters of the warehouse. PW4 stated that he was hired by A1 to transport the goods to Suva City and the goods were later sold to 2 restaurant vendors by A1.*
8. *The following properties were recovered by the Police:*

### **RECOVERY**

- I. *5 X CARTONS of New Zealand Pure Ghee valued at \$1,785.00*
  - II. *7 x cartons of Rewa Powdered Milk valued at \$1,260.00*
  - III. *9 x cartons of Maggie noodles.*
  - IV. *5 x gallon of Canola Oil*
9. *A1 was arrested and interviewed under caution by A/Cpl 3503 Jitendra whereby he admitted that he committed the offence with two other accomplices.*

### **Caution Interview**

*A1 admitted that he stole the items from Hansons Supermarket at four different occasions.*

- *He admitted that he was an employee of Hansons supermarket when he entered the premises of the supermarket warehouse and stole the groceries.*

- *He admitted that PW4's vehicle was used to transport the goods from the supermarket to be sold to other people.*
- ***Full admissions made by the accused.***

**Admissions on items stolen**

***First occasion – April***

- xv. *52 cartons of milk*
- xvi. *20 bags of flour*
- xvii. *20 bags of Jasmine Rice.*

***Second occasion – April***

- xviii. *52 cartons of Rewa Powder*
- xix. *60 gallon Canola Oil*
- xx. *30 carton Maggie Noodles.*

***Third Occasion – sometimes in May 2022***

- xxi. *25 bags of sugar 9 x 25kg*
- xxii. *60 gallon Canola Oil*
- xxiii. *50 cartons of biscuit*

***Fourth occasion – sometime in June 2022***

- xxiv. *50 cartons of Ghee*
- xxv. *40 cartons of condense milk.*

***Annexed herewith is a copy of the Record of Interview of A1 marked 'PE1'***

**COUNT 3 & 4:**

*Witnesses*

***PW16 - Dinesh Chand, 59 years old, in charge of bulk, Hansons***

***PW17 - Manasa Lagi, 67 years old, security at Hansons Supermarket***

***PW18 - Roshni Lata, employed at Goodman Fielder***

***PW19 - Sereana Saluiwalu, domestic duties of Matanikorovatu***

***PW20 - Taracina Mailala, Sales Assistant at Hansons Supermarket***

***PW21 - Om Krishneel Prakash of Makoi***

***PW22 - Siteri Savu of Qaranivalu Road***

***PW23 - Adraham Swanson, van driver of Qaranivalu***

***PW24 - Siteri Bui, chef at Dong Zing Restaurant, Nabua***

***PW25 - Banuve Kasaya, kitchen hand at Dong Zing Restaurant***

*PW26 - Sanxin Lin, Restaurant owner for Dong Zing Restaurant*

*PW27 - Iowane Donumatua of Senivono Lane.*

*PW 28 - Pinpu Wu, businessman of Nabua*

- 10. On 14<sup>th</sup> July 2022, PW1 together with PW17 went to get 7 cartons of chicken but did not check the rest of the cartons of chicken in the freezer.*
- 11. On 16<sup>th</sup> July, 2022, PW1 informed his employees Pw16 and PW17 to bring all the bags of chicken whereby they found out that the freezer was empty and there were no bags of chicken.*
- 12. **PW1 confirmed that about 230 bags of chicken were missing from the freezer and the approximate total value of the stolen chickens were \$25,000.00.***
- 13. However, there were no force entry on the main door of the supermarket and the freezer. PW1 suspected that the Accused is the main suspect for the alleged theft as Accused is the only one who looks after the freezer container.*
- 14. Investigation was conducted whereby statements were recorded from various witnesses. Upon completion of the investigation, it was found that Accused had made a duplicate key of the freezer prior to the incident had occurred.*
- 15. PW23 stated that Accused had approached him for his van to do one short job. On 13<sup>th</sup> July 2022, the van keys were given to Accused. On 14<sup>th</sup> July, 2022, Accused had loaded 40 bags of chicken in the van and offloaded the chickens at one Chinese restaurant in Nabua. Accused had paid him \$1000.00 for transporting the chicken to Nabua. He stated that Accused had planned all these as Accused works at Hansons supermarket.*
- 16. PW24 confirmed that she saw Accused and two other van drivers offloading the bags of chickens at the Dong Zing Restaurant on 14<sup>th</sup> July, 2022.*
- 17. PW25 confirmed that 41 bags of chicken was unloaded and sold to him at his restaurant by the Accused.*
- 18. PW28 who is a restaurant owner in Nabua confirmed that 50 bags of chicken was unloaded at his restaurant by the Accused on 14<sup>th</sup> July, 2022.*
- 19. PW4 who was the driver of the vehicle confirmed that he had unloaded the bags of chicken at a Chinese restaurant in Nabua with the Accused.*
- 20. PW27 stated that the Accused had made confession to him regarding the stealing of the chickens.*
- 21. Matter was reported to Nasinu Police Station and upon investigations, Accused was arrested and escorted to the Nasinu Police Station.*

22. *The Accused was interviewed under caution at Nasinu Police Station by D/Cpl 3064 Samuela D whereby the Accused admitted to committing the alleged offence in the company of two others.*

***Caution Interview statement of The Accused***

*The Accused made full admission whereby he stated that he arranged for stealing the chicken. He admitted that he stole 230 bags of chicken, which was worth \$25,000. He also led the Police to the scene and positively identified the 41 bags of recovered chicken to be the same as the one he stole from the freezer at Hanson's Supermarket. He admitted that he committed the offence with his other two accomplices (cannot be located).*

23. ***The Police recovered 41 bags of assorted number chicken worth \$5,905.***

24. ***The accused is charged and had pleaded guilty to two counts of Aggravated Burglary contrary to section 313 (1) (a) of the Crimes Act 2009 and two counts of Theft contrary to section 291 (1) of the Crimes Act 2009.***

25. *The accused has two previous convictions however, 10 year period has lapsed for both.*

3. As per the Amended Information filed by the Director of Public Prosecutions dated 1<sup>st</sup> of September 2022, you Mr. Tumateu Moceica with others was charged with 2 counts for committing the offences of Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act, 2009 by entering the premises of *Hansons Supermarket at, Narere* as trespasses with the intention to commit theft and also 2 counts of theft contrary to Section 291 (1) of the Crimes Act, 2009 for dishonestly misappropriating the items referred to in counts 2 and 4 above, property of *Hansons Supermarket* whilst being in the company of others. You have entered the *Hansons Supermarket* and the store on four separate days and committed the offences referred to in the said 4 counts.
4. You being aware and well advised and explained of the legal effects, did plead guilty to all the above counts, in the presence of your Counsel. This Court was satisfied that you fully comprehended the legal effects and that your pleas were voluntary and free from influence. You did so plead guilty at the first available opportunity. When the State presented the summary of facts, you accepted and admitted committing the said acts of Aggravated burglary and theft in the company of others.
5. The offence of burglary involves entering or remaining in a premises as a trespasser with the intention to commit theft of anything in the premises. To be guilty of the offence, it is

sufficient to enter the premises with the relevant intention. The offence is committed even if, once inside the premises, the person does not actually carry out the additional intended offence involving theft. The offence of Aggravated burglary occurs if, at the time of the burglary, the offender is in the company of one or more other persons. The offence of Aggravated burglary has a maximum penalty of 17 years and the offence of theft has a maximum penalty of 10 years imprisonment.

6. Aggravated burglary is a preparatory offence, because it involves an act of entering a property with the intention to commit a further offence. If, once the person has entered the premises, he or she actually commits the intended offence involving theft, he or she would be charged and sentenced separately for both the offence of burglary and the offence of theft. Though aggravated burglary is a preparatory offence, in view of the maximum penalty it is considered a serious offence in Fiji and the gravity will depend on the manner and the nature of entering the premises.
7. The prevalence of burglary and home-invasion-style offences including breaking into shops as in the present case will certainly cause great anxiety and disquiet in the community whilst undermining the sense of security that people feel in respect of their business premises and their own homes will certainly bring about a sense of insecurity and inhibition to close up their business premises or houses and go about their daily errands and work freely. I find this is a very serious offence. Wherefore, it is my opinion that such offenders must be endowed with severe and harsh punishments. Thus, in sentencing for offences of this nature it is necessary to convey a message to offenders and also to those who intend to offend that these crimes will not be tolerated and will entail stiff sentences. Therefore, the purpose of this sentence is founded on the principle of deterrence and the protection of the community. I am mindful of the principle of rehabilitation nonetheless the seriousness of these offences outweighs the principle of rehabilitation.
8. The tariff as determined by *State v Seru*, Sentence [2015] FJHC 528 HAC 426.2012 (6 July 2015) and also reiterated by the Court of Appeal in *Daunivalu v State* [2020 FJCA 127; AAU138.2018 (10 August 2020) for the offence of Aggravated Burglary is 18 months to 3 years which carries a maximum penalty of 17 years imprisonment.
9. The tariff as determined by *Waqā v State*, Sentence [2015] FJHC 72 HAA017.2015 (5



October 2015) for the offence of Theft is 4 months to 3 years which carries a maximum penalty of 10 years imprisonment. In **Mikaele Ratusili v. State**, Criminal Appeal No. HAA 011 of 2012 (1 August, 2012) Madigan J. set out the tariff for theft considering various factors in the following form:

- “(i) For the 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.”*

10. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”), reads thus;

*“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

11. The two counts of aggravated burglary and the two counts of theft for which you have been convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for all offences having the Aggravated Burglary count as the base sentence as it is the more serious of the offences.

12. Mr. Waqanivalagi, for you submitted in mitigation that you were 45 years as at the date of offence married with 4 children.

13. You have been employed in Hanson Supermarket you entered the store and the shop on four separate occasions with impunity. This appears to be a pre-planned home invasion with some and planned offending for wholesale profit.

### **Sentence**

14. Upon considering the gravity and the objective seriousness of the offence of Aggravated Robbery, to my mind it is reasonable and pick 3 years' imprisonment as the starting point of the sentences of both of your sentences for this offence. However, the final sentence will depend on the mitigating and aggravating factors which I will now proceed to consider.

### **Aggravating factors**

15. I will start with considering the aggravating factors. I observe the following aggravating circumstances of your offending:
  - a. Trespass in to a commercial property during non-working hours,
  - b. the items stolen are of a commercial quantity and for wholesale profit,
  - c. only a fraction of the stolen items were recovered later,
  - d. The Accused had been employed at Hansons Super Market when he committed the offending as such there is a breach of trust,
  - e. This is not an opportunistic offending but a well-planned burglary carried out with premeditation.
16. I am inclined to add 3 years to the starting point for the above-mentioned aggravating factors bringing the interim Aggregate sentence to 6 years imprisonment.

### **Mitigating factors**

17. Now I will consider the mitigating factors. I observe the following mitigating circumstances of your offending in respect of you;
  - a. pleaded guilty early and at the outset;
  - b. seek forgiveness,
  - c. co-operated with the police,
  - d. Though you have 2 previous offences they are over 10 years old as such will be not considered and there are no similar pending cases.

18. Your counsel also submitted that you have a 4- children and was \$280 per week employed at Hansons Supermarket and due to financial difficulties, pressure and lapse of judgment he committed these offences. You are willing and promise to reform and not re-offend. You have accepted responsibility of your actions and did save the Court's time by pleading guilty at the earliest opportunity.
19. The personal circumstances and family background of the accused has little mitigatory value.
20. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I will consider a reduction of 12 months for the early guilty pleas and another 6 months for the previous good character and for the other mitigating factors which brings your aggregate sentence down to four (4) years and six (6) months' imprisonment.
21. The special reason for the sentence to be above the tariff is that these crimes have been committed for wholesale profit of a commercial scale and it is repeated. The value of the goods stolen is \$105,351.95.

### **Non-parole period**

22. Under section 18 (1) of the Sentencing and Penalties Act (as amended), a non-parole period will be imposed to act as a deterrent to the others and for the protection of the community as well. On the other hand, this court cannot ignore the fact that the accused whilst being punished should be accorded every opportunity to undergo rehabilitation.
23. Considering the above, I impose 3 years as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and also meet the expectations of the community which is just in the circumstances of this case

### **Head Sentence**

24. Accordingly, I sentence you for an aggregate period of 4 years and six (6) months' imprisonment as an aggregate sentence for the offences of Aggravated Robbery and the theft

as charged in the information. However, you are not entitled to parole for 3 years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

### **Actual Period of the Sentences**

25. I also observe from the Court record and the submissions that you have been in remand since 04<sup>th</sup> August 2022 up to date for 3 months and 12 days. In the exercise of my discretion and in accordance with section 24 of the Sentencing and Penalties Act the sentence is further reduced by 04 months upon it being considered as a period of imprisonment already served. In view of the above, the final sentence will be 4 years and 2 months' imprisonment.
26. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to consider the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.
27. Accordingly, the actual total period of the aggregate sentence imposed is four (04) years and two (02) months' imprisonment with a non-parole period of two (02) years and eight (08) months.
28. You have 30 days to appeal to the Court of Appeal if you so desire.



**At Suva**  
16<sup>th</sup> November, 2022.

**Solicitors**  
Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission for the Accused

