

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 11 OF 2022

STATE

.vs.

ILIAKIMI TABUA

Counsels: *Ms. Shankar N* - *for Prosecution*
 Ms. Ali N - *for Accused*

Date of Ruling: 25th April 2023

SENTENCE

1. **Mr. ILIAKIMI TABUA** , you were charged in this Court by the Prosecution for one count of Aggravated Robbery contrary to **Section 311 (1) (a)** of the **Crimes Act 2009**, as follows;

COUNT ONE

Summary of Offence (a)

Aggravated Robbery: Contrary to Section 311(1) (a) of the Crimes Act 2009.

Particulars of Offence (b)

ILIAKIMI TABUA on the 25th day of December, 2021 at Raiwaqa in the Central Division in the company of others, robbed ASIVEN AVIKASH CHADRA OF 1 X Samsung A32 mobile phone and 1 x wallet containing \$120 cash, the property of ASHVEN AVIKASH CHANDRA.

2. You pleaded guilty to the above count stipulated in the information filed by the Prosecution on 31/01/2023.
3. Summary of Facts that were read to you in open court and admitted by you on 01/02/2023 are as follows:

SUMMARY OF FACTS

Accused (A1): Iliakimi Tabua.

The Complainant (PW1): Asven Avikash Chandra.

Prosecution Witness 2 (PW2): PC 7682 Roko Kameli Baleilakeba

Prosecution Witness 3 (PW3): PC514 Krishneel Maharaj

Prosecution witness 4 (PW4): PC5924 Loaloaivalu.

- On 25th December 2021 at about 4pm, complainant was driving his taxi registration number LT3877 along Usher Street near Tappoo city and was heading towards Village 6 Cinemas, a male iTaukei stopped PW1's taxi and got in with two other male iTaukei and sat in rear passenger seat. A1 got in and sat in the front passenger seat. Once seated in the taxi, A1 with his accomplices asked PW1 to drop them at Falvey Road.
- Altogether there were three iTaukei males who got in PW1's taxi and told PW1 to drop them at Falvey Road, Raiwaqa. PW1 drove straight to Falvey Road without stopping anywhere. A1's two accomplices seated at the back then asked PW1 to stop at the said Falvey Road.
- PW1 alleges that the male iTaukei who stopped PW1's taxi and sat at the back behind the driver (PW1) wore a black t-shirt, shorts and a black cap whilst A1 who was seated in the front passenger seat wore a purple bula shirt with white flower prints, black shorts and a face mask.
- PW1 stopped the taxi and heard one of the male iTaukei say "I am giving the fare" and when PW1 looked towards the passenger, A1 who was seated in front started punching PW1. Soon after, A1's two accomplices seated at the back started to attack and punch PW1 on his face and grabbed PW1's wallet and mobile phone from his pant pocket.

- A1 with his two accomplices after punching PW1 and grabbing his wallet and mobile phone then fled towards Falvey road and entered Jittu Estate. PW1 alleges that about 8 people were standing and saw what happened but did not come to help. PW1 then turned around and went to Raiwaqa Police Station to report the matter.
- The total value of the items stolen was \$830.00 which was not recovered.
- After the matter was reported at Raiwaqa Police Station, investigators were then conducted. PW1 was medically examined on 25th December, 2021.
- On 29th December 2021, PW3 had requested PW2 to extract the CCTV Footage from Tappoon city. PW1 extracted the CCTV Footage from the Smart PSS Digital Video Recording Machine onto a 64 GB Verbatim USB.
- On 31st December 2021, PW3 whilst at Raiwaqa Police Station had viewed the CCTV Footage that was extracted by PW2. PW3 states that the CCTV Footage was regarding the robbery that had happened on 25th December 2021 at Falvey Road, Raiwaqa. PW3 clearly identifies this male iTaukei as A1 of Jittu Estate and that A1 with two others had boarded a black taxi registration LT 3877 that day.
- On 1st January 2022 PW4 whilst at Raiwaqa Police Station had also viewed the CCTV Footage that was extracted by PW2. PW4 states that the CCTV Footage is from 25th December, 2021, the day that the robbery was committed between 3.54pm to 4pm. PW4 identifies an iTaukei male youth wearing a purple and white Bula shirt, black pants and a mask. PW4 further states that at about 3.55pm, this male iTaukei youth removed his mask to drink coco cola and PW4 clearly identifies this male iTaukei youth as A1 as PW4 has known A1 for about 3 years and that he is a well-known offender. PW4 further states that whilst viewing the CCTV Footage, he saw A1 with two others boarding a black taxi registration LT3877 and that A1 sat in the front passenger seat.
- On 30th January 2023 at about 9am, at Raiwaqa Police Station, PW1 was shown the CCTV Footage and PW1 clearly identifies the footage is from the day he got robbed after picking passengers from Scott Street beside Tappoo city in Suva.
- PW1 was shown two separate footage and in the first footage PW1 saw a male iTaukei holding a 2l Coca Cola and was wearing a purple Bula shirt with white flowers, black shorts and a face mask. PW1 recalls this male iTaukei was seated in the front passenger seat while the other 2 were seated

in the rear passenger seat. Whilst viewing the second CCTV Footage, PW1 states that he was driving along Usher Street and turned towards village 6 Cinemas when all three iTaukei males got into his black taxi registration LT 38787. A1 was arrested on 1st January 2022 and interviewed under caution at Raiwaqa Police Station on 1st January 2022 where he made nil admissions.

- On 25th December 2021, PW1 had undergone medical examination and it was revealed that PW1 had sustained the following injuries during the incident:
 - i) Abrasion (1x) right lateral upper inner lip; and
 - ii) Swelling (1x) lower lateral left of mouth.
- A1 voluntarily pleaded Guilty to the Charge on 31st January 2023.

4. In comprehending with the gravity of the offence you have committed, I am mindful that the maximum sentence prescribed by law for Aggravated Robbery is 20 years' imprisonment.

5. However, the tariff depends on the nature and circumstances of the robbery at issue. In the case of **The State v EPARAMA TAWAKE**¹, the **Supreme Court of Fiji** has updated the applicable tariff for Aggravated Robbery, by the below pronouncement:

“Once the court has identified the level of harm suffered by the victim, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they pleaded guilty or not guilty and irrespective of previous convictions.”

	ROBBERY <i>(Offender alone and without a weapon)</i>	AGGRAVATED ROBBERY <i>(Offender either with another or with a weapon)</i>	AGGRAVATED ROBBERY <i>(Offender with another and with a weapon)</i>
HIGH	<i>Starting point: 5 years imprisonment Sentencing Range: 3 – 7 years</i>	<i>Starting Point: 7 years imprisonment Sentencing Range: 5 – 9 years</i>	<i>Starting Point: 9 years imprisonment Sentencing Range: 6 – 12 years imprisonment</i>

¹ CAV 0025 of 2019 [Court of Appeal No. AAU 0013 of 2017]

<i>MEDIUM</i>	<i>Starting point: 3 years imprisonment Sentencing Range: 1 – 5 years</i>	<i>Starting Point: 5 years imprisonment Sentencing Range: 3 – 7 years imprisonment</i>	<i>Starting point: 7 years imprisonment Sentencing Range: 5 – 9 years imprisonment</i>
<i>LOW</i>	<i>Starting Point: 18 months imprisonment Sentencing Range: 6 months – 3 years.</i>	<i>Starting Point: 3 years imprisonment Sentencing Range: 1 – 5 years imprisonment</i>	<i>Starting point: 5 years imprisonment. Sentencing Range: 3 – 7 years imprisonment.</i>

6. In this matter, you have committed this offence with the assistance of several other individuals. Therefore, in assessing the objective seriousness of offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. In the present matter, you have committed this offence on a taxi driver when he was proceeding with his usual duties. Considering the circumstances of this case, **ILIAKIMI TABUA**, I start your sentence with a starting point of 5 years imprisonment, i.e. in the medium-range of the applicable tariff.

7. On promulgating the above table for tariff for the offence of Robbery in the case of **The State v EPARAMA TAWAKE**², the Supreme Court has also ventured to identify aggravating and mitigating factors, as below:

“Having identified the initial starting point for sentence, the court must then decide where within the sentencing range the sentence should be, adjusting the starting point upwards for aggravating factors and downward for mitigating ones. What follows is not an exhaustive list of aggravating factors, but these may be common ones:

- *Significant planning*
- *Prolonged nature of the robbery*
- *Offence committed in darkness*
- *Particularly high value of the goods or sums targeted*
- *Victim is chosen because of their vulnerability (for example age, infirmity or disability) or the victim is perceived to be vulnerable*

² Ibid

- *Offender taking a leading role in the offence where it is committed with others*
- *Deadly nature of the weapon used where the offender has a weapon*
- *Restraint, detention or additional degradation of the victim, which is greater than is necessary to succeed in the robbery.*
- *Any steps taken by the offender to prevent the victim from reporting the robbery or assisting in any prosecution.*

Again, what follows is not an exhaustive list of mitigating factors, but these may be common ones:

- *No or only minimal force was used*
- *The offence was committed on the spur of the moment with little or no planning*
- *The offender committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure*
- *No relevant previous conviction*
- *Genuine remorse evidenced, for example by voluntary reparation of to the victim”*

8. In aggravation, Prosecution highlights the below injuries inflicted on the victim by you together with your accomplices’:

- i) Abrasion (1x) right lateral upper inner lip; and
- ii) Swelling (1x) lower lateral left of mouth.

In considering these injuries, I increase the sentence against **ILIAKIMI TABUA** by one year to 6 years.

9. Further, in this matter, **ILIAKIMI TABUA** with your accomplices had chosen a very vulnerable member of our society as the victim. Where, the victim was a taxi driver who allowed the Accused to get in to his vehicle in view of providing transport as a part of his usual occupation. In this regard, it has to be emphasized that taxi drivers provide a very essential service in our society, where on one hand they are an integral part in the tourism industry in our country and on the other hand they provide a means of transport from A to B to our citizenry. Furthermore, in the commission of his offence, **ILIAKIMI TABUA** had played the lead role in stopping the taxi in the pretext of seeking transport services. In noticing the recent hike in numbers of robbery of taxi drivers, this Court perceives that any punishment imposed by this Court in this matter should have a reprehensible deterrent effect that could also send a profoundly strong signal to the community. Therefore, following the direction given by

the **Supreme Court of Fiji** in the case of **The State v EPARAMA TAWAKE**³, I increase the sentence of **ILIAKIMI TABUA** by one more year to 7 years.

10. In mitigation, 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. Still further, Court recognizes that by pleading guilty to the charge you have saved court's time and resources at a very early stage of the Court proceedings. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
11. The, prosecution brings to the attention of this Court that you have been in custody since your arrest on 01/0/2022 to this date for 11 months, though you were mistakenly released and re-arrested in between. In your final sentence this period in custody should be deducted from your sentence separately.
12. Taking all these factors into consideration, especially your young age and potential for rehabilitation, I impose on you a sentence of 3 years and 9 month imprisonment forthwith with an applicable non-parole period of 3 years under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009** as the sentence for the count you are charged with.
13. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage", written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva

This 25th day of April 2023

³ Ibid