

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO. HAC 46 OF 2023**

**STATE**

**vs.**

**LIVAI KANACAGI**

**Counsels:**

<b>Mr. Zunaid Z</b>	<b>-</b>	<b>for State</b>
<b>Mr. Ravu S</b>	<b>-</b>	<b>for Accused</b>

**SENTENCE**

1. **LIVAI KANACAGI** you were charged on the following information with one count of Aggravated Burglary and one count of Theft, as below:

**FIRST COUNT**

*Statement of Offence*

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

*Particulars of Offence*

**LIVAI KANACAGI** and **another** on the 19<sup>th</sup> day of January, 2023 AT Vatuwaqa in the Central Division, in the company of each other entered into the dwelling house

belonging to CITY CARS & EQUIPMENT as trespassers with intent to commit theft therein.

## **SECOND COUNT**

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

**THEFT:** Contrary to Section 291(1) of the Crimes Act 2006

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

**LIVAI KANACAGI** on the 19<sup>th</sup> day of January 2023 at Vatuwaqa in the Central Division in the company of each other dishonestly appropriated (stole) 1 x 3 piece sofa and 1 x Queen size mattress, the property of CITY CARS & EQUIPMENT with the intention of permanently depriving CITY CARS & EQUIPMENT of the said property.

2. You pleaded guilty on your own free will to the above mentioned counts represented by counsel in Court on 31/03/2023. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. Further, you agreed to the following summary of facts, when they were read to you in Court on 26/04/2023, as follows:

## **SUMMARY OF FACTS**

**Complainant (PW1): Vijay Narayan, 42 years old, Property Manager for City Cars and Equipment.**

**Sharmesh Vikash Ram (PW2)** 43 years old, Carrier Driver of Sakoca, Tamavua, Suva.

**Accused (A1):** Livai Kanacagi, 22years old, (Date of Birth: 05.04.2001)  
Farmer of Nanuku Settlement, Vatuwaqa.

**Facts:**

1. On the 19<sup>th</sup> day of January 2023 at around 6.30pm, Vijay Narayan, the Property Manager of City Cars and Equipment went to see one of their rented houses at Lot 16, Vinod Place Rifle Range, Vatuwaqa. When he arrived at the mentioned address, he noticed that the back gate was damaged and was on the ground and that the back door was forcefully opened. Upon checking around the flat he discovered that the following items were missing:
  - a) 1 x three-piece sofa valued at \$2,000.
  - b) 1 x Queen size mattress valued at \$1800.

The total value of the stolen items was \$3,800.00.

2. PW1 reported the matter to the Nabua Police Station a raid was conducted by PC 6415 Inosi and the Quick Response Team at Nanuku settlement, Vatuwaqa whereby A1, Livai Kanacagi was arrested and escorted to Nabua Police Station on the 21<sup>st</sup> day of January.
3. A1 was then interviewed under caution on the same day (21/10/23) where he admitted to the allegations.

**Admission by A1 as per A1's Record of Interview (see Tab 1)**

- A1 admitted to being with the cousin, Eremasi Tukai on the 19/01/23.
- A1 admitted that they were walking along the seashore at Rifle Range and entered a vacant house. The house was fenced so they entered into the compound through the back gate.
- A1 admitted that after entering the house, they took out the three-piece sofa and the mattress outside the house; and place the items on the green grass before the sea wall.

- A1 further admitted that they walked to the Nabua carrier stand and hired a small red with a green tarpaulin carrier which transported the stolen items from Rifle range to Nanuku settlement in Vatuwaqa and sold the items.
- A1 admitted that he sold the items for \$200 to a Fijian man named Pex at Nanuku settlement.
- A1 confirmed that he and Eremasi were inside the sitting room of the house which they have entered into and stole the three-piece sofa and the mattress. A1 also admitted to the allegations.

Recovered items:

- The stolen items were recovered after the arrest of A1. The recovered items were the same items that were in the house at Lot 16, Vinod Place, Rifle Range, Vatuwaqa. These recoveries were photographed by A/CPL5845 Seru Rovia on 23.01.23.
  - PW1 was able to identify the recovered items as belonging to his employer the City Cars and Equipment. The recovered items are as follows:
    - a) 1 x three-piece sofa valued at \$2,000.
    - b) 1 x Queen size mattress valued at \$1800.
4. At the very outset, this Court was convinced that the facts agreed by you satisfy all the elements of each offence you were 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.
  5. 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.

6. 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.
7. This Court also recognizes that to address the alarming 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.
8. In imposing the appropriate punishment for your admitted guilt, I have to comply with the updated tariff regime pronounces for Aggravated Burglary by the Court of Appeal of Fiji in the case of **State v Avishkar Rohinesh Kumar Sirino Aakatawa**<sup>1</sup>, where it was stated as below:

*“Once the level of harm has been identified, 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 plead guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.*

LEVEL OF HARM CATEGORY	<b>BURGLARY</b> (OFFENDER ALONE AND WITHOUT A WEAPON)	<b>AGGRAVATED BURGLARY</b> (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	<b>AGGRAVATED BURGLARY</b> (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03 – 08 years	Starting point 07 years Sentencing Range: 08 – 12 years	Starting Point – 09 years Sentencing Range: 08 - 12 years

<sup>1</sup> [2022] FJCA (24<sup>th</sup> November 2022)

MEDIUM	Starting Point 03 years Sentencing Range : 01 – 05 years	Starting Point: 05 years. Sentencing Range 03 – 08 years	Starting Point : 07 years Sentencing Range: 05 – 10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 05 years Sentencing Range: 01 – 05 years	Starting point : 05 years Sentencing Range: 03 – 08 years.

9. In the above pronouncement of the Court of Appeal, Court has further identified the factors indicating the degree of harm, as below:

<b>Factors indicating greater harm</b>
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present.
Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary
Violence used or threatened against victim, particularly the deadly nature of the weapon
Content of general public disorder
<b>Factors indicating lesser harm</b>
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim.

Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced.
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10. 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 2012)**, 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.”*

11. Considering the circumstances of this case, I see 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 you for Count 1 and 2.



12. In assessing the objective seriousness of offending 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. 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 residential area. I am very mindful that offences of this nature disturb the peace and tranquility of

mind of residents of our community and threatens safety of our community. In this regard, the Courts have a bounden duty to discourage and deter this kind of anti-social behavior that makes living in our society unpleasant and risky. Having considered all these factors, I would pick a starting point of 5 years imprisonment against you placing your offence in the lower level of harm category in relation to the tariff available for Aggravated Burglary committed with another.

13. In aggravation, Prosecution brings to my attention that you have had unheeding disregard to the property rights of the victim in this matter. Further, you have taken steps to transport the stolen properties where you found them from and arranged the sale of these items.
14. In mitigation, your counsel has informed the Court that you were 25 years old at the point of commission of these offences and you are remorseful for your conduct in this matter. I see that considering your age you have a high rehabilitation potential. In view of this, I reduce your sentence by six (6) months.
15. Your counsel further informs this 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, where all the stolen items have been recovered. Further, by pleading guilty to the charge you have saved courts time and resources at a very early stage of the court proceedings. 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. **LIVAI KANACAGI**, please remember that you are young and able, carrying an inescapable responsibility to contribute to the betterment of this country and not to be misdirected to cause harm to your fellow citizens.
16. Still further, Prosecution counsel brings to my attention that since arrest on 21<sup>st</sup> January 2023 4 months and 20 days, which period has to be reduced from the final sentence.
17. **LIVAI KANACAGI**, in considering all the factors analyzed above, I sentence you to 02 years and 07 months imprisonment with a non-parole period of 25 months imposed under **Section 18 (1) of the Sentencing and Penalties Act of 2009**.



18. You have thirty (30) days to appeal to the Fiji Court of Appeal.

   
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/ **Hon. Justice Dr. Thushara Kumarage**

At Suva

This 12<sup>th</sup> day of June 2023

cc: *Office of Director of Public Prosecutions*  
*Office of Legal Aid Commission*