

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO. HAC 155 OF 2023**

**BETWEEN** : **STATE**

**AND** : **RATU WAISAKE TAWAKE**  
**MESAKE RAIMASI**

**Counsel** : Ms M Naidu for the State  
Both Accused in Person

**Date of Hearing** : **6 July 2023**

**Date of Sentence** : **11 July 2023**

### **SENTENCE**

- [1] Ratu Waisake Tawake, you have pleaded guilty to one count each of aggravated burglary and theft at the first opportunity, after waiving your right to counsel. I am satisfied that you have pleaded guilty freely and voluntarily and that your plea is informed and competent.
- [2] The facts are that on 2 May 2023 you and your accomplices got together and made a plan to steal from the complainant's house at Wainibuku. The complainant is a woman police officer. As part of your plan you went to the complainant's house at nighttime while she was asleep. You entered the house through the window after removing the louver blades. After entering the house you picked up a smart phone and a watch, a bottle of perfume and two canvasses and passed them over to your

accomplices who were waiting outside. The total value of stolen property was \$1295.00.

- [3] When the complainant woke up at around 5 am she discovered her house had been burgled. She reported the burglary to police. When the accused was arrested the complainant's smart watch was found in his physical possession. Under caution, he admitted to the allegations of burglary and theft. The complainant's smart phone was recovered from one of the accomplice's possession.
- [4] The maximum penalty for aggravated burglary is 17 years imprisonment while the maximum penalty for theft is 10 years imprisonment. Since both offences are founded on the same facts, an aggregate sentence is appropriate.
- [5] I am mindful of the guidelines enunciated by the Court of Appeal in Kumar & Vakatawa v State Criminal Appeals No AAU33 of 2018 and AAU117 of 2019 for the offence of aggravated burglary. The Kumar guidelines require the sentencing court to first assess the level of harm caused by the offence and then determine the applicable starting point and sentencing range. In this case, the parties agree that the level of harm is low and the applicable starting point is 3 years imprisonment and the sentencing range is 1-5 years imprisonment.
- [6] In this case the level of harm is less. The complainant's house was not ransacked or damaged. The loss of property is not significant as the expensive items had been recovered.
- [7] A significant aggravating factor is that the complainant was present inside the house when it was burgled at nighttime. The accused is the principal offender who had planned the burglary.

- [8] The mitigating factors are that the accused is 18 years old and is a youth. He is a first time offender. He confessed to the crime to police and pleaded guilty early. He is remorseful. He has saved court's time and resources by pleading guilty early. There is a partial recovery of the stolen property.
- [9] I pick 3 years imprisonment as my starting point, add 1 year for the aggravating factors and deduct 2 ½ years for the mitigating factors.
- [10] Ratu Waisake Tawake, you are convicted and sentenced to 18 months imprisonment. The offence of burglary is too prevalent in our community and is mostly committed by unemployed youths. While the court has a duty to keep the community safe by passing deterrent sentence, the court must also consider rehabilitating a young offender when passing sentence. To balance these competing purposes of sentence, I order that the accused serve 6 months in prison and 12 months in the community on a suspended term of 3 years from the date he is released from the prison. The accused has been in custody on remand for 2 months. This term is considered sentence already served.
- [11] The sentence of Ratu Waisake Tawake is:  
18 months imprisonment, serve 6 months in prison (2 months already served, remaining term to serve is 4 months) and 12 months is suspended for 3 years from the date of release from prison.
- [12] After sentence was pronounced on the first accused, the second accused, Mesake Raimasi changed his plea to guilty. He had a secondary role in the commission of the burglary and theft. He accompanied the first accused to the complainant's house but he did not enter the house. He remained outside and assisted the first accused to carry the stolen items to their destinations. The stolen smart phone was found in his possession when he was arrested.

[13] The second accused is 18 years old and a first time offender. He pleaded guilty and has saved the court's time and resources. His sentence is based on the secondary role that he had played in the commission of the crime.

[14] The sentence of Mesake Raimasi is:  
18 months imprisonment, serve 4 months in prison (2 months already served, remaining term to serve is 2 months) and 14 months is suspended for 3 years from the date of release from prison.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Both Accused in Person