

IN THE HIGH COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 2 of 2024

The State -v- Jonati Mavo

Osea Thomas Naitini

For the State: Mr. Z. Zunaid

For the Accused: Ms. R. Nabainivalu

Date of Plea: 17th March 2024

Date of Sentence: 2nd May 2024

SENTENCE

1. The two Accused persons are charged on the following Information.

COUNT 1

Statement of Offence

AGGRAVATED BURGLARY: contrary to section 313 (1) (a) of the Crimes Act 2009

Particulars of Offence

JONATI MAVOA & OSEA THOMAS NAITINI in the company of each other, on the 3rd day of December 2023 at Nausori in the Eastern Division, entered into the property of **INOKE LEDUA** as trespassers with intent to commit theft.

COUNT 2

Statement of Offence

THEFT contrary to section 291 (1) of the Crimes Act 2009

Particulars of Offence

JONATI MAVOA & OSEA THOMAS NAITINI in the company of each other, on the 3rd day of December 2023 at Nausori in the Eastern Division, dishonestly appropriated assorted traditional mats, and assorted clothes the properties of **INOKE LEDUA** with the intention of permanently depriving **INOKE LEDUA** of the said properties.

2. They both entered a plea of guilty on the 17th of March 2024 and the following Summary of Facts was outlined to them: -

- (a) The two Accused are Jonati Mavoa, 23 years of age and Osea Thomas Naitini, aged 20 years, both of Dravo Village, Tailevu both unemployed.
- (b) The complainant Inoke Ledua is a pastor who resides in Dravo village, Tailevu.
- (c) On the 3rd of December 2023 at around 3 am the complainant got up to use the bathroom and he heard movements inside his house.
- (d) He saw two iTaukei boys in his house. When he saw the two boys, he yelled, and he noticed that one of them had a t-shirt wrapped around his head. He also noticed that the two boys were wearing clothes from the complainant's house, clothes which they had stolen.
- (e) He saw one of the intruders throw a bag that he was carrying and as they ran away, one of the two boys dropped a white t shirt at the scene.
- (f) The complainant then noticed that assorted clothes and mats with tapa designs were stolen. The total value of the mats and clothes were \$1, 025.
- (g) The Police, after investigations, identified and recovered the stolen items on the 3rd of December 2023 and these recovered items were positively identified by the complainant as those items that were stolen from his home.
- (h) After further investigations, the Police arrested both the Accused persons and upon being questioned, they admitted that on the night of the 2nd of December 2023 they were having barbeques with the other youths in the village. After the barbeque, the two Accused then went down to the river to have drinks.
- (i) After having drinks, they wanted to smoke suki so they agreed to go and ask the pastor's son since he was employed. When they went to the pastor's house, they saw the pastor's son was asleep and the door was open.
- (j) Jonati Mavoa then acted as the "lookout" while Osea Thomas Naitini entered the house and brought out the mats and as he did so, Jonati Mavoa grabbed two t shirts, one vest, one round neck t short and one pair long trousers.
- (k) At this point, the pastor yelled, and they got scared and ran away. They hid the stolen items in the graveyard and returned home.

- (l) They were eventually arrested by the Police, and they made full admissions to the Police. On questioning by the Police, they then admitted that they had gone to the pastor's house at time because they wanted to take the mats and they entered the house and took the mats when they were sleeping. They had gone to the pastor's house earlier that afternoon and noticed the mats there.
- (m) They were then interviewed under caution and then charged and produced in the Nausori Magistrate's Court on the 5th of December 2023. They were bailed on the 19th of December 2023 and the matter was then transferred up to the High Court as the first count is an indictable offence.
3. The Accused have both admitted the Summary of Facts. I have considered the plea, and I am satisfied that the summary of facts contains all the elements of the two offences and the guilty pleas have been made unequivocally.
4. The two Accused persons have both presented their plea in mitigation through their counsel as follows: -
5. Mitigation for Jonati Mavoa
- (a) He is 23 years of age, single and he sells green coconuts for a living earning about \$70 a week.
- (b) He resides at Dravo village.
- (c) He admits to his role in the offending, and he admits the summary of facts.
- (d) He understands that what he did was wrong, and he regrets his action.
- (e) He submits that it was poor decision making on his part.
- (f) He is remorseful and regrets what he did. He apologises to the Court and promises that he will not reoffend or appear in court charged for an offence.
- (g) He fully cooperated with the Police. He was truthful and honest and he told the Police everything that happened on the day of the offending.
- (h) Jonati Mavoa is willing to reform himself should he be given an opportunity to do so and he asks for a second chance to prove himself in society.
- (i) He also wishes to apologise to the complainant, the Court and all parties involved.

- (j) There was no violence used in the commission of the offences.
- (k) He is a first offender and there was full recovery of the stolen items.
- (l) For the offence of Aggravated Burglary, the maximum sentence is 17 years imprisonment while the offence of Theft attracts a maximum sentence of 10 years imprisonment.
- (m) The tariff for Aggravated Burglary was set by the Fiji Court of Appeal case of Kumar and Vakatawa vs The State [2022] FJCA ; AAU 33 of 2018 and AAU 17 of 2019 (24 November 2022) and set out the following table

LEVEL OF HARM (CATEGORY)	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
HIGH	Starting point: 5 years Sentencing Range: 3 – 8 years	Starting Point: 7 years Sentencing Range: 5-10 years	Starting Point: 9 years Sentencing Range: 8 – 12 years
MEDIUM	Starting Point: 3 years Sentencing Range: 1-5 years	Starting Point: 5 years Sentencing Range: 3-8 years	Starting Point: 7 years Sentencing Range: 5-10 years
LOW	Starting Point: 1 year Sentencing Range: 6 months – 3 years	Starting Point: 3 years Sentencing Range: 1-5 years	Starting Point: 5 years Sentencing Range: 3- 8 years

- (n) Counsel respectfully submits that the offending in this case falls into the Low end of seriousness – there was no violence in the commission of the offence and there was full recovery of the stolen items.
- (o) Counsel therefore submits that the starting point should be 3 years and the sentencing range should be 1 to 5 years.
- (p) The tariff for simple Theft was set out in the case of Ratusili vs State [2012] FJHC 1249; HAA 11 of 2012 (1st August 2012) which set out the following tariff for Theft:
- For a first offence of simple Theft the sentencing range should be between 2 and 9 months
 - Any subsequent offence should attract a penalty of at least 9 months.

- Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to 3 years.
- Regard should be had to the nature of the relationship between offender and victim.
- Planned thefts will attract greater sentence than opportunistic thefts.

(q) Counsel submits that after the considering the aggravating factors and mitigating factors that the Accused ought to be sentenced to 3 years and the Court ought to strongly consider a suspended sentence.

6. Mitigation for Osea Thomas Naitini

- (a) He is 20 years of age, single and he sells green coconuts for a living, earning about \$70 a week.
- (b) He resides in Cunningham, and he supports his uncle who he stays with.
- (c) He admits to his role in the offending, and he admits the summary of facts.
- (d) He understands that what he did was wrong, and he regrets his action.
- (e) He submits that it was poor decision making on his part.
- (f) He is remorseful and regrets what he did. He apologises to the Court and promises that he will not reoffend or appear in court charged for an offence.
- (g) He fully cooperated with the Police. He was truthful and honest, and he told the Police everything that happened on the day of the offending.
- (h) He pleaded guilty at the earliest instance and in doing so he has saved the Court's time and resources.
- (i) He is a first offender and also a young offender.
- (j) All of the stolen items have been recovered therefore there has been no loss suffered by the complainant.
- (k) The rest of the submissions on the tariff and the recommended sentence set out above are also applicable to this Accused.

7. The State has also filed sentencing submissions as follows: -

- (i) The maximum sentence for the offence Aggravated Burglary is 17 years imprisonment and for Theft the maximum sentence is 10 years imprisonment.
- (ii) The tariff for Aggravated Burglary was set out by the Court of Appeal in the case of Kumar and Vakatawa vs The State [2022] FJCA; AAU 33 of 2018 and AAU 17 of 2019 (24 November 2022).
- (iii) The State agrees that the category of offending is Low and the Court ought to take a starting point of 3 years and the sentencing range is between 1 – 5 years imprisonment.
- (iv) For the second count of Theft, the State also refers to the case of Ratusili vs State [2012] FJHC 1249; HAA 11 of 2012 (1st August 2012) and submits that this offending was in the nature of a breach of trust and the tariff to be applied should be in the range of 2 months to 3 years.
- (v) The State identified the following aggravating factors for the offending in this case: -
 - (a) Their conduct showed utter disregard for the property rights of others.
 - (b) Prior planning
 - (c) These types of offences are prevalent.
- (vi) The following factors mitigate the offending in this case: -
 - (a) Guilty Plea
 - (b) Previous good conduct as first offenders
 - (c) Cooperation with Police leading to full recovery of the stolen property.
- (vii) Jonati Mavoa spent 16 days in remand and Osea Thomas Naitini spent 15 days in remand. These period in remand should be deducted as time already served.
- (viii) The State recommends that the Court ought to apply the sentencing principles of denunciation and deterrence although this may be balanced with the prospects of their personal rehabilitation.
- (ix) The State therefore recommends an appropriate sentence commensurate with the offending in this case.

Analysis

8. The offence of Aggravated Burglary attracts a maximum sentence of 17 years imprisonment. The tariff was identified in the Court of Appeal case of Kumar and Vakatawa vs The State [2022] FJCA; AAU 33 of 2018 and AAU 17 of 2019 (24 November 2022).
9. The offence of Theft attracts a maximum sentence of 10 years imprisonment. The tariff was identified in the case of Ratusili vs State [2012] FJHC 1249; HAA 11 of 2012 (1st August 2012).
10. The aggravating factors for this case are the prior planning and the breach of trust as they had been inside the complainant's house the same afternoon and used that opportunity to identify the items that they would later steal that same night.
11. The mitigating factors include the cooperation with the Police leading to the early guilty pleas, the recovery of the stolen property and the previous good conduct of the two Accused as first offenders.
12. With the first count, applying the tariff set out in the Kumar and Vakatawa case above, the offending falls into the Low category with a starting point of 3 years with sentencing range of 1 to 5 years.
13. For the first count of Aggravated Burglary, I adopt a starting point of 3 years and for the aggravating factors identified the above the sentence is enhanced by 2 years. For the guilty plea and the recovery of the stolen items the sentence is reduced by 20 months and for their previous good conduct as first offenders, the sentence is reduced by a further 1 year leaving an interim sentence of 28 months or 2 years and 4 months imprisonment.
14. For the second count of Theft, I adopt a starting point of 6 months imprisonment and I add 3 months for the aggravating factors set out above. For the guilty plea I deduct 3 months and I deduct a further 1 month for the previous good conduct as a first offender, leaving an interim sentence of 5 months imprisonment.


15. The two offences are to be served concurrently therefore the total period of imprisonment is 2 years 4 months.
16. The two Accused persons spent time in remand 16 days for Jonati Mavoa who was arrested earlier and 15 days for Osea Thomas Naitini. This period will be deducted as time already served.
17. The total sentence is a sentence under 3 years therefore it may be suspended in the appropriate circumstances. The relevant factors to consider are that the two were arrested and the stolen property recovered within a short period of time. There was full recovery therefore the complainant did not suffer actual loss apart from being deprived of their property for a few days. The Accused persons cooperated with the Police and this culminated in their early guilty plea.
18. For those reasons the Court will promote the rehabilitation of the two Accused persons and fully suspend their sentence.

Jonati Mavoa and Osea Thomas Naitini, this is your sentence: -

- 1. Jonati Mavoa on the First count of Aggravated Burglary you are sentenced to 2 years 3 months and 15 days.**
- 2. Jonati Mavoa for the Second Count of Theft you are sentenced to 5 month's imprisonment, to be served concurrently with the First Count.**
- 3. Osea Thomas Naitini for the First Count of Aggravated Burglary you are sentenced to 2 years 3 months and 16 days.**
- 4. Osea Thomas Naitini for the Second Count of Theft you are sentenced to 5 months imprisonment to be served concurrently with the First Count.**

5. Jonati Mavoia and Osea Thomas Naitini your sentence is fully suspended for 3 years. Your counsel will advise you the suspended sentence and the consequences if you reoffend within the period of the sentence.

30 days to appeal



Mr. Justice Usaia Ratuville
Puisne Judge



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