

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

**Crim. Case No: HAC 185 of 2023**

**STATE**

vs.

**ARTHUR SAMUEL LOCKINGTON**

**Counsel:** Ms. M. Ramoala for the State  
Ms. B. Kinivuwai for the Accused

**Date of Sentence/Mitigation Submission:** 21<sup>st</sup> July 2023

**Date of Sentence:** 2<sup>nd</sup> May 2024

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**SENTENCE**

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**Introduction**

1. **Arthur Samuel Lockington**, the Accused, is indicted with a single count of the offence of *Attempted Aggravated Robbery* contrary to sections 44(1) and 311(1)(a) of the Crimes Act 2009 as laid out in the Information by the Director of Public Prosecutions:

**COUNT ONE**

*Statement of Offence*

**ATTEMPTED AGGRAVATED ROBBERY:** contrary to Sections 44(1) and

311(1)(a) of the Crimes Act, 2009.

*Particulars of Offence*

**ARTHUR SAMUEL LOCKINGTON** with another on the 28<sup>th</sup> day of May, 2023 at Lami, in the Central Division, in the company of each other, unlawfully attempted to steal a mobile phone and a handbag from **VIVINA SERUVONO** and immediately before stealing from **VIVINA SERUVONO**, used force on her.

2. Having finished work on 28 May 2023 at about 6.30pm, the complainant Vivina Seruvono (PW1) then proceeded to the bus stop to await a bus going towards Navua. While waiting at the bus stop for about 30 minutes, four I-Taukei boys walked passed her going in the direction towards Lami town and uttered something to the complainant which the complainant did not understand. The complainant then called her husband via her mobile phone and noticed one of the four I-Taukei boys namely Paula Williams (PW2) approaching the bus stop and sat next to her. A few minutes later the Accused and another approached the complainant and pulled her handbag while the other boy pulled her mobile phone causing the complainant to scream seeking the assistance of the Novotel security guard namely Vakacegu who was close by. The Accused and accomplice then released the complainant's handbag and mobile phone and ran towards Kalekana Settlement. The complainant and security guard Vakacegu then confronted Paula Williams (PW2) for being an accomplice and then took PW2 to the Novotel security booth where they called the police to report the matter. PW2 was later taken to the Lami Police Station and assisted the police in identifying the Accused as a perpetrator of the attempted aggravated robbery. The Accused was then arrested on 2 June 2023, voluntarily admitted the allegation in his caution interview statement, and formally charged the same day.
3. On 21 July 2023 Arthur Samuel Lockington being represented by the Legal Aid Commission counsel namely Mr. Ravu pleaded 'guilty' to the aforesaid charge voluntarily and unequivocally.
4. Prosecutor Ms. Ramoala then read out the *Summary of facts* and submitted the *Antecedent*

*report* containing two (2) prior convictions of the Accused, which the Accused admitted followed by the court formally convicting the Accused.

5. Plea in mitigation by the Accused’s Counsel Ms. Kinivuwai of the Legal Aid Commission was submitted on 11 August 2023 including the sentencing submissions by both Ms. Kinivuwai (Defence Counsel) and Ms. Ramoala (Prosecutor).
6. Having heard Defence Counsel’s plea in mitigation and both Counsels’ sentencing submissions, this is the Court’s finding on sentence.

### **Attempted Aggravated Robbery**

7. Section 44(1) of the Crimes Act 2009 state that *‘[a] person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed’*.
8. Section 311(1)(a) of the Crimes Act 2009 state that *‘[a] person commits an indictable offence if he or she commits a robbery in company with one or more other persons; ... Penalty – Imprisonment for 20 years.*
9. The maximum penalty for the offence of *Attempted Aggravated Robbery* is the custodial term of 20 years.
10. As for the sentencing tariff for the offence of *Attempted Aggravated Robbery*, this Court adopts the guideline set by the Fiji Supreme Court in State v Tawake [2022] FJSC 22; CAV0025.2019 (28 April 2022), per Keith, J at paras. [24] – [29]:

*[24] The English guideline covers three different types of robbery: “home invasions”, professionally planned commercial robberies, and street and less sophisticated commercial robberies. Our focus in this case is on the last type. Even then, though, the English framework would require some refinement in Fiji, because in England there is a single offence of robbery, whereas Fiji has two offences of robbery: robbery contrary to section 310 of*

*the Crimes Act and aggravated robbery contrary to section 311 of the Crimes Act. Moreover, as we have seen, the offence of aggravated robbery takes two forms: where the offender “was in company with one or more other persons” at the time of the robbery, and where the offender “has an offensive weapon with him or her” at the time of the robbery. Such guideline as we give has to reflect these differences.*

*[25] For my part, I think that this framework, suitably adapted to meet the needs of Fiji, should be adopted. There is no need to identify different levels of culpability because the level of culpability is reflected in the nature of the offence, and if the offence is one of aggravated robbery, which of the forms of aggravated robbery the offence took. When it comes to the level of harm suffered by the victim, there should be three different levels. The harm should be characterized as high in those cases where serious physical or psychological harm (or both) has been suffered by the victim. The harm should be characterized as low in those cases where no or only minimal physical or psychological harm was suffered by the victim. The harm should be characterized as medium in those cases in which, in the judge’s opinion, the harm falls between high and low.*

*[26] 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 (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED ROBBERY (OFFENDER EITHER WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED ROBBERY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
<b>HIGH</b>	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment	Starting point: 9 years imprisonment Sentencing range: 6-12 years imprisonment
<b>MEDIUM</b>	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment	Starting point: 7 years imprisonment Sentencing range: 5-9 years imprisonment

<b>LOW</b>	Starting point: 18 months imprisonment Sentencing range: 6 months – 3 years imprisonment	Starting point: 3 years imprisonment Sentencing range: 1-5 years imprisonment	Starting point: 5 years imprisonment Sentencing range: 3-7 years imprisonment
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*[27] 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*
- *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*

*[28] 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 to the victim*
- *Youth or lack of maturity which affects the offender’s culpability*
- *Any other relevant personal considerations (for example, the offender is the sole or primary carer of dependent relatives, or has a learning disability or a mental disorder which reduces their culpability)*

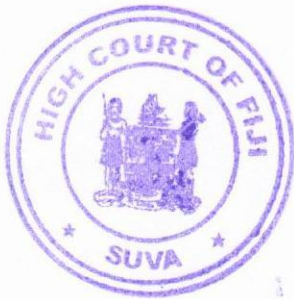
*[29] Having decided on the appropriate sentence in this way, the Court should then reduce the sentence, by such amount as appropriate – first for a plea of guilty and then for the time the offender spent in custody on remand awaiting trial and*

*sentence. If judges take these steps in the order I have identified, it is to be hoped that sentences will be more likely to fit the crime, and that undesirable disparities in sentences will be avoided.*

11. Relying on the aforesaid sentencing guideline, I find that in Arthur Lockington's case it falls in the low category of aggravated robbery (offender either with another or with a weapon) with the corresponding sentencing range of 1 – 5 years imprisonment and starting point of 3 years.
12. With the starting point 3 years I add 1 year 6 months for the aggravating factors due to the fact that the Accused committed this crime with others and had chosen a vulnerable victim to accost with some degree of physical force to attempt to deprive her of her handbag and mobile phone while she was waiting for a bus to return home after a hard day's work as Housekeeper at the Novotel Resort in Lami.
13. For the mitigating factors I deduct 1 year considering that the Accused Arthur Samuel Lockington is 27 years old, a casual worker as Fish Processor earning about \$30 per day and looking after his sickly father who is 79 years old.
14. Having considered the aggravating and mitigating factors, I further make the following special deductions:
  - (i) Early guilty plea - 1 year 2 months is deducted being the one third deduction for the early guilty plea. This approach is consistent with the Fiji Supreme Court decisions in Qurai v State [2015] FJSC 15; CAV24.2014 (20 AUGUST 2015) per Justice Saleem Marsoof at para. [54]; and Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 12-15.
  - (ii) Time spent in custody and pursuant to section 24 of the Sentencing and Penalties Act 2009 – a deduction of 1 month 16 days for the remand period 5 June 2023 to the point of guilty plea on 21 July 2023. See Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 7-11.
15. Thus, the head sentence for the offence of *Attempted Aggravated Robbery* in this instant is the

imprisonment term of 2 years 2 months 14 days.

16. On the issue of suspension of the aforesaid head sentence, having carefully considering the same I have decided not to suspend the sentence; however, order that Arthur Samuel Lockington serve a non-parole term of 16 months imprisonment.
17. Therefore, Arthur Samuel Lockington is hereby sentenced to 2 years 2 months 14 days imprisonment, and to serve a non-parole period of 16 months imprisonment.
18. Thirty (30) days to appeal to the Fiji Court of Appeal.



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**Hon. Mr. Justice Pita Bulamainivalu**  
**PUISNE JUDGE**

**At Suva**

2<sup>nd</sup> May 2024

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for the Accused