IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 195 OF 2016

STATE

-v-

1. ASELAI WAQANIVALU
2. ISAAC JAMES
3. MAIKA TOVAGONE
4. JOELI NUKUNAWA
5. EMOSI BALEIDROKADROKA

Counsel : Mr A. Singh for Prosecution
: 1st, 2nd and 3rd Offenders in Person
: Ms K. Vulimainadave for 4th and 5th Offenders

Dates of Sentence Hearing: 17 July 2024
Date of Sentence : 23 July 2024

SENTENCE

1. After a contested trial, the Accused persons (hereinafter referred to as the offenders) were convicted of two counts of Aggravated Robbery. The information on which the offenders were tried and convicted was as follows:

FIRST COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (b) of the Crime Act 2009.

Particulars of the Offence

ASELAI WAQANIVALU, ISAAC JAMES, MAIKA TOVAGONE, JOELI NUKUNAWA AND EMOSI BALEIDROKADROKA on the 22nd day of September 2016 at Lautoka in the Western Division robbed **IMTIAZ SHAUKAT ALI** of 1 Toyota Prado valued at $115,000.00, $16,550 cash, 1 Samsung Galaxy S7 Edge mobile phone valued at $2,100, all to the total value of $133,650.00 the property of **IMTIAZ SHAUKAT ALI**.

COUNT 2

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311 (1) (b) of the Crimes Act 2009.

Particulars of Offence

ASELAI WAQANIVALU, ISAAC JAMES, MAIKA TOVAGONE, JOELI NUKUNAWA AND EMOSI BALEIDROKADROKA on the 22nd day of September 2016 at Lautoka in the Western Division, robbed **SHAHINA NAZMEEN HUSSEIN** of 1Samsung Galaxy J5 valued at $650.00, 1 Suitcase with clothes valued at $200.00, 1 gold chain valued at $500.00 and 2 kids' carry-bags valued at $30.00, all to the total value of $1,380.00 the property of **SHAHINA NAZMEEN HUSSEIN**.

2. This robbery was disturbing and it raised public alarm and concern when the CCTV footage that captured it went viral on social media. The law-abiding citizens, who viewed the robbery live and on social media, should no doubt be interested in the punishment the court is handing down on the perpetrators.

3. The facts were that the complainant and his wife were running a business at the Lautoka Market. On the day of the incident, the complainant took his wife and the two kids, a son aged 10 and a daughter aged 01, left for Kashmir in his Toyota Prado to pick up his sister, who had come from New Zealand. There were two bags containing clothes, a gold chain,

$ 16,000.00+ money and two smartphones in the vehicle. His wallet was in his pocket. The money collected from his business was to be deposited in the bank the next morning.

4. On their way, the complainant stopped his vehicle in front of a shop in Kashmir at around 7.20 p.m. While the engine was on, he went inside the shop to buy some stuff for the kids. His wife sat in the front passenger seat with his daughter and the son in the back seat. Suddenly, he heard his wife scream. When he turned back, he saw an iTaukei guy sitting in the driving seat of his vehicle. He ran to the vehicle and forced himself inside it to get the iTaukei guy out. There were eight iTaukei men, and the others loomed soon. The 1st Offender and another started to assault the complainant in full view of the public. One of them picked up his wallet. The 2nd Accused kicked an old onlooker Indian man. The complainant's wife managed to get out of the vehicle with their daughter. One robber dropped the son on the pavement. All the robbers got in the vehicle and fled the scene. The whole incident was captured by the CCTV camera installed at the shop. The CCTV footage displayed a Chicago-type systematic and coordinated brutal attack on the victims and their property rights.

5. The complainant received injuries to his face when they punched him. The way the child was thrown to the pavement was ruthless. The police managed to locate the abandoned car but nothing else was recovered.

6. In selecting the sentences that are best suited to the offenders, the courts must have regard to the proportionality principle enshrined in the Constitution, the sentencing principles in the Sentencing and Penalties Act 2009 (SPA), the maximum penalty prescribed for the offence, the current sentencing practice and the applicable guidelines issued by the courts. Considering the seriousness of the offence and the harm caused to the victims, the final sentence should be determined after making appropriate adjustments for the aggravating and mitigating circumstances.

7. According to Section 17 of the Sentencing and Penalties Act 2009, if an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court has the discretion to impose an aggregate sentence of imprisonment in respect of those offences. This is a fit case to impose an aggregate sentence on each offender for both offences.

8. Property-related offences such as Aggravated Robbery and Burglary are on the rise in Fiji. The tourism industry, which earns the bulk of foreign currency to the country could greatly be affected if this trend were allowed to be continued. The courts have emphasised that the increasing prevalence of these offences in our community calls for deterrent punishments. The community must be protected from robbers. This Court must ensure that the sentences are such as to operate as a powerful deterrent factor to prevent the commission of such crimes. The offenders must receive condign punishment to mark society's outrage and denunciation against such crimes.

9. The maximum sentence for Aggravated Robbery is 20 years' imprisonment. It is now settled that offenders of Aggravated Robbery must be sentenced in accordance with the sentencing guidelines and the tariff set out by the Supreme Court in **Eparama Tawake v State** [1] (*Tawake*).

10. In ***Tawake***; the Supreme Court identified the starting points and the sentencing ranges for the three categories of "Robbery" found in the Crimes Act as follows:

HIGH	**ROBBERY (OFFENDER ALONE AND WITHOUT A WEAPON)**	**AGGRAVATED ROBBERY (OFFENDER EITHER WITH ANOTHER ORWITH A WEAPON**	**AGGRAVATED (OFFENDER WITH ANOTHER AND WITH A WEAPON**
	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
MEDIUM	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
LOW	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

[1] CAV 0025.2019 (28th April 2022)

According to **Tawake** guidelines, *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 different levels. The harm should be characterised 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 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*[2].

12. *Once the level of harm suffered by the victims has been identified, the Court should use the corresponding starting point from the table set out in the judgment to reach a sentence within the appropriate sentencing range.*[3]

13. The sentencing tariff that existed before *Tawake* had been set by the Supreme Court in **Wise v State**[4] where the sentence ranged from eight (8) years to sixteen (16) years imprisonment. The tariff set by the Supreme Court in *Tawake* is lenient compared to that set in **Wise** in that the former recommends only a maximum of 12 years imprisonment to an offender who has committed even a night-time home invasion with another with a weapon. However, depending on the circumstances, the sentencing court has the discretion to deviate from the existing tariff when valid reasons are present and recorded.

14. The culpability levels of all offenders are almost on an equal footing. This robbery was committed in the company of each other. Although no weapon was used, the level of violence was high. The complainant received minor injuries because of the assault, albeit they were not that serious. The harm should be characterised as high in this case as the psychological harm suffered by the victims, especially the children, was high.

15. A starting point of 7 years and a sentencing range of 5-9 years' imprisonment is reserved by the said *Tawake* guidelines for the aggravated gang robberies committed of this

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[2] paragraph 25
[3] paragraph 26
[4] [2015] FJSC 7 CAV0004.2015 (24 April 2015)

magnitude. I start the sentencing process for each offender with a starting point of 7 years' imprisonment from the bottom end of the tariff.

Aggravating Factors

16. Being guided by *Tawake,* I identified the following common aggravating factors for all offenders. There was evidence of pre-planning. Four offenders had come to the West all the way from Suva to commit this organised crime. It was a high handed frightening night-time invasion of the person committed in full view of the public without any regard for the law. One of the victims received minor injuries and all the victims no doubt were subjected to psychological trauma. The robbery was committed with the knowledge of the presence of two vulnerable children, in whose view their father was assaulted, and their vehicle robbed. The value of the property stolen was high. Except for the vehicle, the valuables stolen were never recovered. For these aggravating features, the sentence should be increased by three years to arrive at an aggregate interim sentence of ten (10) years imprisonment.

17. In addition to these aggravated factors that should be applied equally to all the offenders, the offending of the 1st and 2nd Offenders was further aggravated because of their distinct actions. The 1st Offender pulled the complainant and assaulted him repeatedly. The 2nd Accused kicked an on-looker old Indian man who was just witnessing the robbery. Accordingly, I add 6 months to the sentence of the 1st Offender to arrive at an interim sentence of 10 years and 6 months imprisonment. I add 3 months to the sentence of the 2nd Accused to arrive at an interim sentence of 10 years and 3 months imprisonment.

Mitigating Factors

18. Before examining the mitigating factors for each offender, I would like to identify the common mitigating factors applicable to all. The offence was committed eight years ago on 22 September 2016. All the offenders were arrested soon after that and brought before the Court. The trial commenced in April 2024 and the conviction was recorded on 24 May 2024. There is a delay in prosecuting this matter of approximately eight years. Although

the offenders also contributed to the delay, it is reasonable to give some allowance to the delay in mitigation. The stolen motor vehicle was recovered, but not because of their cooperation with the police. Therefore, the offenders do not deserve a considerable discount for the recovered stolen property[5] although the recovery of the vehicle mitigated the loss caused to the victims.

Mitigation and sentence for Mr Aselai Waqanivalu (1st Offender)

19. Mr Waqanivalu is a 36-year-old father married with a child. His wife is expecting another child. There are no significant mitigating factors for Mr Waqanivalu. He receives no discount for his good character as he has 21 previous convictions of a similar nature, two of which are still active. He had been in remand for this matter for approximately three years. I deduct six (6) months for mitigation and three (3) years for the remand period to arrive at an aggregate sentence of seven (7) years imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of six (6) years.

Mitigation and the sentence for Mr Isaac Mathew James (2nd Offender)

20. Mr James is 38 years old. He maintained his innocence and refused to file any mitigation. Therefore, I do not find significant mitigating factors for Mr James. He receives no discount for his good character as he has 16 previous convictions, two of which are still active. He has been in remand for this matter for approximately two years (one year and nine months). I deduct two (2) years for the remand period and three (3) months for mitigation to arrive at an aggregate sentence of eight (8) years imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of seven (7) years.

[5] Jahid v State [2011] FJHC 262(12 May 2011)

Mitigation and the sentence for Mr Maika Tovagone (3rd Offender)

21. Mr Tovagone is a 26-year-old young offender. There are no significant mitigating factors for him. He receives no discount for his good character as he has a previous conviction.

22. There is a dispute over Mr Tovagone's remand period. Mr Tovagone claims that he was never released on bail since he was remanded. [The Copy Record shows he was remanded on 3 October 2016].

23. Since I had doubts about his claim and the State failed to assist this Court in calculating the correct remand period, I browsed the PACLII website where the court determinations are published. It was revealed that Mr Tovagone was bailed by this Court on 28 February 2018 after being on remand for approximately 18 months[6]. His bail has not been revoked by this Court thereafter.

24. Mr Tovagone claims that despite bail being granted, he did not go out because he could not find sureties. He further claims that he was released when a *nolle prosequi* was filed in a Suva High Court matter. If that was the case, he could not just walk free without furnishing bail to the Lautoka High Court Registry. Being fully aware of this fact then he had come out of remand. His conduct would be equivalent to an escape from lawful custody.

25. He is serving an imprisonment term imposed by the Suva High Court in HAC 331 of 2018[7]. Upon perusal of the sentence Ruling in that case, it was revealed that Mr Tovagone committed another Aggravated Robbery on 20 August 2018 after bail was granted in this matter. It is obvious that he was at large to commit this offence. He not only misled this Court but suppressed that he committed another aggravated robbery whilst on bail.

26. Mr Togavone was arrested soon after the said robbery on 20 August 2018 and remanded. According to the sentence Ruling in HAC 331 of 2018, Mr Tovagone had been on remand

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[6] Tovagone v State [2018] FJHC 119; HAM012.2018 (28 February 2018)

[7] State v Naureure - Sentence [2020] FJHC 1030; HAC331.2018 (30 November 2020)

from 20 August 2018 until he was sentenced on 30 November 2020 for two (2) years and twenty-five (25) days.

27. Mr Tovagone contends that his remand period in HAC 331 of 2018 should be deducted from his sentence. His contention appears to be based on Section 24 of the SPA.

28. Section 24 provides that *if an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender.*

29. In my opinion, the words *'held in custody prior to the trial of the matter or matters'* do not connote that the remand period or periods in other matters should also be regarded as a period of imprisonment already served by the offender for this matter. The period he was kept in remand in HAC 331 of 2018 had already been deducted when the sentence in that case was passed. In any event, this Court under Section 24 of the SPA has the discretion not to regard any remand period as a period of imprisonment already served by the offender. This is a fit case to exercise discretion in disregarding the remand periods in other matters. However, the 18 months he was kept in remand in this matter should be deducted from his sentence.

30. Mr Tovagone's claim that he had no previous convictions at the time of the offence was not disputed. Accordingly, I deduct 6 months for mitigation for his youth, the delay, and other personal circumstances. I deduct 18 months for the remand period to arrive at an aggregate sentence of eight (8) years imprisonment. His potential for rehabilitation is not that promising given his previous conviction. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of seven (7) years.

Consecutive /Concurrent Sentence

31. The State urged this Court to impose consecutive sentences on Mr Tovagone and Mr Baleidrokadroka (5thoffender). This discussion on consecutive / concurrent sentence is relevant to the sentences of both of them.

32. According to the information provided by the State, Mr Tovagone is serving a 12-year prison term from 30 November 2020 in which he is expected to be released on 28 October 2030.

33. Section 22 of the SPA deals with concurrent or consecutive sentences. The relevant parts of Section 22 are as follows:

> 22 (1) Subject to sub-section (2), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of imprisonment.
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> (2) Sub-section (1) does not apply to a term of imprisonment imposed—
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> *(a)* .....
>
> *(b)* ....
>
> *(c)* on a habitual offender under Part III;
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> *(d)* .....; or
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> *(e)* on any person for an offence committed while released on bail in relation to another offence.
>
> (3).....
>
> (4)....
>
> (5)...
>
> (6) Every term of imprisonment imposed on a prisoner by a court in respect of an offence committed while released on bail in relation to any other offence must, unless otherwise directed by the court based on exceptional circumstances, be served consecutively on any uncompleted sentence of imprisonment.

34. According to this section, every sentence imposed by the court must as a matter of course be served concurrently with any pending sentence of imprisonment. However, the section gives the power to a sentencing court to deviate from that normal course. The Supreme Court in **Vaqewa v State**[8] has articulated the proper construction of Section 22 (1) of the SPA where Keith J held that:

> In my opinion, the proper construction of these provisions is as follows. The default position is that any term of imprisonment passed on someone by a court has to be served concurrently with any sentence of imprisonment he is currently

[8] [2016] FJSC 12; CAV0016.2015 (22 April 2016)

> serving. There are two situations in which the default position must or may be disapplied. It must be disapplied in any of the five circumstances set out in section 22(2). That is the effect of the opening words of section 22(1) – "Subject to sub-section (2) ..." – and the opening words of section 22(2) – "Sub-section (1) does not apply ..." In addition, though, even in a case which does not come within any of the five circumstances set out in section 22(2), the default position may be disapplied. That is the effect of the words "unless otherwise directed by the Court" in section 22(1).

35. Mr Tovagone committed the Aggravated Robbery in HAC 331 on 20 August 2018 whilst he was technically on bail. Therefore, he comes under Section 22(2)(e) in which the default position may be disapplied. In any event, the words "*unless otherwise directed by the Court*" in Section 22(1) give a discretion to the sentencing court to depart from the default position, if it finds the consecutive sentence is the appropriate punishment.

36. Two principles come into play in deciding the appropriateness of a consecutive sentence, namely, the proportionality principle enshrined in the Constitution and the totality principle. The first is proportionality between the sentence and the offence. The totality principle advocates that a court should not impose a "crushing" sentence. The word crushing in this context connotes the destruction of any reasonable expectation of a useful life after release[9]

37. The Supreme Court delivering its recent opinion in the **Matter of a Reference by Cabinet concerning the interpretation and application of the Constitution of the Republic of Fiji**[10] observed as follows:

> [35] Besides the general interpretative directions just mentioned, there is further guidance in Chapter 2 of the Constitution. That Chapter shows that there is another relevant value embedded in the Constitution, namely proportionality. We see proportionality as an important constitutional value in Fiji, as it is in other comparable jurisdictions.
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> [36] Proportionality analysis attempts to weigh restrictive measures against the benefits those measures seek to achieve in order to determine whether there is an appropriate balance between the measure and the objective. A highly restrictive measure aimed at achieving a particular objective will be disproportionate if the objective can equally well be achieved by a less restrictive measure. In colloquial terms, the issue is whether the ends justify the means.

[9] Rajasinghe J in State v Baleidrokadroka State v Baleidrokadroka - Sentence [2019] FJHC 572; HAC293.2017 (7 June 2019); Martino v Western Australia [2006] WASCA 78 .
[10] [2024] FJSC 20; Miscellaneous Action 0001 of 2024 (28 June 2024)

38. The proportionality principle requires the Court to weigh the propriety of a consecutive sentence against the benefits that it seeks to achieve in order to determine whether there is an appropriate balance between the measure and the objective. In paragraph 8 above, I have already explained the benefits of imposing harsher punishments to repeat offenders of aggravated robbery of this magnitude. Therefore, the imposition of a consecutive sentence on a repeat offender is not disproportionate if it legitimately aims at protecting the community.

39. The Court of Appeal in **Tuibua v State**[11] discussed the totality principle as follows:

> The totality principle is a recognized principle of sentencing formulated to assist a sentencer when sentencing an offender for multiple offences. A sentencer who imposes consecutive sentences for a number of offences must always review the aggregate term and consider whether it is just and appropriate when the offences are looked at as a whole. A sentencer must always have regard to the totality of the sentence that is going to be served so as to ensure it is not disproportionate to the totality of the criminality of the offences for which the offender is to be sentenced (Mill v The Queen [1988] HCA 70; (1988) 166 CLR 59; R v Stevens (1997) 2 Cr.App.R. (S.) 180). When a sentencer imposes a sentence of imprisonment on an offender who is already subject to an existing sentence for other offences, and orders the new sentence to run consecutively to the existing sentence, the sentencer should also consider the propriety of the aggregate sentence taken as a whole (R v Jones [1995] UKPC 3; (1996) 1 Cr.App.R. (S.) 153, R v Millen (1980) 2 Cr.App.R. (S.) 357 and Nollen v Police [2001] SASC 13; (2001) 120 A Crim R 64)."

40. In view of the principles enunciated in **Tuibua**, the court should regard the propriety of the aggregate sentence in imposing a consecutive sentence on an accused, who is already subject to an existing term of imprisonment for another matter. Accordingly, the court is required to consider the aggregate sentence in both cases.

41. Dual consideration of the totality principle and the proportionality principle require the Court to evaluate the circumstances of the offence for which Mr Tovagone is currently serving his sentence. In paragraph [6] of the Sentence Ruling in HAC 331 of 2018, the Court observed as follows:

> This is a well-planned crime, which had been executed meticulously. The second accused first entered the Medical Centre, pretending that he wanted to fix his gold

[11] [2008] FJCA 77; AAU0116.2007S (7 November 2008)

> tooth, then the rest of the robbers stormed into the Centre, without letting the victims any chance of escape or alarm the others. It was established that the accused had planned their escape as well. They had changed their shirts, soon after the incident, in order to escape from the scene without getting noticed. While executing this crime, the robbers have used a substantive amount of force on the victims. This is a place that provides an essential health service to the public. Because of the nature of the service, the Medical Centre is required to keep its entrance easily accessible to the public. The robbers used this advantage to storm into the premises without any difficulties. Even during a state of emergency or civil unrest, the health facilities are opened and not targeted for any form of attacks as it provides such a vital service to the public. Hence, I find that the level of culpability in this crime is also very high.

42. Mr Tovagone is serving a 12-year imprisonment term to be completed on 28 October 2030. The sentence arrived at in this case is eight (8) years imprisonment. If the Court imposes a concurrent sentence in this matter, he will serve approximately two years for the commission of these offences upon completion of the current sentence. If the Court imposes a consecutive sentence, the aggregate sentence for two cases will be twenty (12+08) years imprisonment and his term will end on 28 October 2038.

43. The maximum sentence prescribed for Aggravated Robbery is 20 years imprisonment. Mr Tovagone was sentenced in HAC 331 of 2018 under *Wise* sentencing regime. Given the prescribed maximum sentence and the current sentencing practice reflected in *Tawake*, the imposition of a consecutive sentence on Mr Tovagone will be obnoxious to the two sentencing principles discussed above. He is young and at the time of the offence, he was a first offender. A consecutive term of imprisonment will destroy any reasonable expectation of a useful life after his release. Therefore, I order that this sentence be served concurrent to the existing term of imprisonment.

44. Mr Tovagone is young but his potential for rehabilitation is not that promising given his previous conviction. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of seven (7) years.

Mitigation and the sentence of Mr Joeli Nukunawa (4th Offender)

45. Mr. Nukunawa is a 32-year-old single and a market vendor by profession. He receives no discount on account of his good character as he has 10 previous convictions. He cooperated with the police and the Court. He has been in remand for this matter for approximately three years. I deduct one year for mitigation and three years for the remand

period to arrive at an aggregate sentence of six (6) years imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, I fix a non-parole period of five (5) years.

Mitigation and the sentence for Mr Emosi Baleidrokadroka (5th Offender)

46. Mr Baleidrokadroka is a 30-year-old market vendor. He is separated and a father of two children. There are no significant mitigating factors for Mr Baleidrokadroka. He receives no discount for his good character as he has six active previous convictions of a similar nature. I deduct six months for the delay and personal mitigation to arrive at an aggregate sentence of 9 years and six months imprisonment for both offences.

47. Ms Vulimainadave submitted that Mr Baleidrokadroka, though served for other matters, was technically remanded for this matter, and was never granted bail from 2016 to date. She therefore argues, as Mr Tovagone did, that his remand period during which he served for other matters should be deducted from his sentence.

48. Since the State Counsel has not provided any information about Mr Baleidrokadroka's remand period, and I entertained doubts about Ms Vulimainadave's claim, I checked the bail files in the Registry and browsed the PACLII website for past cases involving him. In that process, I managed to gather a lot of information relevant to the sentence which I shall list in the following paragraphs. I must emphasise that this information will not be used to punish the offender for what he has done in the past but to form an idea as to the correct remand period, to consider the appropriateness of imposing a consecutive sentence and, also if he should be declared a habitual offender.

49. The first sentence for Mr Baleidrokadroka was imposed on 28 March 2019 in HAC 117 of 2018[12] by the Suva High Court when the Court found him guilty of Aggravated Robbery after a contested trial. In that matter, he, with another, on 11 March 2018 assaulted and robbed the victim when he was walking home in the evening. He was

[12] State v Baleidrokadroka - Sentence [2019] FJHC 265; HAC117.2018 (28 March 2019)

sentenced to eight (8) years and six (6) months imprisonment with a non-parole period of six (6) years and six (6) months.

50. The second sentence was imposed on 9 May 2019 in HAC 115 of 2018 by the Suva High Court for nine (9) years imprisonment with a non-parole period of seven (7) years when he pleaded guilty to the offence of Aggravated Robbery. He had entered a car wash with two others, assaulted the victims and robbed them. He was serving both these sentences concurrently.

51. The third sentence was imposed on 7 June 2019 by the Suva High Court in HAC 293 of 2017 for 10 years imprisonment with a non-parole period of 7 years and 7 months for having committed an aggravated robbery on 29 August 2017[13]. In that case, he admitted having committed the crime with four others in the house of the victim at about 2 a.m. They were masked and armed with knives and pinch bars. They threatened the occupants and tied them up. Having stolen the items, they fled the house, using the vehicle of the victim. Considering his two previous sentences that were being served concurrently, the Court made this sentence run consecutive to the existing sentence on the uncompleted term of imprisonment.

52. The fourth sentence was imposed in HAC 277 of 2018 by the Suva High Court on 24 July 2019 for an imprisonment period of 6 years[14].

53. According to the record of previous convictions, Mr Baleidrokadroka has been sentenced for Escaping from Lawful Custody on 15 May 2018. The fact that he has committed four aggravated robberies starting from 29 August 2017 means that he has come out from remand to commit those crimes. If he was not granted bail by this Court as his Counsel claims, the only inference that could be drawn is that he committed those crimes having escaped from lawful custody while on remand. He is unable to provide the date on which he escaped. Therefore, he should not be given any discount for the remand period even though he was not granted bail in this matter.

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[13] Sentence [2019] FJHC 572; HAC293.2017 (7 June 2019)

[14] This case is not reported on PACLII. This information is based on the uncontested previous conviction report filed by the State.

54. Even if he was not granted bail and had not escaped from lawful custody, the remand period during which he served in other matters could not be deducted for the same reason that I advanced in respect of Mr Tovagone. Further, once sentenced for a term of imprisonment in another matter, his liberty is anyway curtailed even if he was on bail in this matter.

55. As a result, the aggregate sentence for Mr Baleidrokadroka remains at nine (9) years and six (6) months imprisonment for both offences. His potential for rehabilitation is not that promising given his previous convictions. To balance his chances of rehabilitation with the concerns for community protection, a non-parole period of 8 years is fixed.

Consecutive /Concurrent Sentence

56. I shall apply the same legal principles I discussed in respect of the sentence of Mr Tovagone in deciding whether to impose a consecutive sentence on Mr Baleidrokadroka. Mr Baleidrokadroka is serving roughly an imprisonment term of 13 years to be completed on 03 December 2031. The sentence arrived at in this case is nine (9) years and six (6) months imprisonment. If the Court imposes a concurrent sentence in this matter he will serve approximately three years for the commission of these offences, upon completion of the current sentence. If the Court imposes a consecutive sentence, the aggregate sentence for two cases will be twenty-one (13+08) years of imprisonment and his term will end in 2044.

57. The maximum sentence prescribed for Aggravated Robbery is 20 years imprisonment. Given the maximum sentence and the current sentencing practice reflected in *Tawake,* the imposition of a consecutive sentence on Mr Baleidrokadroka will be obnoxious to the two sentencing principles discussed above. He has already received a consecutive sentence in HAC 293 of 2017 under *Wise* sentencing regime. Another consecutive term of imprisonment will destroy any reasonable expectation of a useful life after his release. Therefore, I order that this sentence be served concurrent to the existing term of imprisonment.

Habitual Offender

58. In view of Mr Baleidrokodroka's past criminal record, I consider if he should be declared a habitual offender in terms of Sections 10, 11 and 12 of the SPA. Section 11(1) of the SPA lays down two prerequisites for the exercise of discretion to declare an offender a habitual offender. The first is that the offender should have been convicted of an offence in the nature prescribed under Section 10. The offence of Aggravated Robbery is covered under this section. The second is that the sentencing court having regard to the offender's previous convictions for offences of a similar nature must be satisfied that the offender constitutes a threat to the community.

59. The State has filed a record of previous convictions (RPC) issued by the Criminal Records Office (CRO). Mr Baleidrokadroka has been adversely recorded with 7 previous convictions 6 of them were for property-related offences of a similar nature. Having considered the previous convictions and the way these offences have been committed, I am satisfied that he constitutes a threat to the community. Therefore, Mr Baleidrokadroka is a suitable candidate to be declared a habitual offender.

60. **Summary**

i. **Mr Aselai Waqanivalu** is sentenced to an aggregate sentence of seven (7) years imprisonment with a non-parole period of six (6) years.

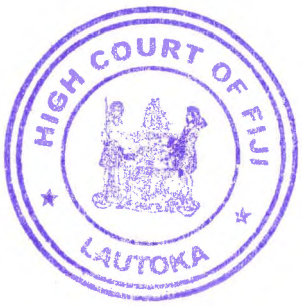
ii. **Mr Isaac James** is sentenced to an aggregate sentence of eight (8) years imprisonment with a non-parole period of seven (7) years.

iii. **Mr Maika Tovagone** is sentenced to an aggregate sentence of eight (8) years imprisonment with a non-parole period of seven (7) years. I order this sentence to be served concurrently with the existing prison term.

iv. **Mr Joeli Nukunawa** is sentenced to an aggregate sentence of six (6) years imprisonment with a non-parole period of five (5) years.

v. **Mr Emosi Baleidrokadroka** is sentenced to an aggregate sentence of nine (9) years and six (6) months imprisonment with a non-parole period of 8 years. I order this sentence to be served concurrently with the existing prison term. He is declared a habitual offender.

61. 30 days to appeal to the Court of Appeal if the offenders so desire.



Aruna Aluthge

Judge

23 July 2024

At Lautoka

Solicitors:

Office of the Director of Public Prosecution for State

1st, 2nd and 3rd Offenders in Person

Legal Aid Commission for 4th and 5th Offenders