

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

**Criminal Case No. HAC 94 of 2024**

**The State -v- Aseri Senikabuta**

**For the State: Ms. K. Dugan**  
**For the Accused: Ms. R. Nabainivalu**

**Date of Plea: 18<sup>th</sup> June 2024**  
**Date of Sentence: 12<sup>th</sup> August 2024**

**SENTENCE**

1. Aseri Senikabuta has pleaded guilty to the following offences on the Information filed on the 23<sup>rd</sup> April 2024: -

**INFORMATION BY THE**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

**ASERI SENIKABUTA with another** is charged with the following offences:

**COUNT ONE**  
*Statement of Offence*

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

*Particulars of Offence*

**ASERI SENIKABUTA with another**, on the 5<sup>th</sup> day of May 2023, at Suva in the Central Division, in the company of each other, entered the warehouse of the **MINISTRY OF RURAL MARITIME DEVELOPMENT and NATIONAL DISASTER MANAGEMENT** as trespassers with the intent to commit theft therein.

**COUNT TWO**  
*Statement of Offence*

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

*Particulars of Offence*

**ASERI SENIKABUTA with another**, on the 5<sup>th</sup> day of May 2023, at Suva in the Central Division, in the company of each other, dishonestly appropriated (stole) 1 x 15 horsepower Yamaha Engine, the property of **MINISTRY OF RURAL MARITIME DEVELOPMENT and NATIONAL DISASTER MANAGEMENT** with the intention of permanently depriving the **MINISTRY OF RURAL MARITIME DEVELOPMENT and NATIONAL DISASTER MANAGEMENT** of the said property.

2. He pleaded guilty to the Information on the 18<sup>th</sup> of June 2024, and he admitted the following Summary of Facts when it was outlined to him on the 9<sup>th</sup> of July 2024:

### 3. Summary of Facts

- (i) The Accused is Aseri Senikabuta, aged 37 and resident of Lot 15 Laqio Road, Davuilevu.
- (ii) The Complainant is Apolosi Vuli, Leading Hand employed by the Ministry of Rural Maritime Development and National Disaster Management Committee, of Lot 10 Vesivesi Road, Kinoya.
- (iii) On the 5<sup>th</sup> of May 2023, the Accused and another at Suva in the Central Division, the Accused and another person, at Suva entered the warehouse of the Ministry of Rural Maritime Development and National Disaster Management Committee as trespassers and they stole 1 x 15 horsepower Yamaha engine, the property of the said Ministry.
- (iv) On the 21<sup>st</sup> of March 2023, the complainant was tasked to return a 15 horsepower Yamaha engine, along with other properties to its rightful owner in Lau via boat transfer. He took the engine and the other properties to the Suva wharf; however the boat captain advised him that the boat leaving for Lau was full and they would not be able to take these properties.
- (v) The complainant then took the engine and the other properties to the Ministry's warehouse in Walu Bay for safekeeping awaiting the next boat to Lau.
- (vi) On the 16<sup>th</sup> of May 2023, the complainant received a directive that there was a boat leaving for Lau later that day and he was advised to pack the 15-horsepower engine and have it sent to the boat.
- (vii) The complainant sought the assistance of Avinash Prasad, Assets and Logistics Officer employed by the Ministry to collect the engine from the warehouse at Walu Bay. Upon accessing the warehouse, both the complainant and Prasad noticed that the engine was nowhere to be found in the warehouse.
- (viii) These officers then engaged the IT personnel of the Ministry, and they reviewed the CCTV footage from the warehouse beginning from the 21<sup>st</sup> of March 2023. The CCTV cameras had a view inside the warehouse and upon review, the complainant and Avinash Prasad noted that on the 5<sup>th</sup> of May 2023, between 8pm and 10 pm, the cameras went off. Prior to this time the engine was seen inside the warehouse, however when the cameras came back on the engine was missing. At all this time the only person seen in the footage was the security guard at the warehouse.

- (ix) The matter was then reported to the Police and the security guard was brought in for questioning. Upon questioning the security guard admitted to the allegations put to him and he confirmed to the interviewing officer that the offence was committed by himself and the Accused.
  - (x) On the 13<sup>th</sup> of September 2023, the Accused was arrested from his residence, and he was brought to Totogo Police Station. He was interviewed under caution, and he confirmed that he and the security guard gained access into the warehouse through the window by breaking the shutters and entering, before they extracted the 15 horse-power Yamaha engine and transported it via taxi.
  - (xi) The Accused then sold the stolen engine to Varun Kumar, self-employed of Lot 4 Dadakulaci Road for \$2, 000 cash. Varun Kumar then posted an advertisement on Facebook offering the 15 horsepower Yamaha engine for sale. Ashneel Chand, fisherman of Lokia, Koronivia, answered the advertisement and he purchased the engine from Varun Kumar for \$4, 000 and this transaction took place on the 21<sup>st</sup> of May 2023.
  - (xii) The Police executed a search warrant and seized the engine from Ashneel Chand on the 14<sup>th</sup> of September 2023.
  - (xiii) The Accused was subsequently charged with one count of Aggravated Burglary and one count of Theft and he was produced in the Suva Magistrate's Court on the 13<sup>th</sup> of March 2024.
  - (xiv) He was then arraigned in the High Court in Suva on the 27<sup>th</sup> of March 2024.
4. The Accused has admitted the Summary of Facts as outlined above. I have examined the plea, and I am satisfied that the summary of facts sets out all the elements of the two offences in the Information. I am also satisfied that the guilty plea is unequivocal therefore Aseri Senikabuta is convicted as charged on both accounts.
5. The Accused is a first offender and counsel has offered the plea in mitigation as follows:
6. Plea in Mitigation
- (i) The Accused is 37 years of age, and he is married to Josivini Adiqaito, a domestic worker and they have 7 children ranging in age from 12 years of age to the youngest child 2 months of age.

- (ii) He is currently a security officer employed by Victory Security Company earning approximately \$250 a week.
- (iii) He is also a part time student with Australia Pacific Training Coalition (APTC) studying Diploma in Wall and Floor Tiling.
- (iv) He stays at Lot 15 Mor Road, Laqio Davuilevu Housing, Nausori with his wife and 3 younger children. Their older 4 children are now staying with their maternal grandmother because of the financial difficulty they faced when he was in remand.
- (v) He admits to the summary of facts, and he understands that what he did was wrong, and he regrets his actions. He submits that it was poor decision making on his part.
- (vi) He is a first offender and a person of previous good conduct.
- (vii) He is truly remorseful for his actions, and he regrets what he did. He humbly apologises to the Court for his actions and promises not to reoffend or to appear in Court ever again in the future.
- (viii) He cooperated with the Police in their investigations, which led to the recovery of the stolen items. He is willing to reform should he be given an opportunity to do so and he asks for a second chance.
- (ix) He has entered an early guilty plea and in doing so he has saved the Court's time and the expenses of a full trial.
- (x) As stated above, there has been full recovery of the stolen items therefore the complainant has not suffered any further loss.
- (xi) For the offence of Aggravated Burglary, the maximum sentence is 17 years imprisonment and the Court of Appeal has set the new tariff in the case of Kumar and Vakatawa vs State AAU 33 of 2018 and AAU 117 of 2019 (24<sup>th</sup> November 2022.)
- (xii) Applying the above tariff, counsel submits that there was lesser harm in this matter as there was no evidence of harm in the property; no violence was used; no use of weapons; the victim did not suffer significant loss; and there was no evidence of physical and psychological harm.
- (xiii) Counsel submits that the tariff to be applied is to range from 1 to 5 years and counsel submits that an appropriate sentence would be an order for Community Work pursuant to section 15 (1) (e) of the Sentencing and Penalties Act 2009. Alternatively, the Court may consider recording the

conviction and discharging the Accused (conditional discharge) pursuant to section 15 (1) (g) of the Act.

- (xiv) Counsel therefore submits that the Court consider the lower end of the tariff, especially because he is young offender.
- (xv) For the second count of Theft, counsel refers to the case of Ratusili vs State [2012] FJHC 1249; HAA 11 of 2012 (1<sup>st</sup> August 2012) and submits that this offending was a simple theft and the tariff to be applied should be in the range of 2 months to 9 months imprisonment.
- (xvi) Counsel submits that in the circumstances, a suspended sentence is the most appropriate sanction bearing in mind the offending and his personal circumstances. A non-custodial sentence will also meet the proportionality of the offending and the sentence.

#### Sentencing Recommendations

7. The State filed the following sentencing recommendations:

- (i) The offence of Aggravated Burglary attracts a maximum sentence of 17 years imprisonment, and the offence of Theft attracts a maximum sentence of 10 years imprisonment.
- (ii) The tariff for this offence has now been settled by the Court of Appeal in the case of Avishkar Rohinesh Kumar & Sirino Vakatawa vs State [2022] FJCA 164; AAU 117 of 2019 (24 November 2022).
- (iii) The offence of Theft attracts a maximum sentence of 10 years imprisonment. The tariff was set by the case of Mikaele Ratusili vs State Criminal Appeal No. HAA 01 of 2012 (21<sup>st</sup> August 2012).
- (iv) As the offending in this case arose from the one transaction, the State proposes that the Court impose an aggregate sentence, pursuant to section 17 of the Sentencing and Penalties Act 2009.
- (v) The State submits that this was a planned offence, not opportunistic and the theft was committed inside government premises. These types of offences are prevalent in society today and all these factors aggravate the offending in this case.
- (vi) The Accused is a first offender, and he pleaded guilty at the earliest part of these proceedings. The stolen item has also been recovered and these factors mitigate the offending.

- (vii) He spent 48 days in custody; therefore, this period should be deducted from the sentence as time already served.
- (viii) The State submits that the facts of this case do not support an application for non-conviction. The two counts on the Information are serious offences attracting sentences of imprisonment over 10 years and non-conviction is reserved for morally blameless people or technical breaches and offending such as this must be met with appropriate sentence.
- (ix) The State submits that the offending in this case requires a commensurate sentence.

### Analysis

8. The Accused has pleaded guilty to Aggravated Burglary on the first count and Theft on the second count.
9. The two offences were committed as part of one transaction and I am satisfied that it is appropriate to impose an aggregate sentence pursuant to section 17 of the Sentencing and Penalties Act 2009.
10. I find that the Accused's personal culpability is high and the offending in this case requires a sentence of imprisonment.
11. The offending in this case is serious and premeditated therefore an order for non-conviction is not available, nor appropriate.
12. The following factors aggravate the offending: -
  - (a) Prior planning as he and his accomplice used their inside knowledge to commit the offence, shutting down the CCTV camera and gaining access while it was down
  - (b) Breach of trust as he and his accomplice were both security officers entrusted with securing these government premises and instead they stole from these premises.
13. The following factors mitigate the offending: -
  - (a) He cooperated with the Police in their investigations culminating in his guilty plea in Court.

- (b) There was full recovery although this was not voluntary and the stolen engine was only recovered after his admission to the Police
- (c) His previous good conduct as a first offender.

14. The Accused has been remanded for a total of 48 days and this period will be deducted as time already served.
15. In preparing the aggregate sentence, I will apply the tariff for the more serious offence, Aggravated Burglary.
16. The tariff was set out by the Court of Appeal in the case of Avishkar Rohinesh Kumar & Sirino Vakatawa vs State [2022] FJCA 164; AAU 117 of 2019 (24 November 2022).
17. The Court of Appeal set out the following principles for a sentencing Court to consider in sentencing for the offence of Aggravated Burglary: -

“The court should determine the offence category among 01-03 using *inter alia* the factors given in the table below:

- **Category 1** - Greater harm (High)
- **Category 2** - Between greater harm **and** lesser harm (Medium)
- **Category 3** - Lesser harm (Low)

<b><i>Factors indicating greater harm</i></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
Context of general public disorder
<b><i>Factors indicating lesser harm</i></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

[76] 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 or not 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)	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: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years	Starting Point: 09 years Sentencing Range: 08–12 years
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: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years

[77] The following table contains a **non-exhaustive** list of higher and lower culpability factors relating to the offending. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

<i><b>Factors indicating higher culpability</b></i>
Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence).
Child or the elderly, the sick or disabled at home (or return home) when offence committed
A significant degree of planning, or organization or execution. Offence committed at night.
Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.
Equipped for burglary (for example, implements carried and/or use of vehicle)
Member of a group or gang
<i><b>Factors indicating lower culpability</b></i>
Offence committed on impulse, with limited intrusion into property or little or no planning
Offender exploited by others or 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
Mental disorder or learning disability, where linked to the commission of the offence



[78] The following table contains a **non-exhaustive** list of aggravating and mitigating factors relating to the offender. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

<i>Factors increasing seriousness</i>	<i>Factors reducing seriousness or reflecting personal mitigation</i>
<b>Statutory aggravating factors:</b>	Genuine remorse displayed, for example the offender has made voluntary reparation to the victim
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	Subordinate role in a group or gang No previous convictions or no relevant/recent convictions.
Offence committed whilst on bail or parole.	Cooperation with the police or assistance to the prosecution
<b>Other aggravating factors include:</b>	Good character and/or exemplary conduct
Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution	Determination, and/or demonstration of steps taken to address addiction or offending behaviour
Established evidence of community impact	Serious medical conditions requiring urgent, intensive or long-term treatment
Commission of offence whilst under the influence of alcohol or drugs	Age and/or lack of maturity where it affects the culpability and responsibility of the offender
Failure to comply with current court orders	Lapse of time since the offence where this is not the fault of the offender
Offence committed whilst on licence	Mental disorder or learning disability, where not linked to the commission of the offence
Offences Taken Into Consideration (TICs)	Any other relevant personal considerations such as the offender being sole or primary care giver for dependent relatives or has a learning disability or mental disorder which reduces the culpability

[79] Once the head sentence is arrived at reductions for guilty pleas and time spent in remand could be made. If sentencing is for more than one offence, totality principle should also be considered before recording the actual sentence to be served.

18. The offending in this case falls into the “Low” end of seriousness and as the offence was committed with another offender, the tariff will range from 1 to 5 years imprisonment.


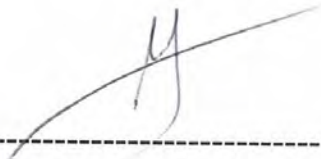
19. In preparing the sentence I adopt a starting point of 3 years imprisonment.

20. For the aggravating factors set out above I add 3 years to the sentence and for the mitigating factors I reduce the sentence by 2 years.
21. For the previous good conduct the sentence is further reduced by 1 year leaving an interim aggregate sentence of 3 years imprisonment.
22. The Accused was remanded in this matter for 48 days therefore this will be deducted as time already served leaving a final sentence of 2 years 11 months and 17 days.
23. This is a sentence under 3 years therefore it may be suspended in the appropriate circumstances as set out at section 26 of the Sentencing and Penalties Act 2009.
24. In this instance, the offending lies at the Low end of harm for such offences. There has been full recovery of the stolen items and the Accused is a first offender with a previously unblemished record.
25. After considering the circumstances of the offending and the personal circumstances of the offender, I find that it is appropriate to partially suspend the sentence.

**Aseri Senikabuta this is your sentence: -**

- 1. For the offence of Aggravated Burglary and Theft I impose an aggregate sentence of 2 years 11 months and 17 days on you.**
- 2. You will serve 3 months and 17 days and the balance of your sentence is suspended for 3 years**

**30 days to appeal**

  
  
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**Mr. Justice U. Ratuville**  
**Puisne Judge**

*cc: Office of the Director of Public Prosecution  
Office of the Legal Aid Commission*