

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 100 of 2024

BETWEEN: THE STATE

A N D:

**WAISEA TOKAIQALI
LEONE PATERESIO
ATUNAISA NAIKA**

Date of Sentencing hearing:
Date of Submissions: 18th February 2025
Date of Sentence: 28th February, 2025

SENTENCE

BACKGROUND INFORMATION

1. The accused persons were charged by the following information filed by the Director of Public Prosecutions dated 12th of September, 2024:

Statement of offence

AGGAVATED ROBBERY: Contrary to section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

WAISEA TOKAIQALI, LEONE PATERESIO and ATUNAISA NAIKA on the 17th day of June, 2024, at Lautoka in the Western Division, in the company each other stole 1 x Samsung Galaxy A 10 mobiles Phone and cash amounting to \$60.00 **ASHNEEL SHARMA** being property of MANSOOR and immediately before stealing used force for the said Mansour Ali.

2. The summary of facts admitted by the accused persons are as follows:

- a) On 17th of June 2024, the three accused person after conducting their shopping at CJ Patel Supermarket approached the complainant who was the driver of Taxi registration number LK 1457 in front of the Supermarket and engaged his taxi service to drop them at Tavakubu back road.
 - b) Upon arrival at Tavakubu the three accused told the complainant to open the boot of the taxi and upon doing so one of the accused grabbed him from behind, another accused started punching his face and at the same time the accused asked him for money. The third accused ransacked the taxi. The complainant started fighting back but the three accused over powered him.
 - c) A nearby resident living close to the scene saw what happened and started yelling at the accused persons to stop. The accused persons than ran towards the bush.
 - d) Later it was discovered by the complainant that the accused persons stole the following items from him;
 - 1x A10 Samsung phone
 - Cash amounting to \$60.00
 - e) The complainant was also medically examined and the findings of the doctor revealed the following ;
 - Laceration on the right earlobe
 - Bruises on the right eye.
 - The medical report noted the age of injuries were less than 24 hrs.
 - f) All three accused were cautioned interviewed by police. The police also retrieved CCTV footage from CJ's Supermarket and were able to identify the accused during investigations. During the said investigation it was found that accused 1 had sold the mobile phone to one resident in Tomuka.
3. After considering the summary of facts read by the State Counsel and admitted and agreed upon by the three accused, this Court is satisfied that the three accused person have entered an unequivocal plea of guilty on their own freewill.
 4. This court is also satisfied that the accused person have fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence committed. The three accused person also admitted committing the offence with another.
 5. In view of the above, this court finds the three accused person guilty as charged and convicted all three accused accordingly. Counsels for all three accused including State counsel filed **sentence** and mitigating submissions for which this court is grateful.

6. The learned counsel for the **1st accused Waisea Tokaiqali** presented the following mitigation and personal details:
 - a. The accused is 20 years old and single
 - b. He is currently unemployed, however prior to being remanded was employed as a loader for Fiji Sugar Corporation earning an estimate salary of \$120.00 a week.
 - b. He supports his parents
 - d. Partial recovery of all the stolen item
 - e. Regrets what he has done;
 - f. Resides in Vakatora Housing with relatives
 - g. Co-operated with the police;
 - h. Pleaded guilty at the earliest opportunity.
 - i. He is a first offender

7. Counsel for **2nd accused Leone Pateresio** submitted the following mitigation and personal details;
 - a. 19 years of age
 - b. Casual laborer of Fiji Sugar Corporation and earns \$ 185.00 per week.
 - c. He currently resides at Tomuka Lautoka with his parents, sister and cousin brother.
 - d. Sole bread winner in the family and is dependent on financial support.
 - e. His highest level of education was form 7 at Ba Provincial School in Lautoka.
 - f. He is a first offender.

8. Counsel for the **3rd Accused Atunaisa Naika** presented the following mitigation and personal details.
 - a. He is 19 years of age
 - b. He is single and unemployed.
 - c. He supports his step father. He resides in Naviago Lautoka
 - d. He sis a first Offender

TARIFF

9. The maximum penalty of the offence of Aggravated Robbery is 20 years imprisonment. The Supreme Court in the case of **The State v EPARAMA**

TAWAKE, had updated the applicable tariff for Aggravated Robbery, by the pronouncement below;

“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 <i>(Offender alone and without a weapon)</i> | AGGRAVATED ROBBERY <i>(Offender either with another or with a weapon)</i> | AGGRAVATED ROBBERY <i>(Offender with another and with a weapon)</i> |
|---------------|---|--|--|
| HIGH | <i>Starting point: 5 years imprisonment Sentencing Range: 3 – 7 years</i> | <i>Starting Point: 7 years imprisonment Sentencing Range: 5 – 9 years</i> | <i>Starting Point: 9 years imprisonment Sentencing Range: 6 – 12 years imprisonment</i> |
| MEDIUM | <i>Starting point: 3 years imprisonment Sentencing Range: 1 – 5 years</i> | <i>Starting Point: 5 years imprisonment Sentencing Range: 3 – 7 years imprisonment</i> | <i>Starting point: 7 years imprisonment Sentencing Range: 5 – 9 years imprisonment</i> |
| LOW | <i>Starting Point: 18 months imprisonment Sentencing Range: 6 months – 3 years.</i> | <i>Starting Point: 3 years imprisonment Sentencing Range: 1 – 5 years imprisonment</i> | <i>Starting point: 5 years imprisonment. Sentencing Range: 3 – 7 years imprisonment.</i> |

10. Waisea Tokaiqali, Leone Pateresio and Atunaisa Naika, you have committed the offence of Aggravated Robbery with the assistance of one another. Therefore, in assessing the objective seriousness of offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability, the manner in which you committed the offence and the

harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in Section 4 of the Sentencing and Penalties Act 2009.

11. In the present matter, you have committed this offence on a taxi driver who ventured to provide his services to you. Considering the circumstances of this case, **Waisea Tokaiqali, Leone Pateresio** and **Atunaisa Naika**, I start your **sentence** with a starting point of 5 years imprisonment, i.e. in the medium-range of the applicable tariff.
12. On promulgating the above table for tariff for the offence of Robbery in the case of The **State v EPARAMA TAWAKE**, the Supreme Court has also ventured to identify aggravating and mitigating factors, as below:

“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.*

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 of to the victim.*

AGGRAVATING FACTORS

13. The following aggravating factors are obvious:

a. No regard to victim's property

The accused person did not have any regard for the property rights of the owner. The accused persons ransacked the taxi of the complainant and took his belongings from him.

b. Prevalence of the offending

There has been an increase in such offending that people are reluctant to walk on the streets. The accused person used force and violence to overpower the complainant who sustained injuries from the same.

c. Planning

From the facts there appears to be degree of planning involved. The accused persons had planned their actions holding boxes in their hands in front of a Supermarket pretending they came back shopping and urgently in need of a taxi to convey them to their destination. The admission was made in accused 1's caution interview notes. The act of planning was evident in the way the executed their plan upon reaching their destination

Prosecution informs this Court that you have pre-planned the commission of this robbery with others and that it was committed on an unsuspecting vulnerable taxi driver who was proceeding with his day to day business.

14. **Waisea Tokaiqali, Leone Pateresio and Atunaisa Naika**, the operators of taxis provide an invaluable service to our country in many ways. In this regard, on one hand they provide a valuable day to day mode of transportation to the citizens of our country and on the other hand they provide the inextricable support service to the tourist industry of our country, an industry that is the major contributor to the economy of Fiji. In relation to robbery of taxi drivers, it is pertinent to highlight the observations made by His Lordship Justice Gerard Winter in the case of **Vilikesa Koroivuata v State** as below:

Violent and armed robberies of taxi drivers are all too frequent. The taxi industry serves this country well. It provides a cheap vital link in short and medium haul transport. Taxi drivers are particularly exposed to the risk of robbery. They are defenseless victims. The risk of personal harm they take every day by simply going about their business can only be ameliorated by harsh deterrent sentences that might instill in perspective muggers the knowledge that if they hurt or harm a taxi driver, they will receive a lengthy term of imprisonment."

15. As I have mentioned above, and taking into account the objective seriousness of the offence committed a 5 years imprisonment term (middle range of the tariff) is selected as the starting point of the sentence for the accused person. The sentence is increased by 2 years for the aggravating factors, but reduced for 2 years and 6 months mitigation and good character. The sentence is now 4 years and 6 months imprisonment.
16. The sentence is further reduced for 1 year 5 months for early guilty plea and the sentence now stands at 3 years and one (01) month imprisonment. Hence, it is also noted that all three accused were remanded in custody from then 20th of June 2024 upon their arrest and were granted bail on the 25th of July 2024. They were kept in custody and remanded at Natabua Correction Centre for a period of one (01) month before they were granted bail in the High Court. The time spent in remand will be deducted from their final term of imprisonment leaving the remainder of time to be served as 3 years.
17. The final sentence for one count of robbery against the three accused Waisea Tokaiqali, Leone Pateresio and Atunaisa Naika is 3 years imprisonment.
18. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.

(31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

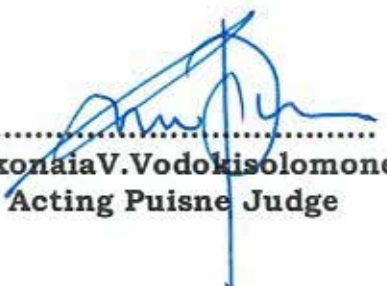
"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of

imprisonment, there must be factors rendering immediate imprisonment inappropriate."

19. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended sentence.
20. All three accused person are young first offenders (between 19 to 20 years at the time of the offending), of good character, have pleaded guilty at the earliest opportunity, are remorseful, cooperated with police and they take full responsibility of their actions.
21. However, I give priority to the principle of special and general deterrence in sentencing the offenders. The risk taxi driver's bear in providing an essential service to the community is immense and the message must be clear that robbing or hurting a taxi driver or a public transport provider will be met with severe consequences.
22. I have considered suspension. The three offenders are person of previous good character. However, a full suspension for the three offenders will send a wrong signal or message to society that crime does not pay. While I consider that a wholly suspended sentence is not appropriate in this case, in view of the circumstances of the offending, a partially suspended sentence will give the offender the opportunity to rehabilitate and mend their ways.
23. In summary all three Accused Persons **Waisea Tokaiqali, Leone Pateresio and Atunaisa Naika** are sentenced to 3 years imprisonment, one year of which is to be served in custody, with the remaining 2 years to be suspended for 4 years.
24. 30 days to appeal to the Court of Appeal.




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Sekoniaia V. Vodokisolomone
Acting Puisne Judge

At Lautoka

28th day of February, 2025.

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused