

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

**Crim. Case No: HAC 244 of 2023**

**STATE**

**v**

**LUKE TIKOIYAWA LESUMAINIUSILADI**

**Counsel:** Mr. S. Seruvatu for the State  
Mr. A. Prasad for the Accused

**Date of Mitigation/Sentencing hearing:** 8 July 2025

**Date of Sentencing:** 24 July 2025

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**SENTENCE**

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1. **Luke Tikoiyawa Lesumainiusiladi**, the accused, is indicted with *Aggravated Burglary* and *Theft*, laid out as follows in the Information by the Acting Director of Public Prosecutions dated and filed on 12 September 2023:

**COUNT 1**

*Statement of Offence*

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

*Particulars of Offence*

**LUKE TIKOYAWA LESUMAINIUSILADI** and **TEVITA SOKO** in the company of each other, on the 15<sup>th</sup> day of July, 2023 at Samabula in the Central Division, entered into the property of one **SHASHI VIJAY SINGH** as trespassers, with the intention to commit theft therein.

**COUNT 2**

*Statement of Offence*

**THEFT**: Contrary to section 291(1) of the Crimes Act 2009.

*Particulars of Offence*

**LUKE TIKOYAWA LESUMAINIUSILADI** and **TEVITA SOKO** in the company of each other, on the 15<sup>th</sup> day of July, 2023 at Samabula in the Central Division, dishonestly appropriated 1 x Promex circular saw, 1 x Samsung J2 Core mobile phone, 1 x Samsung J1 mobile phone, 1 x button mobile phone, assorted coins, 1 x pair Adidas shoes and 1 x Sunbeam electric kettle, the property of **SHASHI VIJAY SINGH** with the intention of permanently depriving **SHASHI VIJAY SINGH** of his properties.

2. On 24 June 2025 Luke Tikoiyawa Lesumainiusiladi pleaded *guilty* to Count 1: Aggravated Burglary and Count 2: Theft voluntarily and unequivocally, duly confirmed by his Legal Aid counsel Mr. Prasad.
3. The *Summary of facts* was read out by Prosecutor Mr. Seruvatu on 8 July 2025, and the accused via his Legal Aid counsel Mr. Prasad, voluntarily admitted the prosecution's *Summary of facts*, followed by the Court formally convicting Luke Tikoiyawa Lesumainiusiladi of Count 1: Aggravated Burglary and Count 2: Theft.

4. Plea in mitigation and sentencing hearing was also held on 8 July 2025. The matter was then adjourned for sentencing, and this is the Court's finding on sentence.
5. The accomplice Tevita Soko had earlier pleaded *guilty* to Count 1: Aggravated Burglary and Count 2: Theft and duly convicted, and sentenced on 3 June 2024 to a concurrent custodial term of 2 years 22 days with the non-parole period of 18 months.

### **Brief facts of the Aggravated burglary and Theft**

6. On 15 July 2023, the complainant Shashi Vijay Singh and his mother left their home situated at Lot 2 Kaukimoce Road, Namadi Heights, Suva, at about 9.00 am to go shopping at Extra Supermarket, and upon returning at 12.00 midday, they noticed that their house had been ransacked and things were scattered inside the house. The complainant also noticed that three louver blades from the back room were removed, which was most probably where the burglars gained entry into the house, and the following items missing: i) 1 x Promex circular saw valued at \$69; ii) 1 x Samsung J2 Core mobile phone valued at \$100; iii) 1 x Samsung J1 mobile phone valued at \$100; iv) 1 x button phone; v) assorted coins; and vi) 1 x pair of Adidas shoes. The complainant then reported the matter to the police. In the course of the investigation, the complainant's neighbour namely Mary Loganivalu stated that on 15 July 2023 at about 9.05 am, she saw the complainant securely locking his house and went shopping, and at about 9.30 am, she saw the accused Luke Tikoiyawa Lesumainiusiladi whom she personally knows for the past 10 years in her neighbourhood, standing at the back of the complainant's house next to the louver blades and calling out to his accomplice Tevita Soko who was standing on the roadside adjacent to Kaukimoce Road. After a while Mary Loganivalu heard Luke Tikoiyawa Lesumainiusiladi telling the accomplice Tevita Soko to burgle the house really fast. On 19 July 2023, PC 5469 Samuela and another police officer were on mobile patrol along Archie Seeto Road, Namadi Heights, Suva, and upon seeing the accomplice Tevita Soko walking along the road, they stopped the vehicle and arrested him and also explained to him the reason for his arrest. The police officers then took Tevita Soko to the Samabula Police Station and handed him over to the charge room personnel. Tevita Soko was later taken for crime scene reconstruction, and the following stolen items were

recovered by the police from individuals whom Tevita Soko and Luke Tikoiyawa Lesumainiusiladi had sold the items to:

- a) 1 x Sunbeam electrical kettle recovered from a Rohitesh Lal of Padam Lala settlement who stated that his wife bought the kettle from two I-Taukei youths who told her that the kettle was not stolen;
- b) 1 x Promex circular saw recovered from a Jesoni Taumaimacuata of Archie Seeto Road who stated that he bought it for \$30, and did not know that it was stolen; and
- c) 1 x Samsung J2 Core mobile phone seized from the accused Luke Tikoiyawa Lesumainiusiladi's house.

On 20 July 2023, the aforesaid items were shown to the complainant Shashi Vijay Singh and he positively identified the same items as being stolen from his house on 15 July 2023. The complainant identified the Sunbeam electric kettle as his based on the sticker on the box, gifted to him by his brother who resides in New Zealand. As for the Promex circular saw, the complainant stated that it is still new as he had only used it once. The complainant identified the Samsung J2 Core mobile phone as his based on a peculiar small crack on the left corner of the left side screen. The accused Luke Tikoiyawa Lesumainiusiladi was also arrested by the police, interviewed under caution on 19 – 20 July 2023, and subsequently charged. In his caution interview statement, Luke Tikoiyawa Lesumainiusiladi fully admitted the *Aggravated Burglary* and *Theft*.

### **Count 1 - Aggravated Burglary sentence analysis**

7. The maximum sentence for *Aggravated Burglary* contrary to section 313(1)(a) of the Crimes Act 2009 is 17 years imprisonment.
8. The Fiji Court of Appeal in Kumar v State [2022] FJCA 164; AAU117.2019 (24 November 2022) at paragraphs 75 to 78, held:

*[75] As the first step, the court should determine harm caused or intended by reference to the level of harm in the offending to decide whether it falls into High, Medium or Low category. The factors indicating higher and lower culpability along with aggravating and mitigating factors could be used in the matter of deciding the sentencing range. This would allow sentencers wider discretion and*

*greater freedom to arrive at an appropriate sentence that fits the offending and the offender.*

*Determining the offence category*

*The court should determine the offence category among 1 – 3 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)
<b>HIGH</b>	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
<b>MEDIUM</b>	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
<b>LOW</b>	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

*[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.*

<b><i>Factors indicating higher culpability</i></b>
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)
<b><i>Factors indicating lower culpability</i></b>
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.*

<b><i>Factors increasing seriousness</i></b>	<b><i>Factors reducing seriousness or reflecting personal mitigation</i></b>
<b><i>Statutory aggravating factors:</i></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><i>Other aggravating factors include:</i></b>	Good character and/or exemplary conduct
Any steps taken to prevent the victim reporting the incident or	Determination, and/or demonstration of steps taken to address addictions or offending behaviour

obtaining assistance and/or from assisting or supporting the prosecution	
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

9. Based on the Fiji Court of Appeal sentencing guideline for *Aggravated Burglary* in Kumar v State (supra) and the Prosecution's *Summary of facts*, the **category of harm** in this instant is **low**, thus the corresponding sentencing range of 1 to 5 years imprisonment, and starting point of 3 years imprisonment.
10. With the **starting point** of 3 years imprisonment, 1 year 6 months is added for the aggravating circumstances of the offending, in particular, the unlawful trespass and extent of damage done to the complainant's house and property; non-recovery and loss of some of the complainant's hard-earned properties; the emotional and psychological trauma endured by the complainant and his mother due to the offending; the accused person's total disregard of the utility and value of the complainant's properties, and lack of respect for the complainant's dwelling home; and prevalence of *Aggravated Burglary*.
11. Having considered defence counsel's plea in mitigation, 1 year is deducted considering that the accused is aged 24 years with no prior conviction; recovery of some of the complainant's hard-earned properties; single; employed as a painter and still reside with

his parents at Salato Road, Namadi Heights, Suva, arriving thus far to the interim custodial term of 3 years 6 months.

12. The 3 years 6 months is further deducted as follows:

i) For the **guilty plea** on 24 June 2025, 1 year 2 months is deducted being the one third deduction for the guilty plea in saving the Court's time and resources, and relieving the complainant of testifying and reliving the trauma due to the *Aggravated Burglary*. See 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) 4 months 7 days (i.e. 127 days) is further deducted for **time spent in custody**. See Sentencing and Penalties Act 2009, s.24; Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 7-11.

13. Thus, the sentence for Count 1: Aggravated Burglary is 1 year 11 months 23 days.

### **Count 2 – Theft sentence analysis**

14. The maximum sentence for **Theft** contrary to section 291(1) of the Crimes Act 2009 is a custodial term of 10 years.

15. In terms of the sentencing tariff for *Theft*, Justice Vincent Perera (as he then was) held in Waqa v State [2015] FJHC 729; HAA017.2015 (5 October 2015) at paras. 10-14:

#### *Tariff for Theft under section 291 of the Crimes Decree*

*10. After considering a number of decisions of this court on tariff for the offence of Theft, I find that the court has opined the lower end to be 2 months imprisonment and the higher end to be 3 years imprisonment. (See Navitalai Seru v State [2002] FJHC 183; State v Saukilagi [2005] FJHC 13; Chand v State [2007] FJHC 65; Kaloumaira v State [2008] FJHC 63; Chand v State [2010] FJHC 291; Ratusili v State [2012] FJHC 1249; State v Koroinavusa*

[2013] FJHC 243; *Lal v State* [2013] FJHC 602; *State v Batimudramudra* [2015] FJHC 495).

11. An imprisonment of 2 to 9 months has been the tariff recognised under the now repealed Penal Code for a first offender who commits the offence of Theft. Section 262 of the Penal Code specified three different penalties for the offence of Theft as follows:

a) First offence of Theft (simple larceny) – 5 years

b) Simple larceny committed after having been previously convicted of a felony – 10 years

c) Simple larceny committed after having been previously convicted of a misdemeanor – 7 years

12. However, it is pertinent to note that the Crimes Decree 2009 does not specify different penalties for Theft based on previous convictions. The only penalty provided under section 291(1) of the Crimes Decree is an imprisonment for 10 years.

13. In view of the fact that the Crimes Decree has increased the maximum penalty for Theft from 5 years as stipulated in the Penal Code to 10 years, it is logical that the tariff for Theft should also be increased. Further, it is no longer the law in Fiji to recognise a different sentence or a tariff for Theft for offenders with previous convictions.

14. Considering all the above factors and the decisions of this court, I am inclined to hold the view that the tariff for Theft is 4 months to 3 years imprisonment.

16. The sentencing range for Theft is 4 months to 3 years imprisonment, and for this instant, I take the starting point of 1 year.

17. 1 year 6 months is added to the 1 year for the aggravating circumstances of the Theft bearing in mind the stolen properties and considerable loss to the complainant including the emotional and psychological trauma sustained by the complainant due to the theft; the accused person's total disregard of the utility and value of the complainant's properties, and extent of damage done to the complainant's home; minimal recovery of the stolen properties including prevalence of Theft.

18. For the mitigating circumstances, I deduct 1 year leaving the balance of 1 year 6 months.

19. Due to the guilty plea, I further deduct 6 months being the one third, and further deduction of 127 days i.e. 4 months 7 days for the time spent in custody, resulting in the sentence of 7 months 23 days imprisonment for Count 2: Theft.

**Totality principle of sentencing**

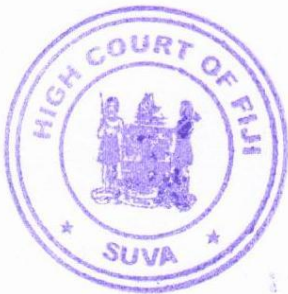
20. Considering the Totality principle of sentencing and relevant provisions in the Sentencing and Penalties Act 2009, the custodial terms of 1 year 11 months 23 days for Count 1: Aggravated Burglary and 7 months 23 days for Count 2: Theft are hereby made **concurrent** resulting in the custodial term of 1 year 11 months 23 days.

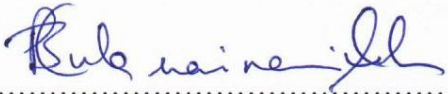
21. The 1 year 11 months 23 days custodial term is not to be suspended, and pursuant to section 18(3) of the Sentencing and Penalties Act 2009, I have decided not to order a non-parole period.

**CONCLUSION**

22. Luke Tikoiyawa Lesumainiusiladi stands convicted for Count 1: Aggravated Burglary and Count 2: Theft, and hereby sentenced to a custodial term of **1 year 11 months 23 days**.

23. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

**At Suva**

24 July 2025

**Solicitors**

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused