

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. HAA 17 OF 2025**

IN THE MATTER of an  
Application for Leave to Appeal  
out of Time filed by the Director  
of Public Prosecutions

AND IN THE  
MATTER of an Appeal from the  
sentencing decision of the  
Magistrates Court at Nadi in  
Criminal Case Nos. 326 of 2024,  
332 of 2024 and 335 of 2024.

**BETWEEN:**

**THE STATE**

**APPLICANT**

**AND:**

**AMINIASI SAUCOKO**

**RESPONDENT**

Counsel:

Ms. R. Uce for Applicant

Ms N. Sharma for Respondent

Date of Hearing: 15 September 2025

Date of Judgment: 14 October 2025

## JUDGMENT

1. The Respondent was charged in the Magistrates Court at Nadi in three separate cases, namely CF 326 of 2024, CF 332 of 2024 and CF 335 of 2024.

In criminal case number CF 326 of 2024, the charge reads:

### FIRST COUNT

Statement of Offence (a)

BURGLARY: Contrary to section 312 (1) of the Crimes Act 2009

Particulars of Offence (b)

Aminiasi Saucoko, between the 5th day of March, 2024 to the 10th day of March, 2024 at Nadi in the Western Division, entered into the house of Walter Miculan as trespassers, with intent to commit an offence.

### SECOND COUNT

Statement of Offence (a)

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

Particulars of Offence (b)

Aminiasi Saucoko, between the 5h day of March, 2024 to the 10h day of March, 2024 at Nadi in the Western Division, dishonestly appropriated 1 x pair of orange cubs flip flop valued at \$90.89, 1 x OPPO mobile phone valued at \$227.23, 1 x school bag valued at \$61.00, 1 x 760ml espero liquor bottle valued at \$30.00 and 1 x 750ml Absolute Vodka bottle valued at \$150.00 all to the total value of \$559.12 the property of Walter Miculan with the intention of permanently depriving the said Walter Miculan.

In criminal case number CF 332 of 2024, the charge reads:

### FIRST COUNT

Statement of Offence (a)

BURGLARY: Contrary to section 312 (1) of the Crimes Act 2009

Particulars of Offence (b)

Aminiasi Saucoko, on the 11<sup>th</sup> day of March 2024 at Nadi in the Western Division, entered into the house of Charles Elhomisi as trespassers, with intent to commit an offence.

SECOND COUNT

Statement of Offence (a)

THEFT: Contrary to section 291 (1) of the Crimes Act 2009  
Particulars of Offence (b)

Aminiasi Saucoko, on the 11<sup>th</sup> day of March 2024 at Nadi in the Western Division, dishonestly appropriated 1 x Swatch wristwatch valued at \$ 800 and 1x Red & Black flip flop valued at \$60.00 all to the total value of 860.00 the property of Charles Elhomisi with the intention of permanently depriving the said Charles Elhomisi.

In criminal case number CF 335 of 2024, the charge reads:

FIRST COUNT

Statement of Offence (a)

BURGLARY: Contrary to section 312 (1) of the Crimes Act 2009

Particulars of Offence (b)

Aminiasi Saucoko, between the 21<sup>st</sup> day of March 2024 to the 22<sup>nd</sup> day of March, 2024 at Nadi in the Western Division, entered into the house of Lara Chung as trespasser, with intent to commit an offence.

SECOND COUNT

Statement of Offence (a)

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

Particulars of Offence (b)

Aminiasi Saucoko, between the between the 21<sup>st</sup> day of March 2024 to the 22<sup>nd</sup> day of March, 2024at Nadi in the Western Division, dishonestly appropriated AUD 13,000 (FJD 19,271.24) cash and FJD 200 cash all to the total value of \$ 19,471.24, the property of Lara Chung with the intention of permanently depriving the said Lara Chung.

2. The Respondent in all three cases pleaded guilty to the charges on his own free will and admitted the summary of facts. He was convicted as charged and the Learned Magistrate sentenced the Respondent on 7 March 2025.
3. The Respondent had been in remand for 11 months pending his sentence. The Learned Magistrate discounted the remand period in all three cases and sentenced the Respondent to 3 months imprisonment in CF 326 of 2024, 5 months' imprisonment in CF 332 of 2024

and 5 months' imprisonment in CF 335 of 2024. The sentences in each case were made concurrent to his serving sentences.

4. Being dissatisfied with the sentences, the Applicant on 25 April 2025 filed a notice of motion with supporting affidavit for enlargement of time to appeal the sentence imposed by the Learned Magistrate. The deponent of the Affidavit was Sheetal Chand, a Litigation and Registry Clerk of the Office of the Director of Public Prosecutions (ODPP).
5. The Respondent through the Legal Aid Commission filed a purported affidavit in reply on 09 September 2025 and objected to the application with two preliminary objections. The affidavit in reply is defective as it is not dated. Despite this defect I proceed to consider the preliminary objections in the interests of justice.
6. The 1<sup>st</sup> objection was that a Litigation and Registry Clerk of the ODPP has no legal authority to make an affidavit on the Applicant's behalf.
7. The Litigation and Registry Clerk has been authorised by the Acting DPP to make the affidavit. She no doubt had access to the correspondence, documents and other information relevant to the appeal and therefore, is capable of deposing facts in the affidavit after perusing those documents in her official capacity. Therefore, there is no merit in this objection.
8. The 2<sup>nd</sup> objection has been that the Applicant has filed one appeal for three sentencing decisions entered in three separate files and therefore defective in law. The Respondent further states that this procedural defect is prejudicial to him.
9. Although the impugned sentencing decisions were entered in three separate files, given the circumstances under which the sentences were imposed and the nature of the relief sought by the Applicant, the appeal cannot be decided effectively without perusing all three files.

10. The three cases concerned a series of burglaries allegedly committed by the Respondent between 5 and 22 of March 2024 in Denarau. The Respondent had taken a progressive approach and pleaded guilty to the charges in all three files on 25 October 2024.
11. When one of the cases was called, the Respondent had informed the Learned Magistrate that he will take progressive approach in that matter and all other pending matters before Court and requested the Learned Magistrate to consider all his pending matters during sentencing. [Paragraph 8(vii) of Respondent’s affidavit]. Accordingly, the Learned Magistrate has imposed the sentences in all three cases on 7 March 2025.
12. There is no legal impediment to consider several appeals together when the parties are the same and the appeal grounds are interconnected. There is no merit in the 2<sup>nd</sup> objection.
13. The law relevant to the enlargement of time for appeals against a sentence is provided in the proviso to Section 248(2) of the Criminal Procedure Act (CPA). The relevant parts of the section provide as follows:

- 248 (1) Every appeal shall be in the form of a petition in writing signed by the appellant or the appellant’s lawyer, and within 28 days of the date of the decision appealed against –
- (2) The Magistrates Court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.  
.....
  - (3) For the purposes of this section and without prejudice to its generality, “good cause” shall be deemed to include –  
.....
  - (c) a case in which the sanction of the Director of Public Prosecutions or of the Commissioner of the Fiji Independent Commission Against Corruption is required by any law;

14. The Supreme Court in *Kumar v State; Sinu v State*<sup>1</sup> set out the principles for extension of time to appeal at paragraph [4]:

Appellate courts examine five factors by way of a principled approach to such applications. These factors are:

- (i) The reason for the failure to file within time.

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<sup>1</sup> [2012] FJSC 17; 2 CAV0001.2009 (21 August 2012)

- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate courts consideration.
- (iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
- (v) If time is enlarged, will the respondent be unfairly prejudiced?

15. In *Rasaku v State*<sup>2</sup>, the Supreme Court confirmed the above principles and said at [21]:

These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.

16. The Supreme Court *Kumar v State; Sinu v State* adopted the approach in *Queen v Brown*<sup>3</sup>:

The principle is that, if any reasonable explanation is forthcoming, and if the delay is relatively, slight, say for a few days or even a week or two, the Court will readily extend the time, provided that there is a question which justifies serious consideration.

17. The Respondent was sentenced on 7 March 2025. The Applicant filed a Notice of Motion seeking enlargement of time at the High Court Registry on the 25 April 2025. Therefore, the delay is approximately three weeks and not substantial.

18. The reason for the delay is reflected in paragraphs 2 to 5 of the Applicant's supporting affidavit. The Applicant submits that the three cases against the Respondent were handled by the police prosecution. The lawyer for the three victims had emailed the ODPP seeking their assistance in appealing the decision of the Learned Magistrate. The email had been forwarded to the Appeal Division in Suva and the police docket had been called for from the Divisional Prosecutions Officer. Despite having not received the police docket yet, the Applicant had considered appealing the sentences imposed on the Respondent. The final decision to appeal the sentences was sanctioned by the Acting Director of Public Prosecution on the 23 April 2025.

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<sup>2</sup> [2013] FJSC 4; CAV0009, 0013.2009 (24 April 2013)

<sup>3</sup> (1963)SASR 190 at 191

19. This is an appeal where the sanction of the DPP is required. According to Section 248(3)(c) of the CPA, the fact that the sanction of the DPP is required is a good cause to enlarge the period of limitation prescribed by Section 248(1) of the CPA.
20. In *State v Pita Dua*<sup>4</sup>, this Court had accepted the State's reason of DPP's timeline in the Appeal Advising Procedures, as a valid reason for delay. The Court had granted leave to Appeal out of time, when the State's application for Leave to Appeal was delayed by 42 days.

Whether the appeal ground is meritorious?

21. The Applicant seeks to appeal the sentences imposed by the learned Magistrate on the following ground: -

The Learned Resident Magistrate had erred in law and in fact, when he had mistakenly allowed for repeated reductions for time spent in remand in the Respondent's sentence in Nadi CF 332 of 2024 and Nadi CF 335 of 2024 when he had already discounted for the same remand period in sentencing the Respondent in Nadi CF 326 of 2024.

22. In *Kim Nam Bae v. The State*<sup>5</sup> the Fiji Court of Appeal held:

It is well established law that before this Court can disturb the sentence, the Appellant must demonstrate that the Court below fell into error in exercising its sentencing discretion. If the trial judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some relevant consideration, then the Appellate Court may impose a different sentence. This error may be apparent from the reasons for sentence or it may be inferred from the length of the sentence itself (*House v. The King* [1936] HCA 40; [1936] 55 CLR 499).

23. These principles were endorsed by the Supreme Court in *Naisua v. The State*<sup>6</sup> Therefore, it is well established that before this Court can interfere with the sentence passed by the Learned Magistrate; the Appellant must demonstrate that the Learned Magistrate fell into one of the sentencing errors:

- (i) Acted upon a wrong principle;
- (ii) Allowed extraneous or irrelevant matters to guide or affect him;
- (iii) Mistook the facts;
- (iv) Failed to take into account some relevant consideration.

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<sup>4</sup> [2016] FJHC 966; HAM99.2016 (25 October 2016)

<sup>5</sup> [1999] FJCA 21; AAU 15u of 98s (26 February 1999)

<sup>6</sup> [2013] FJSC 14; CAV 10 of 2013 (20 November 2013)

24. The Applicant concedes that the Learned Magistrate had correctly identified the applicable tariff for the offences of Burglary and Theft in all three sentences in CF 326/24, CF332/24 and CF 335/24.
25. The Learned Magistrate referred to the Court of Appeal guideline Judgment *in Kumar v State*<sup>7</sup> which sets out the guidelines for Burglary and Aggravated Burglary sentencing and identified the tariff for Burglary as being between 6 months and 3 years imprisonment in all three cases. In selecting this tariff range, the Learned Magistrate appears to have put those Burglaries under ‘lesser harm category’ (offender alone without a weapon).
26. Let me reproduce the summary of facts agreed to by the Respondent in CF 335 /24 to examine if the Learned Magistrate had correctly analyzed the facts in selecting the said tariff.

Between 21/03/24, 9.30pm to 22/03/24, 6.30am at Lot 30, Mariners Drive, Denarau Island, Nadi one Aminiasi Saucoko (B-1) 31yrs, Unemployed of Vadravadra Village, Ba unlawfully entered into the house of Lara Chung (A-1), 44yrs, Self-employed of Lot 30, Mariners Drive, Denarau Island, Nadi and stole from therein.

On the above-mentioned date, time and place, (A-1) locked up all the doors and cars before she went to sleep. (A-1) then woke up at about 5am and had her morning mediation. At about 6.30am (A-1)'s husband woke up and sat beside (A-1) on the lounge and then noticed that 2 x \$10.00 FJD were on the floor. (A-1)'s husband then got up and opened his desk and found out that \$200.00 FJD is missing from the desk, and he told (A-1). (A-1)'s husband then checked the knapsack and found that \$13,000.00AUD is also missing. (A-1) was in Suva on Tuesday (19/03/24) changing the Fijian currency to Australian currency as they will be flying out of the country on 23/03/24.

The matter was then reported to the police whereby enquiry was conducted and (B-1) was arrested from Vadravadra Village, Ba. (b-1) was interviewed under caution and admitted to the allegation put to him. Search was conducted and all stolen items were recovered as it was buried beside a mango tree in (B-1)'s compound and was positively identified by (A-1).

Total Cash recovery \$4750.00 AUD.

27. According to these facts, the theft has caused significant degree of loss to the victim. The victim lost FJD 220.00 and AUD 13,000.00. Only AUD 4750 had been recovered. The victim had been home when the burglary happened. A significant psychological trauma

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<sup>7</sup> [2022] FJCA 164; AAU117.2019 (24 November 2022)

would have been caused to the victim's family when they found that the Australian currency had gone missing when they were about to fly out of the country on 23/03/24.

28. According to the table in the said guideline judgment, the burglaries fall under 'greater harm' category if (a) the occupier or victim was home or on the premises (or returns home) at the time of the offence; (b) the theft caused a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value) or (c) significant psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary. The facts qualify the burglary committed by the Respondent to be identified under 'greater harm' category which attracts a starting point of 5 years and a sentencing range of 03–08 years. The Learned Magistrate had mistaken the facts when he selected the tariff range between 6 months and 3 years imprisonment to impose an imprisonment term of 5 months after deducting the remand period. This sentence is manifestly lenient.
29. The Applicant had been in remand for 11 months before the sentence in all three matters. In passing the sentence in CF 326/24, the Learned Magistrate had discounted the remand period of 11 months. Having done so, he proceeded to sentence the Respondent in CF 332/24 and CF 335/24 and discounted the same remand period in these two matters. The Applicant argues that the Learned Magistrate was wrong when he repeatedly discounted the same remand period in sentences in 332/24 and 335/24 and by doing so, he has produced a lenient sentence for the Respondent.
30. Section 24 of the Sentencing and Penalties Act requires the sentencing court to regard the time in custody before trial as a period of imprisonment, unless ordered otherwise, in sentencing an offender to a term of imprisonment. Although the sentences were passed in three individual cases, all of them were considered together on the request of the Respondent. The fact that the remand period was discounted in CF 326/24, was a relevant consideration in passing the sentences in CF332/24 and CF335/24. The Learned Magistrate failed to take into account a relevant consideration and committed a sentencing error when he repeatedly discounted the remand period in CF332/24 and CF335/24.

31. The offences in all three cases were committed in the month of March, 2024. The Respondent had broken into the homes of the three victims and stolen money and other property. The victims were residents at Denarau Islands, the Fiji's main tourism hub. They were alarmed at the lenient sentences that were passed by the Learned Magistrate and they made representations to the ODPP through their counsel AK Lawyers and sought assistance to appeal the sentences.
32. The Respondent claims that since AK Lawyers was not the complainant in any of the matters, AK Lawyers requesting ODPP to appeal the sentences, and the ODPP taking action on the same is not just unlawful but abuse of process.
33. The aggrieved parties have no standing to retain a counsel to look after their interests in criminal matters. However, there is no prohibition for them to make representations to the ODPP through a lawyer if they were aggrieved by a decision of the Court because only the DPP had the power to appeal a sentence.
34. The Respondent had 15 previous convictions of which 13 were for similar offending of burglary and theft.
35. In sentencing the Respondent in CF326 of 2024, the Learned Magistrate had discounted 11 months remand period resulting in a final term of 3 months to be served. In sentencing the Respondent in CF332 of 2024 the Learned Magistrate had again discounted the same 11 months remand period which was already discounted in CF 326 of 2024, resulting in a manifestly lenient term of 5 months to be served. In sentencing the Respondent in CF 335 of 2024 the Learned Magistrate had again discounted the same 11 months remand period which was already discounted in CF 326 of 2024, resulting in a manifestly lenient term of 5 months to be served.
36. I am of the opinion that by discounting the same remand period of the Respondent, the Learned Magistrate has imposed a manifestly lenient sentences in Nadi Magistrates Court case No CF 332 of 2024 and CF 335 of 2024. Therefore, those sentence should be quashed and substituted with fresh sentences that are just and proportionate to the crimes committed.

37. The sentence imposed by the Resident Magistrate at Nadi on 7 March 2024 in CF No. 332 of 2024 should be quashed and substituted with 16 months imprisonment to be effective from 7 March 2025.
38. The sentence imposed by the Resident Magistrate at Nadi on 7 March 2024 in CF No. 335 of 2024 should be quashed and substituted with 16 months imprisonment to be effective from 7 March 2025.
39. I am informed that the Respondent was released on 17 September 2025 after serving his full terms in case No CF 332 of 2024 and CF 335 of 2024 as per the impugned sentence ruling of the Learned Magistrate which is 5 months imprisonment. Therefore, the Respondent should serve only 11 months imprisonment.
40. **Following Orders are made:**
- i. Leave for enlargement of time to file Petition of Appeal is allowed.
  - ii. The appeal against sentence is allowed.
  - iii. The sentence imposed by the Resident Magistrate at Nadi on 7 March 2024 in CF No. 332 of 2024 is quashed and substituted with 11 months imprisonment to be effective from today (14 October 2025).
  - iv. The sentence imposed by the Resident Magistrate at Nadi on 7 March 2024 in CF No. 335 of 2024 is quashed and substituted with 11 months imprisonment to be effective from today (14 October 2025).
  - v. Both sentences to be served concurrently.



Aruna Aluthge

Judge

At Lautoka

14 October 2025

Solicitors:

Office of the Director of Public Prosecution for Applicant  
Legal Aid Commission for Respondent