IN THE MAGISTRATE'S COURT AT SAVUSAVU
CRIMINAL JURISDICTION

Criminal Case No. 208 of 2015

STATE

V

1. KAIOTI ROGONAVANUA
2. LEPANI VUREYAWA

For the Prosecution : **Ms Elo. W**
For the Accused : **Both in person**

Sentence : **2 March 2018**

SENTENCE

1. The accused, *Kaioti Rogonavanua*, and *Lepani Vureyawa*, you are before this court today to be sentenced after being convicted to the charges of *Aggravated Burglary* and *Theft*, contrary to *sections 313(1)(a)* and *291(l)* of the *Crimes Decree 2009*.

2. On 21 September 2015, you both waived your rights to counsel. Both of you pleaded guilty to the charges on 11 May 2016. I find both of your plea to be unequivocal.

3. The brief summary of facts are ;-

> *"On the morning of 19 July 2015, one Aisake Dokomusu (Aisake) was at his home when he saw the two accused and others were sitting on the canteen verendha of Ilaitia Mataunivosa (complainant). Aisake then saw one of the boys entered into the door of the*

canteen. At about 5am the same morning Aisake went to the compalinant's house and woke the complainant and informed him that someone broke into his canteen. Aisake and the complainant went to check the canteen where the complainant notice that 2 tins of tuna flakes valued at $3.60 were missing. The matter was reported and investigation was carried resulted in the arrest of the two accused and they both admitted to the allegation."

4. You both admitted to the above summary of facts on 21 June 2016, and you are both convicted as charged.

5. The maximum penalty for *Aggravated Burglary* is 17 years imprisonment. The tariff was set in ***State v Mikaele Buliruarua*** *[2010] FJHC 384*, and ranges from 18 months to 3 years imprisonment. The maximum penalty for *Theft* is 10 years imprisonment. The tariff was set in ***Vakarauvanua v The State*** *[2004] FJHC 116*, for 2 to 9 months for simple theft and 9 months and more for repeated offenders.

6. The aggravating factors in this case are;-
   (i) This is a well plan burglary and theft.
   (ii) It is a commercial burglary and theft.

7. The mitigating factors are;-

   <u>First Accused</u>

   (i) Young offender of 19 years old.
   (ii) First offender.
   (iii) Seek the court forgiveness.

   <u>Second Accused</u>

   (i) Young offender of 22 years old.
   (ii) First offender.
   (iii) Seek the court forgiveness.
   (iv) Promise not to re-offend.
   (v) Ask for a lenient sentence.

8. In sentencing, my starting point for *Aggravated Burglary* is 2 years imprisonment. I add 1 year for the aggravating factors and that increase your sentence to 3 years. I reduce 10 months as mitigation for both of you and that reduce your sentence to 2 years and 2 months imprisonment.

9. Both of you entered an early guilty plea and you are both entitled to a one third reduction, which is 8 months. I, therefore, reduce your sentence by 8 months and that reduce your sentence to 18 months imprisonment.

10. Both the offences were committed together under one circumstance. In compliance with the *one transaction rule* imposed by the Supreme Court in ***Wong Kam Hong v The State*** *(unreported) Criminal Appeal No. CAV 0002 of 2013 (23 October 2013)*, I impose 7 months imprisonment as your sentence for the count of *Theft*.

11. The final sentence for both of you are as follows:-

    (i) *Aggravated Burglary* – 18 months imprisonment.

    (ii) *Theft* - 7 months imprisonment.

12. I have drawn my attention to the case of ***Navin v The State*** *[2006] FJHC6; HAA 0148J. 2005S* (9 February 2006), where the High Court has provided for the approach to be taken for young and first offenders. In assessing the facts of this case, there was no weapon used and nobody was harmed. The value of the item stolen is $3.60 and there was a full recovery. I my view this is one of the exceptional case where sentence can be suspended.

13. *Kaioti Rogonavanua*, and *Lepani Vureyawa*, you are now sentence as follows:-

    a. Count 1 — *Aggravated Burglary* — 18 months imprisonment.

    b. Count 2 — *Theft* — 7 months imprisonment.

    c. Sentence for both the counts are to run concurrently and suspended for 2 years.

28 days to appeal.

MAGISTRATE'S COURT SAVUSAVU

C. M. TUBERI
RESIDENT MAGISTRATE