

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 277 - 2019

STATE

-v-

JOSEFA SOGOVUNIVALU

Before : RM Fotofili L.  
For Prosecution : A/WCPL Chand A. [ Police Prosecution ]  
Accused : In Person,  
Date of Sentence : 24<sup>th</sup> November 2020

SENTENCE

BACKGROUND

1. JOSEFA SOGOVUNIVALU, you have pleaded guilty to the following charge:

**Count One**

*Statement of Offence*

CRIMINAL TRESPASS: Contrary to section 387 ( 1 ) ( a ) of the *Crimes Act of 2009*.

*Particulars of Offence*

JOSEFA SOGOVUNIVALU on the 15<sup>th</sup> of November 2019 at Nasomo, Vatukoula in the Western Division entered into the property of MARAIA ROKOTINA with intent to annoy the said MARAIA ROKOTINA.

**Count Two**

*Statement of Offence*

DAMAGING PROPERTY: Contrary to section 369 ( 1 ) of the *Crimes Act of 2009*.

*Particulars of Offence*

**JOSEFA SOGOVUNIVALU** on the 15<sup>th</sup> day of November 2019 at Nasomo Vatukoula in the Western Division wilfully and unlawfully damaged the window frame valued at \$30 and four louver blades valued at \$12 to the total of \$42 the property of **MARAIA ROKOTINA**.

2. The prosecution has offered no evidence in relation to Count Three for resisting the arrest of Police Constable Number 5142 Emosi Tagicakivanua on the 7<sup>th</sup> of December 2019 at Nasomo Vatukoula and I have acquitted you of that count pursuant to section 178 of the Criminal Procedure Act 2009.
3. I am satisfied that your guilty plea to Count One and Count Two of the charge is voluntary and that you understand the consequence of your plea. The evidence tendered in support of your plea and your admission, supports your guilty plea.
4. The facts proposed by prosecution on its own is inadequate but your admissions to the police during your caution interview, which you have admitted was given voluntarily, makes me sure that you committed the offence.
5. I find you guilty and convict you of Count One and Count Two of the charge accordingly.
6. The female victim is 15 years old. Between 9pm to midnight she was sleeping on a bed at her grandmother's home while her other siblings were in the same room but sleeping on the floor. You removed the louver blades to the house and entered the house. The victim felt as if someone was watching her and when she turned, she saw you on top of her bed. You were half naked and had no t/shirt on but you were wearing your shorts which you were about to take off. The victim was shocked and she shouted and yelled and that is when you fled through the same window you had gained entry. In the process of your escape from the house you broke and damaged three louver blades and the window with the value of \$42. The matter was reported and you were later arrested by police.
7. You were interviewed under caution. You admitted that the victim is your cousin. You said that you went in the night to the house to look for food. You gained entry through the window. You admitted damaging the louvers and the window. You admitted standing on the bed where the victim was lying down. You said that you were trying to wake her up. You deny that you took off your shorts.
8. The case cannot be settled pursuant to section 154 of the Criminal Procedure Act 2009 because you have admitted that the victim is your cousin or a domestic

relationship exists. In addition, the offence is also aggravated in degree which I will explain later.

9. You are not a first offender. For example, you have a previous conviction in 2016 for assault occasioning actual bodily harm and three convictions for theft in 2012. Your sentence will not be reduced because of your good character or for being a first offender.
10. You have been remand since the 9<sup>th</sup> of December 2019. You had two other pending cases before me, that is Tavua CF 258 – 18 [alleged indecent assault on a female victim] and Tavua CF 245 – 19 [alleged indecently insulting or annoying a female victim]. You were on bail in those files when you allegedly committed the offences of criminal trespass and damaging property. You were also charged in Tavua CF 278 – 19 for criminally intimidating your aunty with a cane knife. The offence of criminal intimidation was committed by you on the 7<sup>th</sup> of December 2019. You have pleaded guilty in that criminal intimidation case and you were sentenced on the 27<sup>th</sup> of October 2020.
11. You had to be remanded as you seemingly reoffended while on bail. Your time in remand has been absorbed and considered when I sentenced you in CF 278 – 19 for criminally intimidating your aunty.
12. In this sentence, I will not consider any time you have spent in remand as time served. You have received that benefit already.
13. You are 32 years old. You seek forgiveness. You say that you have learnt a lot while in remand.

#### **AGGREGATE SENTENCE**

14. Both the counts were committed in the course of the same transaction or founded on the same facts.
15. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
16. Since damaging property is the more serious of the counts, I will use that as the foundation when passing your aggregate sentence for both the counts.

## **LAW**

17. The maximum sentence that is imposable by law for the offence of damaging property is up to 2 years imprisonment.

## **TARIFF**

18. Non-custodial sentences may be appropriate for damaging property offences but if imprisonment is considered, then the imprisonment range can be between 3 months to 6 months imprisonment [ **Bano v State** [ 2011 ] FJHC 168; Criminal Case 293.2009 ( 17 March 2011 ) ].

## **STARTING POINT**

19. Considering the objective seriousness of the offence, I select an aggregate 3 months imprisonment as a starting point.

## **AGGRAVATING FEATURES**

20. The victim was your cousin or a domestic relationship existed.
21. The victim was young.
22. You entered the house in the night and you frightened her and the others who were in the house.
23. I increase your aggregate sentence to 9 months imprisonment.

## **MITIGATION**

24. You are remorseful.
25. You cooperated with police when you were interviewed.
26. I reduce your aggregate sentence to 6 months imprisonment.

**GUILTY PLEA**

27. For pleading guilty early, I reduce your aggregate sentence to 4 months imprisonment.

**SUSPENSION**

28. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009** as long as your sentence does not exceed 2 years imprisonment.
29. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence and the range of sentencing orders in section 15.
30. Your sentence will be aimed at deterrence and to punish you adequately.

**SUMMARY:**

31. **JOSEVA SOGOVUNIVALU**, you will receive a combined or aggregate sentence for criminally trespassing and damaging property.
32. You are sentenced to an aggregate 4 months imprisonment term.
33. I refuse to suspend your sentence either in part or in whole. The circumstance of the case certainly warrants an immediate custodial sentence and the need for deterrence persuades me not to suspend your sentence.
34. I impose and finalise a Domestic Violence Restraining Order [ DVRO ] with section 27 standard non-molestation conditions on you for the protection of the female victim, your cousin. This DVRO is to protect the victim forever until and unless the order is varied or cancelled.
35. Do not misbehave towards her or breach any condition of the DVRO as you may be charged for another offence.
36. 28 days to appeal.



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**Lisiate T.V. Fotofili**  
**Resident Magistrate**

Dated at TAVUA this 24<sup>th</sup> day of November, 2020.