

IN THE MAGISTRATES' COURT OF FIJI
AT BA

[CRIMINAL JURISDICTION]

Criminal Case No: 34/22

STATE

v.

AVNAL AVNIT NAND
AND ANOTHER

For State:	Ms. Prakash/Ms. Naibe
For Accused:	Appearing with Mr. Padarath
Plea:	12/4/2022
Trial:	10/7/2023 & 11/8/2023 & 4/6/2025
NCTA Ruling:	9/2/2024
Judgement:	18/12/2025
Sentence:	5/3/2026

SENTENCE

A. Outline of Proceeding

1. Avnal Avnit Nand [hereinafter referred to as 'accused'] is to be sentenced for the offence of Theft contrary to *Section 291 (1) of the Crimes Act 2009*.
2. By this Court's Judgement on 18/12/2025 the Court had found the accused guilty of the charged offense thus convicted him for the same. The accused was released on bail on like date with the matter being adjourned for the filing of mitigation submissions by the defense, the same was filed on 27/2/2026 and has been duly considered in this Sentence.
3. On 27/2/2026 further to what has been filed in written. the Court heard from the Counsel for the accused on their verbal submission on what they propose and submit to be suitable sentencing options. The Court on like date was also informed by the Prosecution that the accused is a first offender. Your Counsel sought thereafter to file a supplementary mitigation to better assist your submission in line with recent precedents of the appellate Courts.
4. The matter was thereafter adjourned to today for Sentence.

B. Sentencing Maximum and Tariff

5. The maximum sentence for Theft is 10 years imprisonment.
6. In *Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)* Madigan J discussed about the acceptable tariff for theft:
 - i. For first offence of simple theft the sentencing range should be between 2- and 9-months imprisonment
 - ii. Any subsequent offence should attract a penalty of at least 9 months
 - iii. Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years
 - iv. Regard should be had to the nature of the relationship between offender and victim
 - v. Planned thefts will attract greater sentences than opportunistic
7. The aggravating factors are:
 - Planned theft (this was revealed during the trial, you and your co-accused (PW3) had a meeting of the mind to have you take the Toyota AT Fluid/oil without paying for it);
 - No steps taken to assist the Police; i.e.: no steps to return the stolen item until it was recovered and a story was concocted between you and your co-accused (PW3) following your being caught and confronted for your action;
8. The mitigating factor(s):
 - First offender
 - Promises to rehabilitate for the better

C. Sentence

9. In sentencing the accused, the Court took into account the factors outlined in *Section 4 (1) and (2) of the Sentencing and Penalties Act 2009*.
10. Although the Court finds that there was a degree of planning in your offending, I also consider that this is your first offence together with the value of the oil being \$120.00 thus the Court will consider the sentencing range of 2 – 9 months imprisonment in passing your Sentence.
11. Mr. Padarath, your Counsel sought that the Court show leniency towards you, specifically he addressed the Court on *Section 16 of the Sentencing and Penalties Act 2009* after considering a sentencing option under *Section 15* further submitting that a suspended sentence would best fit the principles that guide a sentencing Court. He submitted that you are at the birth of your career life with employment recently engaged with the Land Transport Authority (Provisional Offer Letter provided to Court) and any such recording of a conviction would gravely affect your budding employment life.

12. I have considered your Counsels submission both written and verbal, I find that you are young and it is evident per se that you are at the cusp of a life with secure employment. Your mitigation submission at [para 17] reflect your admission to a momentary lapse in judgment resulting in this offending and this Court accepts that. Further, this Court also considers the timeframe by which you have been attending to Court in this case and notes your consistent appearance as your ability to be in compliance with the rules of Court thus reflecting to this Court an indication of your genuine effort to reform as well as your aspirations for the better. It is also borne in the mind of the Court that this is an offence of theft and within it are elements of dishonesty thus any such recording of conviction may affect the securing of any future employment – that includes your employment with LTA where you are currently engaged as a Provisional Road Enforcement Officer, Valelevu.
13. With the above being considered by the Court, it is my finding that the recording of a conviction will have a grave impact on you will not serve the objective of sentencing you. The objective is to deter you in future from any such dishonest acts, I find the passing of a short-suspended sentence suffices without the need to record a conviction.
14. I now proceed to sentence you, taking into consideration the objective seriousness of the offence of Theft because of its maximum sentence, the court takes the starting point of 2 months imprisonment and I add 6 months imprisonment for the aggravating factors so the interim sentence is 8 months' imprisonment. I deduct 3 months imprisonment for the mitigating factors so the interim sentence is 5 months imprisonment.
15. Your have no time in remand, you have always been on bail.
16. Your final sentence is 5 months imprisonment.
17. I'm mindful of *Section 26 (2), (b) of the Sentencing and Penalties Act 2009* that I have the discretion to suspend the final sentence when it is below 2 years imprisonment.
18. The Court looks at the sentencing remarks of Goundar J *in Balagan v State [2012] HAA 31/11S 24 April 2012* at [20] in considering to suspend a sentence:
- 'Whether an offender's sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. The final test for an appropriate sentence is – whether punishment fits the crime committed by the offender?' (my underlining).
19. A sentence that will rehabilitate is warranted; this Court will allow you a final opportunity to reform.

20. I therefore order and sentence you as follow:

- **The accused is sentenced to 5 months imprisonment of which is suspended for a term of 3 years.**
- **The conviction entered against the accused is not to be recorded,**

21. You are warned by the court that when you commit another offence within 3 years you may be charged for Breach of Suspended Sentence: contrary to Section 28 of the Sentencing and Penalties Act 2009. If you are convicted then the sentencing court may activate the suspended sentence in paragraph 20.

28 days to appeal to the High Court.

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S. Nasedra [Ms.]
[Resident Magistrate]

State – Office of the Director of Public Prosecution
Accused – SK Ram Lawyers