

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. 14 of 2014**

**LAISIASA RAMAQA**

**v**

**STATE**

Counsel: Appellant in person  
Mr S. Vodokisolomone for State

Date of Appeal 18 August 2014

Date of Judgment: 21 August 2014

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**JUDGMENT**

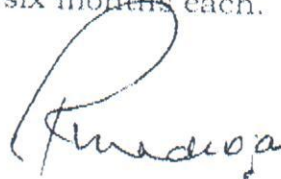
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1. On the 21<sup>st</sup> July 2014 in the Magistrates Court at Labasa the appellant entered pleas of guilty to two charges of theft. He was sentenced the same day to two separate terms of imprisonment of 5 months each, to run consecutively making a total term of ten months.

2. The appellant now appeals his sentence timeously, on the grounds that the sentences should not have been made consecutive, that the wrong aggravation factors were taken into account and that it is generally harsh and excessive.
3. The facts admitted by the Appellant were that on the 24<sup>th</sup> May 2014 he was home alone, his mother and his brother having gone elsewhere. He took the opportunity to steal a mat belonging to his mother valued at \$10 and a mat belonging to his brother valued at \$80.
4. The Magistrate in his sentence took a starting point of 12 months for both offences (6 months for each), stating that the sentences should be consecutive. He added four months to the sentence for the fact that the victims were his family and therefore it was a breach of trust, He further said that he was giving a third discount for the early guilty plea and deducted 3 months from the sentence. He deducted a further three months to reflect the appellant's mitigation arriving at a total sentence of 10 months' imprisonment.. The Magistrate then stated that of this ten months total, the sentence was 5 months for each and the sentences should be consecutively served.
5. The sentence passed by the learned Magistrate is indeed a little confusing. Rather than casting his sentence for both offences together, it would have been far more understandable if he had taken just one of the offences and worked his additions and discounts to that alone and then made that the sentence for each count. His three month deduction which he states to be a third is also not enough, as the Appellant submits. The Magistrate also fell into error in imposing the "repeat offender" tariff for theft when the appellant's criminal record, as unattractive as it is, discloses no previous for theft in the past

ten years. It must be a previous for larceny or theft that engages the higher tariff, not a "previous conviction of a felony" as stated by the Magistrate.

6. In the premises I quash the sentence passed below and would resentence the appellant in accordance with section 256(3) of the Criminal Procedure Decree 2009.
7. A starting point of six months for theft is appropriate for a first offence, where the value of the item is little. Breach of trust is an aggravating feature as the Magistrate found. Family members can expect that their possessions be safe from theft by others within the home when they are away. For this aggravation I add a term of 3 months to the sentence bringing it up to an interim total of 9 months. There is no mitigation available to the appellant apart from an early plea of guilty and for that I deduct a full third meaning that the appellant will serve a sentence of sixmonths for each of the two offences.
8. The sentences shall be served concurrently given that they were part of "one transaction" and given the "default" position set down in section 22 of the Sentencing and Penalties Decree 2009.
9. To that extent the appeal succeeds. The new sentences are two concurrent terms of six months each.



**P.K Madigan**  
**Judge**

At Labasa  
21 August 2014

