

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 302 OF 2016S

**STATE**

**Vs**

**KELEPI LEDUA**

Counsels : Ms L. Bogitini for State  
Mr. A. Qetaki for Accused

Hearings : 2 and 16 March, 2018

Sentence : 20 April, 2018

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**SENTENCE**

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1. On 2 March 2018, in the presence of your counsel, after the following information was read and explained to you, and you said, you understood the same, you pleaded guilty to the same:

**COUNT ONE**

**Statement of Offence**

**AGGRAVATED BURGLARY**: Contrary to Section 313 (1)(a) of the Crimes Act 2009.

**Particulars of Offence**

KELEPI LEDUA & ANOTHER, on the 7<sup>th</sup> day of August, 2016 at Suva, in the Central Division, equipped with 1 x pinch bar, 1 x malt hammer and 1 x axo blade, broke into Bargain Saver Shop with intent to commit theft therein.

COUNT TWO

Statement of Offence

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

Particulars of Offence

KELEPI LEDUA & ANOTHER, on the 7<sup>th</sup> day of August, 2016 at Suva, in the Central Division, stole \$30,000.00 FJD and \$30,000.00 AUD (equivalent to \$45,744.00 FJD) all to the total sum of \$75, 744.00 FJD, the property of Bargain Saver Shop with the intention of permanently depriving the said Bargain Saver Shop of the property

COUNT THREE

Statement of Offence

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

Particulars of Offence

KELEPI LEDUA & ANOTHER, on the 7<sup>th</sup> day of August, 2016 at Suva, in the Central Division, wilfully and unlawfully damaged the ceiling valued at \$100 and the safe locker valued at \$20,000.00, all to the total value of \$20,100.00, the property of Tebara Halal Meat.

COUNT FOUR

Statement of Offence

RESISTING ARREST: Contrary to Section 277 (b) of the Crimes Act 2009.

Particulars of Offence

KELEPI LEDUA on the 7<sup>th</sup> day of August, 2016 at Suva, in the Central Division, resisted Police Constable 4923 Kaminieli whilst effecting arrest in the due execution of his duty.

2. The following summary of facts were read to you by the prosecutor:
  1. The accused is Kelepi Ledua, 64 years of Naitasiri.
  2. On the 6<sup>th</sup> of August, 2016, the accused and an accomplice prepared to break into the Bargain Saver Shop at Tebara Halal Meat Building located at 52-54 Usher Street Suva. The accused and his accomplice had been planning to break into the aforementioned shop two weeks before that.
  3. Around 12.00 am on the 7<sup>th</sup> of August, 2016, the accused and an accomplice broke into the Bargain Saver Shop by cutting the external side of the window grill of the Bargain Saver Shop. The accused and accomplice had used theft

implements which included 1 pinch bar, 1 malt hammer and 1 axo blade to break into the shop. The accused was to be the watchman who was to keep a lookout while the accomplice went into the shop to steal.

4. Upon entering the Bargain Saver Shop, the accomplice of the accused then ransacked the Bargain Saver Shop and opened the wooden locker of the Bargain Saver Shop. The accomplice of the accused then took \$30,000 Australian Dollars (which was equivalent to \$45,744.00 Fijian Dollars) and \$30,000 Fijian Dollars. The accused was given a portion of the money.
5. The accomplice of the accused then used the theft implements to damage the floor of the Bargain Saver Shop which was also the ceiling of the Tebara Halal Meat Shop. The damages to the ceiling of the Tebara Meat Hal Shop amounted to \$100.00 in costs. The accomplice then attempted to open the locker safe of Tebara Halal Meat which led to the locker safe getting damaged. The cost of the damaged locker for the safe was \$20,000.00. Following this, the theft implements were then left at the Suva Bargain Saver Shop.
6. PC 4923 Kaminieli was on a nightshift at the Suva Market Police Post when he received a report from an unknown person at around 11.45pm about suspicious activity at an Usher street building. PC Kaminieli along with PC 3380 Aklesh went to investigate the building at Usher Street when they saw the accused and the accomplice holding a white bag and an identified object. PC Aklesh called out for them to stop, but they both ran towards Tapoos city, the accused fell down as the concrete footpath was wet due to the rain while the accomplice continued to run away. The accused then challenged PC Kaminieli to a fight. PC Kaminieli managed to cuff the accused hands with the assistance of a security officer based at Tapoo City by the name of Sailasa Regunamada. Upon reaching the Suva market post the police officers searched the accused and found a total of \$AUD 19,200 and \$FJD 6,617 cash that was in his possession.
7. On the 8<sup>th</sup> of August, 2016, the staff of Bargain Saver Shop found that the white bag containing a cutter, pinch bar, malt hammer and axo blade under bed sheets at the Suva Bargain Saver Shop.
8. The accused was interviewed under caution on the 8<sup>th</sup> of August, 2016 at the Totogo Police Station. During the interview the accused was given breaks to rest, have his meals and visit the Nasese force Medical Centre. Also during the caution interview there was scene reconstruction. There was no threat,

promise, or inducement made to the accused when he was in police custody.  
The accused gave his statement of his own free will.

9. The accused confessed in his caution interview as shown below:

Q80: *What time did you wake up?*

Answer: *No, I was about to sleep when one Puamau Luvu called Pauliasi Namulo on his mobile phone for me to come to town and do one job.*

Q 81 *What job did you mean?*

Answer: *To break into one shop in Suva*

Q82: *How did Puamau Luvu know that you was at Pauliasi Namulo's house?*

Answer: *He already know that we will do this job and he knew that we will be waiting for him there.*

Q83: *Where did you plan to do this job?*

Answer: *I met Puamau Luvu two weeks ago in Suva town where we plan to do this job?*

Q91: *Which shop did you go and break into?*

Answer: *The second hand clothes upstairs along Usher Street opposite Suva Market.*

Q92: *How did you two enter the shop?*

Answer: *The place was dark we entered from the front of the shop, Puamau Luvu climbed to the top then I passed him the whole white bag containing the bolt cutter, pinch bar.*

Q93: *Where did you get the bolt cutter and the pinch bar?*

Answer: *He brought it with him when I met him he was holding the bag containing the bolt cutter and the pinch bar.*

Q94: *How did you know that it was inside the bag?*

Answer: *Because we had planned for it.*

Q95: *What is your role in that shop break in?*

Answer: *Watchman*

Q105: *How much was your share?*

*Answer: I did not know as the money was wrapped in a rubber band and I could feel that it was a big amount as the bundle was very thick.*

*Q106: How many bundles of money that Puamau gave you?*

*Answer: I could not recall only I could say that it was many.*

*Q107: What happened after that?*

*Answer: Whilst we shared the money the police came towards us.*

*Q112: Why did you two run?*

*Answer: Because the police officers are chasing us.*

*Q117: According to police officer namely Kaminieli that when you was arrested you then challenged him for a fight and also resisting arrest?*

*What can you say about that?*

*Answer: Yes I admitted.*

3. On 16 March 2018, the court checked with your counsel on whether or not you are admitting the prosecution's summary of facts and admitting all the elements of the offences in counts no. 1, 2, 3 and 4; including the particulars of offences in all the counts in the information. Through your counsel, you admitted the prosecution's summary of facts, and the elements of all the offences in the information. Because of the above, I found you guilty as charged on all the above counts, and convicted you accordingly on those counts.
4. In **State v Josevata Lesumailodoni**, Criminal Case No. HAC 094 of 2013S, I said the following, "...As I have said in **State v Josese Caginaliwalala & Others**, Criminal Case No. HAC 293 of 2011S, High Court, Suva and **State v Peni Vulisoko & Another**, Criminal Case No. HAC 118 of 2013S, High Court, Suva:

"...Aggravated burglary" carried a maximum sentence of 17 years imprisonment (section 313 (1) of the Crimes Decree 2009). In the repealed Penal Code, Chapter 17, "burglary" carried a maximum sentence of life imprisonment (section 299 of Penal Code). In **Viliame Gukisuva v The State**, Criminal Appeal No. HAA 117 of 2007, High Court, Suva, Her Ladyship Madam Justice N. Shameem, held that the tariff for burglary was a sentence between 2 to 3 years imprisonment.

"Theft" carried a maximum sentence of 10 years imprisonment [section 291 (1) of Crimes Decree 2009]. In the repealed Penal Code, Chapter 17, "simple theft" carried a maximum penalty of 5 years imprisonment; however, if the person had been previously convicted of a felony, the maximum penalty was 10 years imprisonment (section 259 (1) and 262 of the Penal Code). In Navitalai Seru vs The State, Criminal Appeal No. HAA 84 and 85 of 2002S, Her Ladyship Madam Justice Shameem said as follows:

"...the maximum sentence for simple larceny is (on a second conviction) 10 years imprisonment. The tariff, on a first conviction under section 259 and 262 of the Penal Code, is two months to nine months imprisonment (Paula Bale vs The State, Criminal Appeal No. 27 of 1998, Pauliasi Nadali vs The State, Criminal Appeal No. 29 of 1998, lowane Wainiqolo vs The State, Criminal Appeal No. 44, 45 of 1998, Ronald Vikash Singh Criminal Appeal No. HAA 035 of 2002). It is logical, that on a second conviction the tariff is doubled to four months to 18 months imprisonment, because the statutory maximum increases from five to ten years. I accept this as a tariff in cases of second convictions for larceny..."

In State vs Jona Saukilagi, Criminal Case No. HAC 21 of 2004S, Her Ladyship further said as follows:

"...Stealing from the bank is a serious matter. The tariff for simple larceny on first conviction is 2 – 9 months (Ronald Vikash vs State, HAA 035 of 2002) and on second conviction a sentence in excess of 9 months. In cases of the larceny of large amounts of money sentences of 1 ½ years imprisonment (Isoa Codrokadroka vs State Criminal Appeal No. 67 of 2002) and 3 years imprisonment have been upheld by the High Court (Sevanaia Via Koroi vs The State, Criminal Appeal No. HAA 031 of 2001S). Much depends on the value of the money stolen, and the nature of the relationship between victim and defendant. The method of stealing is also relevant..."

One could see from the above authorities that the accepted tariff for "theft" is a sentence between 2 months to 3 years, depending on the circumstances and facts of the case. However, the actual sentence in the case will depend on the aggravating and mitigating factors..."

5. "Damaging Property" (count no. 3) carried a maximum sentence of two years imprisonment (section 369 (1) of the Crime Act 2009).
6. "Resisting Arrest" (count no. 4) carried a maximum sentence of five years imprisonment (section 277(b) of the Crime Act 2009).

7. In this case, the aggravating factors, were as follows:
- (i) Your offendings were well planned and executed by you and your accomplice. You planned to burgle the complainant's shop two weeks prior the incident. You gathered your shop breaking implements and forced your way into the shop with intent to commit theft. You acted as a watchman. This was just as bad as the one who broke into the shop. Unfortunately for you, you were caught when you fled from the crime scene.
  - (ii) Your offendings showed you had no regard for other people's property rights. You showed a propensity to take the easy way out of life by stealing from others. You will loose your liberty as an incentive to turn your life around by respecting other peoples' property rights.
8. The mitigating factors were as follows:
- (i) You have been remanded in custody since 10 August 2016, that is, approximately one year eight months ten days ago;
  - (ii) Luckily for you, your share of the stolen goods, that is \$AUD 19,200 and \$FJD6,617 were recovered from you upon your arrest.
  - (iii) You pleaded guilty to the charges one year six months eleven days after the first call in the High Court. Nevertheless, you saved the court's time.
9. On count no. 1 (aggravated burglary), I start with a sentence of three years imprisonment. I add three years for the aggravating factors, making a total of six years imprisonment. For time already served while remanded in custody, I deduct one year nine months, leaving a balance of four years three months. For the stolen property being recovered from you on arrest, I deduct three months, leaving a balance of four years imprisonment. For pleading guilty, I deduct one year, leaving a balance of three years imprisonment.
10. On count no. 2 (theft), I repeat the process and sentence in count no. 1 above
11. On count no. 3 (damaging property), I sentence you to twelve months imprisonment.
12. On count no. 4 (resisting arrest), I sentence you to six months imprisonment.

13. The summary of your sentences are as follows:

- |       |             |   |                     |   |                        |
|-------|-------------|---|---------------------|---|------------------------|
| (i)   | Count no. 1 | : | Aggravated Burglary | : | 3 years imprisonment   |
| (ii)  | Count no. 2 | : | Theft               | : | 3 years imprisonment   |
| (iii) | Count no. 3 | : | Damaging Property   | : | 12 months imprisonment |
| (iv)  | Count no. 4 | : | Resisting Arrest    | : | 6 months imprisonment  |

14. Because of the totality principle of sentencing, I direct that all the above sentence be made concurrent to each other, making a final total sentence of three years imprisonment.

15. Mr. Kelepi Ledua, for the four offences you committed against various complainants on 7 August 2016, at Suva in the Central Division, I sentence you to three years imprisonment, effective forthwith. I will not impose a non-parole period.

16. You have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

**Solicitor for State** : **Office of the Director of Public Prosecution, Suva**  
**Solicitor for Accused** : **Office of the Legal Aid Commission, Suva.**