

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC013 of 2017**

**STATE**

vs.

- 1. NIKO BALEIWAIRIKI**
- 2. ERONI RAIVANI**

**Counsel:** Ms. S. Serukai for the State  
Mr. E. Koroi for Accused 1  
Ms. L. Manulevu with Ms. P. Mataika for Accused 2

**Date of Hearing:** 22<sup>nd</sup>, 25<sup>th</sup> to 29<sup>th</sup> March 2019 and 1<sup>st</sup> April 2019  
**Date of Summing Up:** 08<sup>th</sup> April 2019  
**Date of Judgment:** 11<sup>th</sup> April 2019  
**Date of Sentence:** 15<sup>th</sup> April 2019

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**SENTENCE**

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1. Mr. Niko Baleiwairiki and Mr. Eroni Raivani, both of you stand convicted for one count of Murder, contrary to Sections 46 and 237 of the Crimes Act, which carries a mandatory sentence of life imprisonment and one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act, which carries a maximum penalty of 20 years imprisonment. The particulars of the offences are that:

***FIRST COUNT***

*Statement of Offence*

**MURDER:** *Contrary to Section 237 read with section 46 of the Crimes Act 2009.*

*Particulars of Offence*

**NIKO BALEIWAIRIKI and ERONI RAIVANI on the 1<sup>st</sup> day of January, 2017 at Lokia, Rewa, in the Central Division, murdered JAI PRASAD.**

**SECOND COUNT**

*Statement of Offence*

**AGGRAVATED ROBBERY: Contrary to Section 311 (1) (a) of the Crimes Act 2009.**

*Particulars of Offence*

**NIKO BALEIWAIRIKI and ERONI RAIVANI on the 1<sup>st</sup> day of January, 2017 at Lokia, Rewa, in the Central Division, in the company of each other robbed JAI PRASAD of a 15 Horsepower Yamaha Outboard Engine valued at \$5, 950.00.**

2. It was proved during the course of the hearing that two of you with another accomplice had formed a joint enterprise to rob an outboard engine belonged to Mr. Jay Prasad. Three of you then went to the house of Jay Prasad in the early hours of 1st of January 2017. In the execution of the said joint enterprise, your accomplice had assaulted Jay Prasad and killed him. Meanwhile, three of you managed to rob the outboard engine from Jay Prasad as well.
3. This is a case of breaking of a dwelling house in the night and violently attack the occupant, causing the death of the occupant and robbing therein. Hon Former Chief Justice Gates in **Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015)** has outlined the important of safe and secure environment for the people from violent intruders as of this nature, where his Lordship held that:

*“It is our duty to make clear these type of offences will be severely disapproved by the courts and be met with appropriately heavy terms of imprisonment. It is a fundamental requirement of a harmonious civilised and secure society that its inhabitants can sleep safely in their beds without fear of armed and violent intruders.”*

4. In view of the above observation made by Hon Former Chief Justice Gates in **Wise (supra)**, the purpose of this sentence is founded on the principle of deterrence and the protection of community. I am mindful of the principle of rehabilitation; however, the seriousness of this offence obviously outweighs the principle of rehabilitation.
5. The punishment for the offence of Murder is a mandatory sentence of life imprisonment. However, the sentencing court has been given a judicial discretion to set a minimum term to be served before pardon may be considered. In order to set a minimum term to be served for the offence of Murder, the court is required to consider the aggravating and mitigating circumstances of the crime. Murders which are brutally carried out without any form of remorse or respect to human life must be given longer minimum period.
6. Justice Madigan in **State v Rokete [2014] FJHC 114; HAC084.2009 (4 March 2014)** has discussed the setting of minimum term in comparison with the sentencing guidelines of UK, where his Lordship held that:

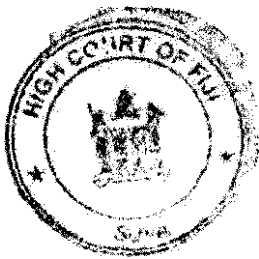
*“In the U.K, the Criminal Justice Act, 2003 Schedule 21, makes provision for minimum terms. The schedule provides for elements of aggravation and mitigation that a Court could consider in assessing a minimum term for murder. This U.K Act does not apply in Fiji of course, nor does Fiji have similar legislation but those provisions can be of real assistance in assessing a minimum term before pardon in terms of section 237 of the Fiji Crimes Decree. Aggravating features listed in the UK schedule and which are of particular relevance to the present case include:*

- i) Murder for gain (for example in the course of robbery or burglary),*
- ii) The murder of a vulnerable victim in terms of age and or vulnerability,*
- iii) A murder with a view to obstruct justice,*

7. The tariff for the Aggravated Robbery is 8 to 16 years of imprisonment period. **(Wise v State (2015) FJSC7; CAV0004.2015 (24 April 2015), Bonaseva v State (2015) FJSC12; CAV0022.2014 (20 August 2015), State v Nadavulevu - Sentence [2015] FJHC 651; HAC046.2015S (10 September 2015).**
8. I now draw my attention to determine the level of culpability and the harm caused by this offending. The deceased was a forty-six (46) years old person. He lived alone in his house. Two of you and your accomplice invaded his house in the night. You have used high level of force on the deceased in order to incapacitate him. You punched him and then dragged him to the bushes. Hence, it appears that the deceased was in a vulnerable and defenceless situation. Accordingly, I find the level of harm and culpability in these two offences are substantially high.
9. This is a pre-planned crime. You and your accomplice planned to rob the deceased to buy more alcohol in order to celebrate the dawn of the year 2017. By doing that, you have killed an innocent man who was silently enjoying the dawn of the New Year in his house alone. Mr. Niko Baleiwairiki, the deceased was your father's best friend. Yet, you decided to proceed with this unlawful plan of robbery and killed the best friend of your father. I find these factors as aggravating factors.
10. The learned Counsel for second and third accused in their respective written mitigation submissions, submitted the personal and family background of the second and third accused. Apart from their age and number of members in their respective families, I do not find any significant personal or family circumstances that attract any discount in the sentencing.
11. Both of you are first offenders. Therefore, you are entitled for a discount for your previous good behaviours.
12. Having considered the above discussed factors, I impose a sentence of twelve (12) years imprisonment to the offence of Aggravated Robbery. For the offence of Murder, it is my

opinion that you must be served minimum imprisonment period of twenty- two (22) years before you are being considered for any pardon.

13. In conclusion, Mr. Niko Baleiwairiki, I sentence you for imprisonment of life to the offence of Murder, contrary to Sections 237 and 46 of the Crimes Act with minimum term of twenty two (22) years before being considered for any pardon. Moreover, I sentence you for a period of twelve (12) years imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Both Sentence to be served concurrently. Since, I am imposing a life imprisonment for the offence of Murder, I do not wish to impose any non-parole period for the offence of Aggravated Robbery.
14. Mr. Eroni Raivani, I sentence you for imprisonment of life to the offence of Murder, contrary to Sections 237 and 46 of the Crimes Act with minimum term of twenty two (22) years before being considered for any pardon. Moreover, I sentence you for a period of twelve (12) years imprisonment to the offence of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act. Both Sentence to be served concurrently. Since, I am imposing a life imprisonment for the offence of Murder, I do not wish to impose any non-parole period for the offence of Aggravated Robbery.
15. Thirty (30) days for the appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe".

R.D.R.T. Rajasinghe  
Judge

At Suva  
15<sup>th</sup> April 2019

Solicitors  
Office of the Director of Public Prosecutions for the State.  
Koroi Law for the 1<sup>st</sup> Accused.  
Office of the Legal Aid Commission for the 2<sup>nd</sup> Accused.