

INIA POATE and **SENITIKI TUVOU** between the 15th to the 17th of January, 2019 and 17th of January, 2019 at Lot 40 Waila Housing in the Eastern Division, entered into the house of **LANIETA NAVITILEVU** as trespasser, with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

INIA POATE and **SENITIKI TUVOU** between the 15th and 17th day of January 2019, at at Lot 40 Waila Housing in the Eastern Division, dishonestly appropriated 1xNokia Brand Mini Ipad, 1xIphone5, 1xAkita Bluetooth speaker, 2xUnder Armour caps, 1x Under armour slip-on, 1x Black transistor radio, 1x Medium sized torch, 1x Nike branded Knapsack, the property of **LANIETA NAVITILEVU**.

2. Both of you pleaded guilty on your own free will to the above mentioned counts when you were represented by a counsel. You understood the consequence of the guilty plea and the sentencing tariffs for offences you have committed. I am satisfied that the guilty pleas are informed and unequivocal and entered freely and voluntarily.
3. You agreed the following summary of facts when it was read to you in court. The facts agreed satisfy all the elements of each offence you are charged with. You are found guilty and convicted on each count as charged.
4. The facts you agreed are that:

On 4th day of February 2019, the complainant, Lanieta Navitilevu had reported to Nausori Police Station that an unknown person had broken into their house between the 15th to the 17th day of January, 2019 while their whole family was in Nadi.

On the 15th to the 17th day of January, 2019 Inia Zerubable and Senitiki Tuvou had unlawfully entered into the dwelling house of Lanieta Navitilevu by removing the kitchen louver blades dishonestly appropriated the following items with the sole intention of permanently depriving Lanieta Navitilevu of the said items:

The items are as follow:

- 1. 1 x Nokia Brand Mini Ipad valued at \$350.00*
- 2. 1 x Iphone 5 valued at \$300.00*
- 3. 1 x Black Akita Bluetooth speaker valued at \$70.00*
- 4. 2 x Under Armour caps valued at \$72.00*
- 5. 1 x Under Armour slip-on valued at \$50.00*
- 6. 1 x Black transistor radio valued at \$20.00*
- 7. 1 x Medium sized torch valued at \$15.00*
- 8. 1 x Nike branded Knapsack valued at \$40.00*

All to the total value of \$967.00 the property of the complainant.

The complainant had prior suspicions and later made enquiries around the Wailea area. In doing so, the complainant received information that Senitiki Tuvou was involved in the break in, upon investigation DC 4926 Krishneel Kumar arrested Inia Zerubable (juvenile) and Senitiki Tuvou from their respective residence and escorted them to the Nausori Police Station, in which Inia (Juvenile) was accompanied by his father namely Alipate Tubui.

Senitiki Tuvou was interviewed under caution by DC Apisai Voravora and admitted to the allegation as stipulated in the caution interview from (Q & A No. 28 to 36).

Inia Zerubable (Juvenile) was interviewed under caution and also admitted to the allegations as stated in stipulated in the caution interview from (Q & A No. 15 to 24).

Enquiries were made in which some items were recovered, items recovered are as follows:

- 1. Nike Brand Knapsack*
- 2. Bluetooth headset*
- 3. Yellow medium sized torch*
- 4. Black kenwin transistor radio (Recovered – voluntarily handed by Anasa Mareu, Market Vendor whom the two accused had sold the item to)*
- 5. 1 x black under armour cap (Recovered – voluntarily handed over by Ifereimi Narawa)*
- 6. 1 x under amour slip on (Recovered – voluntarily handed over by Ifereimi Narawa)*

Senitiki Tuvou and Inia Zerubable (Juvenile) were both charged on 5/02/19 for one count of Aggravated Burglary contrary to Section 313 (1) and Theft contrary to Section 291 (1) of the Crimes Act 2009.

In light of the above, both the accused have pleaded guilty to the Aggravated Burglary contrary to Section 313 (1) (a) and Theft contrary to Section 291 (1) of the Crimes Act 2009 on the 21st day of May 2019 on their own free will.

5. The maximum punishment for Aggravated Burglary under Section 313 (1) (a) is an imprisonment term of 17 years and the maximum punishment for Theft is an imprisonment term of 10 years.
6. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: *State v. Mikaele Buliruarua*[2010] FJHC 384; HAC 157.2010 (6 September 2010); *State v. Nasara*[2011] FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu*[2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa*[2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru*[2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose*[2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi &*

Another [2018] FJHC 364; HAC 101.2018 (7 May 2018) and recently in *State v Tukele* - [2018] FJHC 558; HAC179.2018 (28 June 2018).

- 7 The tariff for Theft ranges from 4 months to 3 years imprisonment: *Waga v State* [HAA 17 of 2015].
- 8 This is an appropriate case where an aggregate sentence could be imposed in terms of section 17 of the Sentencing and Penalties Act in view of the fact that you were convicted on both counts, based on the same facts. I would impose an aggregate sentence on both of you.
- 9 In assessing the objective seriousness of the offending, I considered the degree of culpability and the loss or harm caused to the complainant. Having considered all these factors, I would pick a starting point of 18 months for each of you.
- 10 There are no aggravating features in your offending.
- 11 Separate mitigating submissions have been filed by your counsel. I have considered the mitigation submissions in passing this sentence.
- 12 **Inia**, you are 16 years of age and still a juvenile. You are a student and have completed one stage of Autocad course at Productivity Authority of Fiji. You entered early guilty pleas and have been extremely remorseful of your actions. You are a first and young offender. You have promised not to reoffend and you beg for a second chance to rehabilitate yourself. You have cooperated with police and helped them to recover the stolen items. You seek mercy of this court. I consider the early guilty pleas as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charges at a very early stage of the proceedings. I deduct 12 months to arrive at a sentence of 6 months' imprisonment.
- 13 **Senitiki**, you are 22 years of age and single. You are living with your parents and two younger siblings. You are following a refrigeration engineering course expecting a gainful employment abroad. You entered early guilty pleas and have been extremely remorseful of your actions. You are a first and young offender. You have promised not

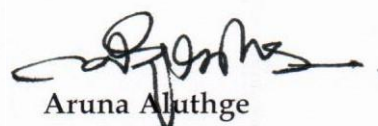
to reoffend and you beg for a second chance to rehabilitate yourself. You have cooperated with police and helped them to recover the stolen items. You seek mercy of this court. I consider your early guilty pleas as evidence of genuine remorse. You have also saved court time and resources by pleading guilty to the charges at a very early stage of the proceedings. I deduct 10 months to arrive at a sentence of 8 months imprisonment.

14. The courts have a duty to denounce and deter this kind of anti-social behaviour. At the same time, rehabilitation of young and first offenders should be promoted. You are young and first offenders having a good chance of rehabilitation. Correction centers do not always correct young offenders. The primary purpose of this punishment is rehabilitation. I have taken into consideration your potential for rehabilitation in view of your youth and clean record.
15. Taking into consideration your early guilty plea, cooperation extended to police to recover the stolen items, genuine remorse, youth and clear record, I am inclined to suspend the sentences for a period of 2 years.

Summary

16. **Inia Poate**, you are sentenced to 6 months' imprisonment to be suspended for a period of 2 years. If you are convicted of any offence in the next two years, the suspended sentence may be activated.
17. **Senitiki Tuvou**, you are sentenced to 8 months' imprisonment to be suspended for a period of 2 years. If you are convicted of any offence in the next two years, the suspended sentence may be activated.




Aruna Aluthge
Judge

AT Suva

On 7th June, 2019

**Counsel: Office of the Director of Public Prosecution for Prosecution
 Office of the Legal Aid Commission for Accused**