

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

**Criminal Case No.: HAC 99 of 2019**

**STATE**

**V**

- 1. MACIU NAIVULI**
- 2. ILAI RAVOUVOU**
- 3. T.Q [Juvenile]**

**Counsel** : Mr. R. R. Chand for the State.  
: Mr. M. Naivalu for the Accused and the Juvenile.

**Date of Hearing** : 02 August, 2019  
**Date of Punishment/Sentence** : 02 August, 2019

---

**PUNISHMENT AND SENTENCE**

---

*(The name of the Juvenile is suppressed he will be referred to as "TQ").*

1. The two accused persons and the juvenile are charged as per the following information filed by the Direction of Public Prosecutions dated 7<sup>th</sup> June, 2019:

**COUNT ONE**

***Statement of Offence***

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

### ***Particulars of Offence***

**MECIU NAIVULI, ILAI RAVOUVOU** and **T.Q**, on the 16<sup>th</sup> day of May, 2019 at Yasawa in the Western Division, entered into the house of **LUISA LEWATU SAUKAWA** as trespassers 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***

**MECIU NAIVULI, ILAI RAVOUVOU** and **T.Q**, on the 16<sup>th</sup> day of May, 2019 at Yasawa in the Western Division, dishonestly appropriated 12 packets of cigarette valued at \$120.00 the property of **LUISA LEWATU SAUKAWA** with the intention of permanently depriving the said **LUISA LEWATU SAUKAWA** of the said property.

2. On 24<sup>th</sup> June, 2019 both the accused persons and the juvenile pleaded guilty to the above two counts in the presence of their counsel. Thereafter on 15<sup>th</sup> July, 2019 both the accused person and the juvenile admitted the summary of facts read out by the State Counsel as follows:

- “1. *The victim is Luisa Lewatu Sanukawa (hereafter PW1), 53 years, Domestic Duties of Kese Village, Naviti, Yasawa.*
2. *Accused 1 is Meciu Naivuli (hereinafter A1), 21 years, Employee of Paradise Cove Resort of Soso Village, Yasawa.*
3. *Accused 2 is Ilai Ravouvou Balanabitu (hereinafter A2), 19 years unemployed of Soso Village, Yasawa*
4. *Juvenile is T.Q (hereinafter J3), 15 years, Student of Soso Village, Yasawa.*
5. *On the 16<sup>th</sup> May, 2019 at about 2.30pm at Kese Village, where PW1 was running a canteen business from home when the 2 accused and the juvenile had gone to buy cigarette from PW1, where they bought 2 rolls of cigarette. After this J3 went inside the house of PW1 and stole*

*12 packets of cigarettes valued at \$120.00 while A1 and A2 were on a lookout outside.*

- 6. The victim was having her shower at her uncle's place which is the house beside hers. After she returned and checked her bag, she discovered that the 12 packets of cigarettes were missing. She was then informed by her neighbour that he saw an iTaukei youth wearing a yellow/black bula shirt with  $\frac{3}{4}$  shorts coming out from the victim's house.*
- 7. The neighbour had also seen this iTaukei man coming out with a small bag placed under his armpit walking towards another youth waiting outside wearing a blue shirt. PW1 then identified J3 by the description given from her neighbour as she had early seen him when he came to buy cigarette.*
- 8. Matter was reported to the Police investigations were carried out. The 2 accused and the juvenile were arrested and taken in for questioning. A1, A2 and J3 when interviewed under caution admitted that they were part of the offence and had attained 12 packets of cigarettes, from which they smoked distributed 5 packets amongst them and buried the remaining 7 packets near the sea. [Q&A 57-60 of A1 and Q&A 46-51 of A2 and Q&A 61 -70]*
- 9. J3 admitted stealing the 12 packets of cigarettes from PW1's house [Q&A 53-62]. A1 admitted to waiting outside the house and sharing the 5 packet of cigarettes [Q&A 49-59]. A2 also admitted to waiting outside the house and sharing the [Q&A 42-50]. [The Record of Interview of A1 is annexed on Tab 1. The record of interview of A2 is annexed on Tab 2. The record of interview of J3 is annexed on Tab 3.]*
- 10. The 7 packets of cigarettes that were buried at the beach were returned to PW1 when the matter was reported to the police. Cash of \$52.00 was also paid to the PW1 for the remaining cigarettes on the 17<sup>th</sup> of May, 2019 by the A1's father. There was full restitution in this case.*
- 11. The two accused and juvenile are charged and have pleaded guilty to one count of Aggravated Burglary contrary to section 313 (1) (a) of the Crimes Act 2009 and one count of Theft contrary to section 291 (1) of Crimes Act 2009.*
- 12. The two accused and juvenile do not have any previous conviction records.*

3. After considering the summary of facts read by the State Counsel which was admitted by both the accused persons and the juvenile and upon reading their caution interviews, this court is satisfied that both the accused persons and the juvenile have entered an unequivocal plea of guilty on their own freewill.
4. This court is also satisfied that both the accused persons and the juvenile have fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts satisfies all the elements of both the offences. Both the accused persons and the juvenile also admitted committing the offences in the company of each other.
5. In view of the above, this court finds both the accused persons guilty as charged and they are convicted, as for the juvenile he is found guilty as charged.
6. The two offences for which both the accused persons have been found guilty and convicted and the juvenile found guilty are founded on the same facts hence it is only proper that an aggregate sentence and punishment be imposed.
7. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate sentence and punishment for the two offences both the accused persons have been convicted of and the juvenile found guilty.
8. The learned counsel for both the accused persons and the juvenile presented the following mitigation and personal details:

**Accused One - Meci Naivuli**

- a) The accused is 21 years of age;
- b) First offender;
- c) Attained Form 7 level of education;
- d) Pleaded guilty at the earliest opportunity;
- e) Full restitution with genuine remorse;

- f) Cooperated with police;
- g) Full recovery of stolen items;
- h) Remand period is 73 days.

**Accused Two - Ilai Ravouvou**

- a) The accused is 19 years of age;
- b) First offender;
- c) Attained Form 3 level of education;
- d) Obtained Carpentry Stage 3;
- e) Pleaded guilty at the earliest opportunity;
- f) Full Restitution with genuine remorse;
- g) Cooperated with police;
- h) Full recovery of stolen items;
- i) Remand period is 73 days.

**Juvenile - T.Q**

- a) First offender;
- b) 15 years of age;
- c) Year 10 Student;
- d) Pleaded guilty at the earliest opportunity;
- e) Full Restitution with genuine remorse;
- f) Cooperated with police;
- g) Full recovery of stolen items;
- h) Remanded at the Rehabilitation Center for 10 days.

9. Both the accused persons and the juvenile apologise and seek the forgiveness of the court and beg for mercy and leniency they also promise not to reoffend. Their conduct was one off and unbecoming leading to personal embarrassment and they admit it was a stupid mistake. Their remand was a life changing experience.

**REASONS FOR COMMITTING THE OFFENCES**

10. Counsel for the juvenile and the accused persons in an honest reasoning admitted there was no available and reasonable explanation on why the accused persons and the juvenile did what they did but a senseless stupid

mistake which has been costly for all of them. Peer group influence has been a key factor in the commission of the offences.

### **TARIFF**

11. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
12. The accepted tariff for this offence is a sentence between 18 months to 3 years imprisonment (*see Leqavuni v. State, Criminal Appeal No. AAU 106 of 2014 (26 February, 2016)*).
13. For the offence of theft the maximum penalty is 10 years imprisonment.
14. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012)* Madigan J. set out the tariff for theft as follows:
  - (i) *For the first offence of simple theft the sentencing range should be between 2 and 9 months.*
  - (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 thefts.*
15. The juvenile falls under a special categorization than adults when it comes to punishment under section 30(3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

## **AGGRAVATING FACTORS**

### a) Planning

There is some degree of planning involved in which all three had decided what was to be done and what role each had to play. The accused persons were bold and undeterred.

### b) Canteen was targeted

The victim was carrying on a small village canteen from her home which was targeted by the accused and the juvenile.

## **RESTITUTION**

16. The victim has been paid cash of \$52.00 by the father of the first accused for the five packets of cigarettes smoked by the accused persons and the juvenile. The remaining of 7 packets were recovered and returned to the victim. There was full restitution in this case.
17. The Supreme Court of Fiji in *Manoj Khera -v- the State [2016] FJSC 2; CAV 0003 of 2016 (1 April, 2016)* mentioned about the effect of restitution on sentence, at paragraph 7, Gates C.J. (as he was) stated:  
  
*“...Restitution if made genuinely in a spirit of remorse can reduce the harshness otherwise due in final sentences...”*
18. In *State -vs. - Jocelyn Deo, Criminal Appeal No. HAA 0008 of 2005*, Shameem J. also made a valuable comment about restitution in the following words:  
  
*“... The issue is not just restitution. The issue is true and sincere remorse, an early guilty plea and confession and restitution to the victim as evidence of such remorse and apology.”*
19. Section 4 (2) (h) of the Sentencing and Penalties Act allows a sentencing court to consider restitution. The relevant section is as follows:-

*“(2) In sentencing offenders a court must have regard to -*

*(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this [Act].”*

20. The above provision of the Sentencing and Penalties Act makes it mandatory for a sentencing court to consider restitution.

### **SUBMISSIONS**

21. The counsel for the accused persons and the juvenile urge this court to give the accused persons and the juvenile a second chance in life. Counsel submits they have a bright future but made a wrong choice in life bordering on stupidity. It was peer pressure that has got them in this situation all are equally culpable which cannot be ignored. The juvenile is now back into mainstream education attending Year 10. All of them are genuinely remorseful of their actions they have been in remand which is adequate punishment already and an imprisonment term will hinder the education of the juvenile and will also affect the future of both the accused persons as well.

### **PARENTS VIEWS**

22. The parents of the juvenile were in court namely Mosese Namomo and Adi Tauyavu Mereini they accept responsibility of their laxity in controlling their son in this regard both parents have also attended a workshop on 25<sup>th</sup> July, 2019 organized by the Social Welfare Department being “Child Welfare Specialized Training”. Ms. Simpson from the Social Department also confirmed this.



23. In my judgment this is a step in the right direction the parents have taken and this court would like to recommend that the Social Welfare Department conducts more of such workshops to assist all such parents. The parents have also expressed that the workshop enhanced their knowledge and made them more focused towards better parenting. The parents have also indicated their support, guidance and close supervision of their son and are prepared to sign a bond of \$200.00 each. The juvenile is the eldest out of the five siblings.
24. The parents assured the court that they are ready to take full responsibility of their son. They agree that the juvenile had gone into wrong company of friends the parents also say that they will make sure that the juvenile does not repeat what he has done. They have expressed their support and assistance in making the juvenile a better citizen.
25. The juvenile has also assured the court that he will listen to his parents and not fall into peer group trap. He promises not to reoffend and will reform himself.

#### **SOCIAL WELFARE REPORT**

26. Mrs. Simpson from the Social Welfare Department as per the order of this court conducted a home assessment before compiling a pre-sentence report. The recommendation of the Social Welfare Department is that the juvenile be allowed to pursue his education and be given a chance to become a responsible adult.
27. There is no doubt that the juvenile has committed serious offences, both parents have indicated their willingness to ensure that the juvenile reforms himself.

28. Bearing in mind the special categorization given to juveniles under the Juveniles Act a court in punishing juveniles must weigh the various factors and principles in arriving at a just and fair outcome. The Youth Court of Samoa, in *Police v FG [2015] WSYC 6 (13 August, 2015)* mentioned the following principles at paragraph 39 and 40 which is a helpful guide:

“39.

- *That a young person who commits an offence should be kept in the community so far as practicable and consonant with the need to ensure the safety of the public.*
- *The young person’s age is a mitigating factor in determining whether or not to impose sanction, if so, the type of sanction to impose;*
- *Any sanction to be imposed should take the form most likely to maintain and promote the development of the young person and it is the least restrictive form appropriate in the circumstances;*
- *The underlying causes of the offending by a young person must be addressed;*
- *The views and interests of the victim and the impact of the offending are considered.*

40. *The rights of the young people under the United Nations Convention on the Rights of the Child to have their need for rehabilitation and reintegration respected through the criminal justice system...”*

29. Considering the objective seriousness of the offences committed I select 18 months imprisonment (lower range of the tariff) as the aggregate

punishment of both the offences. For the aggravating factors I increase the punishment by 2 ½ years. The interim punishment now stands at 4 years imprisonment. For the early guilty plea, mitigation, and the remand period the interim punishment is reduced by 2 years and 2 months.

30. The final aggregate punishment for the two offences is 1 year and 10 months imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
31. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

*"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:*

*"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These*

*examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."*

32. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment or suspended punishment.
33. The juvenile is a young person as per the Juveniles Act, he is of good character, isolated offences were committed by him, 15 years of age, pleaded guilty at the earliest opportunity, is genuinely remorseful, full recovery of stolen items, full restitution, cooperated with Police and he takes full responsibility of his actions. These special reasons render immediate imprisonment inappropriate.
34. The juvenile with parental and family guidance and support has a bright future ahead of him, an imprisonment term will not augur well for his future, the custody of the juvenile is in itself an adequate and appropriate punishment, an experience that will remind him to keep away from trouble. This court has taken into account rehabilitation over and above deterrence.
35. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that a suspended punishment is just in all the circumstances of the case.
36. In summary the juvenile is given a punishment of 1 year and 10 months imprisonment as an aggregate punishment for both the offences which is suspended for 3 years. The effect of suspended sentence is explained.

## **ORDERS – Juvenile**

1. The juvenile is given a punishment of 1 year and 10 months imprisonment as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;
2. The parents of the juvenile namely Mosese Namomo and Adi Tauyavu Mereini are to sign a good behaviour bond on behalf of the juvenile in the sum of \$200.00 each;
3. The Social Welfare Department, Lautoka is to immediately arrange for the counseling of the juvenile in the presence of his parents with the view of assisting him in keeping out of peer group influence and to engage himself in education and training;
4. The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;
5. It is the responsibility of the parents of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;
6. A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department, Lautoka.

## **SENTENCE FOR BOTH THE ACCUSED PERSONS**

37. Considering the objective seriousness of the offending, I select 18 months imprisonment (lower range of the tariff) as the aggregate sentence of both the offences. For the aggravating factors I increase the sentence by 3 years. The interim sentence of imprisonment now stands at 4 ½ years imprisonment. For the early guilty plea, mitigation, and the remand period the interim sentence is reduced by 2 years.

38. The final aggregate sentence for the two offences is 2 ½ years imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final sentence since it does not exceed 3 years imprisonment.
39. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing immediate imprisonment or suspended sentence.
40. The accused persons are first offenders of comparatively good character, isolated offences committed, both are in their early twenties, genuine remorse, cooperation with the police, full restitution, pleaded guilty at the earliest opportunity, and they take full responsibility of their actions. I consider these special reasons as rendering immediate imprisonment inappropriate.
41. Both the accused persons are young offenders in their early twenties with a bright future ahead of them, an imprisonment term will not augur well for their future, they have been in remand for about 73 days which is in itself an adequate and appropriate punishment, an experience that will remind them of their misdeeds. This court has taken into account rehabilitation over and above retribution.
42. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that a suspended sentence is just in all the circumstances of the case.
43. In summary both the accused persons are sentenced to 2 ½ years imprisonment respectively as an aggregate sentence for both the offences which is suspended for 3 years. The effect of suspended sentence is explained to both the accused.

44. 30 days to appeal to the Court of Appeal.



A handwritten signature in black ink, appearing to read "Sunil Sharma", is written over the seal.

**Sunil Sharma**  
**Judge**

**At Lautoka**

02 August, 2019

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Messrs. Law Naivalu, Lautoka for both the accused persons and the Juvenile.**