

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

High Court Criminal Case No. HAC 259 of 2020

BETWEEN : THE STATE

AND : 1. MITIELI SOVITA
2. SAMUELA RABISI

Counsel : Ms Nimisha Shankar for the State
Ms Swarvana Prakash for the 1st and 2nd Accused

Date of plea : 15 October 2020

Date of Sentence : 08 December 2020

SENTENCE

1. You, Mitieli Sovita and Samuela Rabisi are to be sentenced upon freely and voluntarily pleading guilty to the following counts;

First Count

Aggravated burglary: Contrary to Section 313(1)(a) of the Crimes Act 2009.

Particulars of offence

Mitieli Soviata and Samuela Rabisi in the company of each other on the 25th day of December 2019 at Nasau Village, Nabukelevu, Kadavu in the Southern Division entered the house of Peceli Waqa as trespassers with intention to commit theft from that property.

Second Count

Aggravated burglary: Contrary to Section 313(1)(a) of the Crimes Act 2009.

Particulars of offence

Mitieli Soviata and Samuela Rabisi in the company of each other on or about the 26th day of December 2019 at Nasau Village, Nabukelevu, Kadavu in the Southern Division entered the house of Peceli Waqa as trespassers with intention to commit theft from that property.

Third Count

Aggravated burglary: Contrary to Section 313(1)(a) of the Crimes Act 2009.

Particulars of offence

Mitieli Soviata and Samuela Rabisi in the company of each other on the 30th day of December 2019 at Nasau Village, Nabukelevu, Kadavu in the Southern Division entered the house of Peceli Waqa as trespassers with intention to commit theft from that property.

Fourth Count

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

Particulars of offence

Mitieli Sovita and Samuela Rabisi between the 25th day of Decmber, 2019 to the 30th day of December, 2019, at Nasau Village, Nabukelevu, Kadavu, in the

Southern Division dishonestly appropriated 5 x Rewa powdered milk, 5 x Packets of Cookies, 25 x Sunbell tin tuna, 2 x Custard, 6 x 5 pack of Maggie noodles, 30 x Tang Nutri C, 2 x Soya Eban oil, 2 x Corned beef, 2 x Tomato sauce, 5 x Punjas biscuit, 1 x Coffee, 1 x container containing \$ 300.00, 1 x container containing \$ 250.00 and 1 x container containing \$ 350.00 the property of Peceli Waqa with the intention of permanently depriving Peceli Waqa of the said property.

2. I am satisfied that the guilty pleas are unequivocal and upon your admission of summary of facts, each of you are now convicted for all four counts.
3. According to the summary of facts, between 25 December 2019 and 30 December 2019 you, Mitieli Sovita and Samuela Rabisi broke into the house of Peceli Waqa in three separate occasions. In the first two occasions you Mitieli Sovita removed louvre blades of a window and entered into the house while you, Samuela Rabisi were acting as the lookout. After stealing items from the house, you placed the louvres back and left the scene with the stolen items. On the third occasion you, Mitieli Sovita entered the house of Peceli Waqa by removing louvre blades of a window and opened the door for Samuela Rabisi to enter. After packing the stolen items in a bag, you left the house through a window. On 03 January 2020 the complainant's son observed that the house was broken into and various items were stolen including three containers with cash. The matter was reported to the Police and you were arrested. Both of you admitted under caution that you broke into the house of Peceli Waqa in three different occasions and stole items all to the total value of \$ 1117.10. Only a packet of custard was recovered. You were later charged for three counts of aggravated burglary and one count of theft.
4. It appears that you committed these offences in a well-planned manner over a period of time. These types of offences are prevalent, and I consider those as aggravating factors in this case.

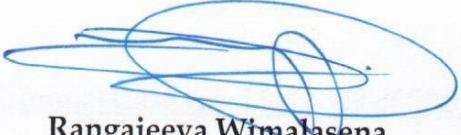
5. I have considered the mitigation submissions filed by your counsel on your behalf. You, Mitieli Sovita are 20 years old and single. You live with your father and two brothers. You are a farmer. You are a first offender and you have no pending matters as well. You expressed remorse by pleading guilty at the earliest opportunity. You have cooperated with the Police during investigations. Further it was submitted that you paid \$ 500 to the complainant as restitution.
6. You, Samuela Rabisi are 19 years old and single. You work as a farmer and support your elderly parents. You are a first offender and you pleaded guilty saving the time of the court. You have cooperated with Police during investigations. It was submitted that you paid \$ 500 to the complainant as restitution.
7. The maximum punishment for aggravated burglary is 17 years imprisonment. The tariff is 18 months to 3 years.
8. The maximum punishment for theft is 10 years imprisonment and the tariff for theft is found in Ratusili v State [2012]FJHC 1249 HAA011.2012 (1 August 2012) as follows;
 - i. For a 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.

9. Section 17 of the Sentencing and Penalties Act provides that if the offences are founded on the same facts or which form a series of offences of the same or similar character the court can impose an aggregate sentence. Taking into account the circumstances of this case I decide to impose an aggregate sentence in respect of the four counts on each of you.
10. Having considered the objective seriousness, I pick a starting point of 2 years for the aggregate sentence for each of you. For the aggravating factors I enhance the aggregate sentence by 6 months. For the mitigating factors and for the early plea I give a discount of 12 months for each of you.
11. Taking into account your clean records, young age, the time spent in remand custody and the significance of giving you an opportunity to rehabilitate yourselves, I decide to suspend the aggregate sentences.
12. Accordingly, the following aggregate sentences are imposed on you in respect of all four counts;

First Accused – I impose 18 months imprisonment and suspend it for 3 years.

Second Accused – I impose 18 months imprisonment and suspend it for 3 years.

30 days to appeal to the Court of appeal.



Rangajeewa Wimalasena
Acting Judge

At Suva

08 December 2020

Solicitors

Solicitors for the State: Office of the Director of Public Prosecutions

Solicitors for the 1st and 2nd Accused: Office of the Legal Aid Commission