

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

**CASE NO: HAC. 228 of 2020**  
**[CRIMINAL JURISDICTION]**

**STATE**

**V**

**PAULA NASIGA**

**Counsel** : Mr. S. Shiraz for the State  
Ms. L. Manulevu for the Accused

**Date of Sentence** : 11 December, 2020

**SENTENCE**

1. Paula Nasiga, you have pleaded guilty to the charges produced below and you were convicted as charged accordingly on 30/11/20;

**FIRST COUNT**

*Statement of Offence*

**Aggravated Burglary:** contrary to Section 313 (1) (a) of the Crimes Act 2009.

*Particulars of Offence*

**PAULA NASIGA**, in the company of others, on the 6<sup>th</sup> day of August, 2020 at Deuba, Navua in the Central Division, entered into the **GRACE ROAD GROUP** building as trespassers with intent to commit theft from that property.

## SECOND COUNT

### *Statement of Offence*

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

### *Particulars of Offence*

**PAULA NASIGA and OTHERS**, on the 6<sup>th</sup> day of August, 2020, at Deuba, Navua in the Central Division dishonestly appropriated 2x 20 litre cooking oil and 1x Suitcase, the property of **GRACE ROAD GROUP** with the intention of permanently depriving **GRACE ROAD GROUP** of the said property.

2. You have admitted the following summary of facts;

1. *The Accused* is Paula Nasiga, (DOB 24/02/2001), 19 years of age, unemployed of Deuba Village, Nabua.
2. *The complainant* is Maria Jung Hwa Li, 51 years of age, Financial Controller of Deuba Navua.

### Count 1 - Aggravated Burglary

3. *On 6 August 2020 at around 9.30pm, the Accused in the company of others planned to enter into the Grace Road Building at Deuba Navua to steal.*
4. *With this plan, the Accused in the company of others entered into the staffs dorm at the Grace Road Building and stole 2 x 20 litre Cooking Oil and 1 x Suitcase (Q&A 37, 43).*
5. *The complainant together with her staff was having a church service when the Accused had entered in company of others.*
6. *Later, on 7 August 2020, the 2 x 20 litre Cooking Oil had been recovered during the reconstruction of the scene and the suitcase was found in the drain (Q&A 43).*

### Count 2 – Theft

7. *The Accused in the company of others planned to enter into the Grace Road Building at Deuba Navua at around 9.30 pm to steal.*

8. *The Accused in company of others after entering into the Grace Road Building stole 2 x 20 litre cooking oil and 1 x Suitcase and brought it outside the building (Q&A 37, 43).*
  9. *The Accused in company of others had the intention to break into the Grace Road Building and steal the 2 x 20 litre cooking oil and 1 x Suitcase.*
  10. *The Accused has admitted to the offence in his caution interview from Q&A 36 – 54. (Marked as Annexure “A” is the copy of Record of Interview for Accused 1).*
  11. *The Accused was then charged with one count each of Aggravated Burglary and Theft. The Accused has nil previous convictions (Marked as Annexure “B” is the Criminal Record History by the Criminal Records & Fingerprint Office)*
3. Additionally, it was revealed during the hearing on sentencing and mitigation that you have been persuaded to commit these offences by the other offenders. More importantly it came to light that, having taken the two oil containers from the relevant building, but before you left the relevant premises, you realized what you did was wrong and then you left the said containers at the said premises and then fled the scene. I note that in your charge statement you have apologised to the police for your actions.
  4. I should make it clear that, from the material available before me and in view of what you said in open court, I am convinced that this is not a case where you had to abandon the stolen items because you had to run away after getting caught and/or being chased. I am convinced that you left the items stolen by you at the relevant premises and walked away because you did realise that you committed a crime and that this was a reflection of your remorse even at that point in time.
  5. The tariff for the offence of aggravated burglary which carries a maximum penalty of 17 years imprisonment should be an imprisonment term within the range of 6 years to 14 years. [Vide *State v Prasad* [2017] FJHC 761; HAC254.2016 (12 October 2017); *State v Naulu* [2018] FJHC 548 (25 June 2018); and *State v Nanovu* [2020] FJHC 985; HAC121.2020 (25 November 2020)]

6. The offence of theft contrary to section 291 of the Crimes Act carries a maximum sentence of 10 years. In the case of *Waqa v State* [HAA 17 of 2015], this court held that the tariff for the offence of theft should be 4 months to 3 years imprisonment.
7. The summary of facts does not reveal any additional aggravating circumstances.
8. You were born on 24/02/2001 and at the time you committed the above offences (06/08/20), you were 19 years and 05 months old. You were a farmer prior to being arrested in view of this matter. Your mother used to sell your produce at the market. Your father is a steward at the Methodist Church. Your father said that he intends to make arrangements for you to join the Military.
9. In addition to the fact that you have entered an early guilty plea, I would consider the following as the mitigating factors in this case;
  - a) You are a first offender;
  - b) There is full recovery;
  - c) You are remorseful and you realized that what you did was wrong immediately after committing the offence; and
  - d) You have cooperated with the police.
10. I am mindful of the fact that you have been in custody for 04 months and 04 days in view of this matter.
11. Given the circumstances of this case I consider it just and appropriate to take the same approach I have taken in the case of *State v Lesunavanua* [2019] FJHC 596; HAC30.2019 (18 June 2019) in relation to sentencing you.

12. I direct myself in accordance with the provisions of section 16(1) of the Sentencing and Penalties Act produced below;

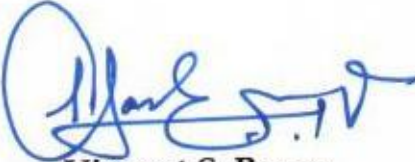
*In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including –*

- (a) the nature of the offence;*
- (b) the character and past history of the offender; and*
- (c) the impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects.*

13. Considering the fact that you realised what you did was wrong and was remorseful soon after you committed the two offences, considering your young age and the fact that you are a first offender, and after weighing the circumstances of the offending in this case against the impact of a conviction on your well-being and the future employment prospects, I am inclined to show leniency on you so that you are given a second chance. Accordingly, I have decided not to record a conviction but only a finding of guilty in relation to each count and order a fine against you in terms of section 15(1)(f) of the Sentencing and Penalties Act. I have also taken into the account the fact that you have already spent a period of 04 months and 04 days in custody.
14. I would therefore retract the convictions entered in this case on 30/11/20 where the said convictions shall now be regarded as findings of guilty. I hereby order you to pay a nominal fine of \$100. This fine should be paid on or before 11/02/21. The failure to pay this fine in full by the said date would result in you having to serve a period of 10 days imprisonment in terms of section 37 read with section 56(1) of the Sentencing and Penalties Act 2009.
15. Accordingly, you will be released today. You are hereby thoroughly warned to hereinafter abide by the laws of this country and lead a good life.

16. Thirty (30) days to appeal to the Court of Appeal.



  
Vinsent S. Perera  
JUDGE

**Solicitors;**

Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused