

COUNT 1

Statement of Offence

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

Particulars of Offence

Simiona Joseph Volatabu and Puale Qasenivuli, on the 14th day of October, 2019 at Nadi, in the Western Division, broke and entered into the shop of Hemant Solanki as trespassers, with intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

Simiona Joseph Volatabu and Puale Qasenivuli, on the 14th day of October, 2019 at Nadi, in the Western Division, dishonestly appropriated (stole) 17 x t-shirts, 2 x three quarter pants, 2 x caps all to the approximate total value of \$330.00, the property of Hemant Solanki, with the intention of permanently depriving Hemant Solanki of the said properties.

3. The summary of facts was filed by the state and it was read over and explained to you. You unequivocally admitted that to be true and correct. It states that;
 1. *The complainant is Hemant Solanki (hereafter PW1) 40 years, Businessman of Carerras, Votualevu, Nadi.*
 2. *The accused is Simiona Joseph Volatabu (hereafter Accused) 18 years, unemployed of Votualevu, Nadi.*
 3. *The juvenile is Puale Qasenivuli (hereafter Juvenile) 16 years, student Votualevu, Nadi.*
 4. *On the 14th of October 2019 between 2am to 3am, Jone Ratu (hereafter PW2) 37 years, security officer saw two I-taukei boys*

loitering around the Motorex building. PW2 then saw the two itaukei boys entering into PW1's shop. PW2 felt suspicious and with another security officer from KK's hardware went to check the shop.

5. They were shining the torch inside the shop when PW2 saw one of the itaukei boys run out of the shop. PW2 saw another itaukei boy still inside the shop. PW2 closed the door of the shop and called the police.
6. The police arrived at the scene and Special Constable Simione Leawere (hereafter PW3) went inside the shop. PW3 saw the Accused hiding behind the main door of the shop. He approached the Accused and arrested him. PW3 searched the Accused and found 2 caps in his possession [A copy of the search list is attached at Tab 1] The Accused informed the police that the other i-taukei boy was the Juvenile. The Accused was then taken to Namaka Police Station.
7. PW1 was informed about the breaking- in in his shop. PW1 went to check his shop and saw that the main door was forcefully opened. When he went inside the shop he saw that the following items were missing from his shop:

17 x t shirts	
(7 Adidas tshirts, 10 Ripcurl t shirts, 1 normal t shirts)	\$250.00
2 x supreme cap	\$ 40.00
2 x ¾ pants	\$ 40.00
	TOTAL \$ 330.00

8. The Police then went to the Juvenile's house and his house was searched by DC 4206 Semi, PC Anania and SC Simione Leawere. They found 7 t-shirt and 2 x ¾ pants from the Juvenile's house [A copy of the search list is attached at Tab 2] The Juvenile was then arrested and taken to Namaka Police Station.
9. The police called PW1 to Namaka Police Station to identify the recovered items. PW1 positively identified the recovered items as the items stolen from his shop.

10. *The Accused was interviewed under caution by DC 4206 Semi whereby he admitted committing the offence with the Juvenile (Q&A 42-45) [A copy of the record of interview is attached at Tab 3].*
11. *The Juvenile was interviewed under caution by DC 3780 Trevor whereby the admitted committing the offence with the Accused [Q&A 30-45] [A copy of the record of interview is attached at Tab 4].*
12. *The accused and the juvenile were then charged formally for 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 of the Crimes Act 2009. Both the accused and juvenile pleaded guilty to both the counts on their own free will on the 26th of May 2020.*

4. I find the alleged two counts proved by the said summary of facts, as both of you have unequivocally admitted the above Summary of Facts. Accordingly, I convict both of you of the two offences of Aggravated Burglary and Theft.
5. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.
6. A person who enters a building with one or more other persons as a trespasser, with the intention to steal commits an aggravated burglary punishable by 17 years’ of imprisonment under section 313(1)(a) of the Crimes Act. Theft is committed if a person dishonestly appropriates property belonging to another with the intention to permanently depriving him of the property. The maximum penalty for theft is 10 years imprisonment under section 291 of the Crimes Act.

7. I hold that the appropriate tariff for Aggravated Burglary is 6 to 14 years imprisonment. Though there is some uncertainty in respect of the recommended tariff, as I have reasoned out in **State v Chand** - Sentence [2018] FJHC 830; HAC44.2018 (6 September 2018), I prefer to follow His Lordship Hon. Justice Perera in **State v Naulu** - [2018] FJHC 548 (25 June 2018), as the said gives effect to the intention of the legislature, best.

As for the offence of theft the accepted tariff would range from 2 months to 3 years (**Ratusili v State** [2012] FJHC 1249; HAA 011.2012).

8. The two offences that both of you have committed are founded on the same facts. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the two offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

17. *“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”*

9. The aggravating factors present in common are that this was a pre-planned invasion and the fact that there is much prevalence of this type of offences in the society. This type of offences has increased due to the leniency they are dealt with and the society now demands an unsympathetic and/or stern judicial approach on these types of offences in order to curtail them.

10. The mitigating factors submitted are that they are very young offenders and also are remorseful. In addition they seek an opportunity to rehabilitate themselves. The 1st Accused has no previous convictions or any other pending cases. He is a first time offender. The Juvenile has two pending matters and is presently serving for another matter.

11. I would select 6 years as the starting point of your aggregate sentence. I would enhance 1 year due to aggravating factors mentioned above and deduct 30 months for the mitigating factors inclusive of the shown remorse and the co-operation with police. Now your sentences are an imprisonment term of 4 1/2 years.

12. You have pleaded guilty at the first available opportunity and I will award the maximum possible discount of 1/3 for that. Therefore your final sentences are 3 years of imprisonment to each of the accused. I will fix non parole period at 2 years, as for section 18 of the Sentencing and Penalties Act. Accordingly your Final Sentences would be;

Simiona Joseph Volatabu - 3 Years of Imprisonment with a non-parole period of 2 years.

Puale Qasenivuli - 3 Years of Imprisonment with a non-parole period of 2 years.

13. You both have been arrested on the 14th of October 2019.

The 1st Accused was granted bail on the 30th of December 2019. That is about 2 months and 2 weeks. I deduct that period from his final sentence of which the remainder, you'd have to serve will be;

1st accused - 2 years 9 months and 2 weeks, with a non-parole period of 1 year 9 months and 2 weeks.

The juvenile is presently serving for some other offence. I am aware he cannot be sentenced to more than two years of imprisonment as for the provisions of section 30 (3) of the Juveniles Act. Though he deserves to be sentenced severely, I will confine to the authorized and the remainder he has to serve would be;


Juvenile - 2 years imprisonment with a non-parole period of 18 months, to run concurrently from today with any other sentence he is serving presently. He is to serve his term at an appropriate place for the rehabilitation of young offenders. He will not be awarded any discount for his remand period as the court is unaware of the date of commencement of his serving for the other matter and also due to the fact that his remand period

may have been discounted in the other matters. In any event I have awarded him an adequate discount already in confining his term to two years.

14. Taking into consideration the section 26 of the Sentencing and Penalties Act and the fact that the 1st accused is a first time offender, I think it is appropriate to suspend the 33 months and two weeks of the 1st accused's imprisonment for a period of 5 years. The consequences of a suspended term will be explained to him by the Court Clerks.

15. You have 30 days to appeal to the Court of Appeal if you so desire.




Chamath S. Morais
JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Lautoka.

Solicitors for the Accused : Legal Aid Commission, Lautoka.