

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 197 of 2020

BETWEEN: STATE

PROSECUTION

A N D: 1. ALIKI JONE BAU
2. TIMOCI DOGAI

ACCUSED PERSONS

Counsel : Mr. S. Shiraz for the State
Ms. A. Singh for 1st Accused
Mr. K. Chang for 2nd Accused

Date of Sentence : 23rd October 2020

SENTENCE

1. Mr. Aliko Jone Bau and Mr. Timoci Dogai, both of you pleaded guilty to one count of Aggravated Burglary, contrary to Section 313 (1) (a) of the Crimes Act, which carries a maximum sentence of seventeen years imprisonment, and one count of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment. The particular of the offences are that:

COUNT ONE

Statement of Offence

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

Particulars of Offence

ALIKI JONE BAU and TIMOCI DOGAI on the 9th day of July 2020, at Waidradra Navua, entered into the dwelling house of **RAMESH CHAND** as trespassers, with the intent to commit theft.

COUNT TWO

Statement of Offence

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

Particulars of Offence

ALIKI JONE BAU and TIMOCI DOGAI on the 9th of July 2020, at Waidradra Navua, dishonestly appropriated 10 kilograms of grog, the property of **RAMESH CHAND** with the intent to permanently deprive the said **RAMESH CHAND** of his property.

2. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict both of you to these offences of Aggravated Burglary and Theft.
3. According to the summary of facts, which you admitted in open court, you had planned to steal 'yaqona' from the complainant's house. Mr. Bau had entered the house from the back door, while Mr. Dogai was guarding outside. The complainant was talking to his neighbour at the front porch. However, the complainant heard a noise and came back to the house. The complainant then saw both of you were fleeing from the scene. Mr. Bau was carrying

a sack of 10 kilograms of pounded 'yaqona'. When the complainant started to shout, Mr. Bau had thrown the sack of pounded 'yaqona' and fled the scene. Both of you had later surrendered to Police.

4. This is breaking into a residential property and stealing therein. You broke into this house while the owner was engaged in a conversation with his neighbour. The crimes of this nature, which are targeting the dwelling houses, undoubtedly affect the entire community. You have instilled fear and insecurity among the people by committing this crime. I, accordingly, find this is a serious offence.
5. Having considered the serious nature of these offences, I now proceed to determine an appropriate sentence for you in line with general principles, objectives, and purposes of sentencing under sections 4 (1) and 4 (2) and 15 of the Sentencing and Penalties Act.
6. All of these offences are founded on the same series of offending of the same and similar characters. Therefore, I find it is appropriate to impose an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act.
7. The tariff for the offence of Aggravated Burglary is between 18 months to 3 years. (**State v Droese - Sentence [2017] FJHC 205; HAC325.2015 (28 February 2017) State v Seru - Sentence [2015] FJHC 528; HAC426.2012 (6 July 2015)**). However, Justice Vinsent Perera found the applicable tariff for the Aggravated Burglary is 6 to 14 years imprisonment. (**State v Prasad (2017) FJHC762; HAC 254.2016 (12 October 2017, State v Naulu 2018 FJHC548 (25 June 2018)**).
8. Accordingly, it appears there are two tariff regimes for the offence of aggravated burglary. The learned Counsel for the Prosecution and the Defence filed detailed written submissions on this issue, emphasizing the tariff of 18 months to 3 years is the appropriate sentencing tariff.

9. Premathilaka JA in **Daunivalu v State** [2020] FJCA 127; AAU138.2018 (10 August 2020) found that;

“I do not propose to repeat the same discussion once again here. I cited some cases in Vakatawa and Kumar submitted to me by both parties where this unhealthy practice had been evidenced. The counsel for the appellant and the respondent had provided me with some more recent cases where this two-pronged approach to sentencing in aggravated burglary had been observed depending on different judges. They are as follows.

Cases where old tariff of 18 months 03 years of imprisonment applied

- i) *State v SB & JHB; Lautoka HAC 208 of 2018 (29 April 2020) followed **Leqavuni v State** [2016] FJCA 31; AAU0106.2014 (26 February 2016); by High Court judge A.*
- ii) *The State v Douglas Matakibau; Suva HAC 379 of 2019 (03 July 2020) By High Court judge B,*
- iii) *State v Eroni Sadrugu; Lautoka HAC 188 of 2019 (14 July 2020) followed Leqavuni By High Court judge A*
- iv) *State v Viliame Mudu & Mesake Tamani; Suva HAC 116 of 2020 (30 July 2020) Referred to Leqavuni. By High Court judge C.*
- v) *State v Taniela Tabuakula; Suva HAC 106 of 2020 (23 June 2020) - followed Leqavuni. By High Court judge D.*

Cases where new tariff of 06 to 14 years of imprisonment applied.

State v Asaeli Naqa; Suva HAC 47 of 2020 (30 July 2020) By High Court judge E - 02 years imprisonment.

- vi) *State v Tawake*; Suva HAC 264 of 2019 (31 July 2020) - By High Court judge E - 02 years imprisonment.
- vii) *State v Simiona J Volatbu & Puale Qasenivuli*; Lautoka HAC 182 of 2019 (24 July 2020); By High Court judge F - 03 years imprisonment.
- viii) *State v Orisi Qiolevu & Isei Yacakuru*; Lautoka HAC 129 of 2019 (10 July 2020) By High Court Judge F- 03 years imprisonment.
- ix) *State v Jonacani Qalova & Ledua Tikotani* (Suva HAC 132 of 2019S (10 July 2020) By High Court judge G - 02 years & 03 months imprisonment.
- x) *State v Etuate Kaulotu & Emosi Doidoi* (Lautoka HAC 129 of 2019 (10 July 2020) By High Court Judge F- 03 years imprisonment.

Thus, it appears that even the High Court judges who have followed the new tariff have paid only lip service to the new tariff and kept their final sentences within the old tariff. However, some Magistrates who have exercised extended jurisdiction have followed the new tariff, then applied the full force of it and ended up sentences within the range of the new tariff while other Magistrates continue to apply the old tariff. As a result, appeals keep coming up in the Court of Appeal against those sentences based on the new tariff.

10. In view of the above-discussed reasons, I prefer to adopt the tariff limit of 18 months to 3 years for the offence of burglary.
11. The tariff for the offence of Theft has been stipulated in **Ratusili v State [2012] FJHC 1249; HAA011.2012 (1 August 2012)**, where Justice Madigan held that:
- 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.*
12. Considering the nature of the items you have stolen and the manner that you have entered into the premises, I find the level of culpability and the harm is moderately high in this offending.
13. Mr. Bau, you are a 20 years old young first offender. Mr. Dogai, you are also a young first offender (24 years old). Both of you pleaded guilty to these offences at the first available opportunity. Moreover, you had surrendered to the Police and admitted the offences during your respective caution interviews. In doing that, you have expressed and shown your remorse and repent for committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty.

14. Considering the reasons discussed above, Mr. Bau and Mr. Dogai, I sentence both of you to 20 months aggregated sentence for these two counts as charged in the information.
15. Taking into consideration your young age, remorsefulness, opportunities for rehabilitation, and the nature of this offending, I suspend both of your sentences for three years pursuant to Section 26 (1) of the Sentencing and Penalties Act.
16. If you commit any crime during that period of three (3) years and found guilty by the Court, you are liable to be charged and prosecuted for an offence according to Section 28 of the Sentencing and Penalties Act.
17. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to be 'R.D.R.T. Rajasinghe'.

.....
Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

23rd October 2020

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the 1st Accused.

Office of the Legal Aid Commission for the 2nd Accused.