

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

**CASE NO: HAC. 141 of 2020**

**BETWEEN**                   :                   **STATE**

**AND**                         :                   **MARIKA BOVORO**

*Counsel*                    :                   *Mr. A. Kumar for the State*  
                                      :                   *Ms. K. Vulimainadave for the Accused*

*Hearing on*                :                   *10<sup>th</sup> March 2021*  
*Sentence*                   :                   *26<sup>th</sup> March 2021*

## **SENTENCE**

1. Mr. Marika Bovoro, you were charged as follows;

### **Count 1**

#### ***Statement of Offence***

***AGGRAVATED ROBBERY: contrary to section 311 (1) (b) of the Crimes Act 2009.***

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

***Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, while being armed with an offensive weapon namely a cane knife, stole 1 x Samsung brand mobile phone, wallet with assorted cards and cash amounting \$700.00, the properties of Mohammed Hanish.***

**Count 2**

**Statement of offence**

*ASSAULT CAUSING ACTUAL BODILY HARM: contrary to section 275 of the Crimes Act 2009*

**Particulars of Offence**

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, assaulted Inoke Lulubula thereby causing him actual bodily harm.*

**Count 3**

**Statement of offence**

*INJURING ANIMAL: contrary to section 368 of the Crimes Act 2009.*

**Particulars of Offence**

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, wilfully and unlawfully wounded Police Dog namely Baxer by throwing stones.*

**Count 4**

**Statement of offence**

*DAMAGING PROPERTY: contrary to section 369 (1) of the Crimes Act 2009.*

**Particulars of Offence**

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, wilfully and unlawfully damaged the windscreen of motor vehicle Registration No. BU-763, the property of David King.*

**Count 5**

**Statement of offence**

*DAMAGING PROPERTY: contrary to section 369 (1) of the Crimes Act 2009.*

**Particulars of Offence**

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, wilfully and unlawfully damaged the right side panel of motor vehicle Registration No. JK-609, the property of Vikash Nambiar.*

**Count 6**

**Statement of offence**

*DAMAGING PROPERTY: contrary to section 369 (1) of the Crimes Act 2009.*

***Particulars of Offence***

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, wilfully and unlawfully damaged the windscreen and right side door glass of motor vehicle Registration No. HI-799, the property of Deoji and Sons.*

**Count 7**

***Statement of offence***

*DAMAGING PROPERTY: contrary to section 369 (1) of the Crimes Act 2009.*

***Particulars of Offence***

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, wilfully and unlawfully damaged the windscreen of motor vehicle Registration No. HD-447, the property of Avikash Chand Sharma.*

**Count 8**

***Statement of offence***

*DAMAGING PROPERTY: contrary to section 369 (1) of the Crimes Act 2009.*

***Particulars of Offence***

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, wilfully and unlawfully damaged the rear left door glass of motor vehicle Registration No. GR-367, the property of Fiji Police Force.*

**Count 9**

***Statement of offence***

*COMMON NUISANCE: contrary to section 376 (1) (b) of the Crimes Act 2009.*

***Particulars of Offence***

*Marika Bovoro, on the 17<sup>th</sup> day of August, 2020 at Navesau, Nalawa, Rakiraki in the Western Division, committed acts not authorized by law causing danger and annoyance to the public.*

2. In this case when the plea was taken for the 1<sup>st</sup> time on the 27<sup>th</sup> of January 2021, you pleaded guilty to all the alleged 9 counts.
3. You have pleaded so at your own free will and having obtained appropriate legal advice. Therefore I am satisfied and convinced that you have pleaded so, unequivocally, having well understood the consequences of such plea.

4. The State has filed the Summary of Facts and the said Summary of Facts were read over and explained to you. You, having understood, agreed and accepted the said summary of facts to be true and correct and have taken full responsibility for your actions.
5. The Summary of Facts filed by the State disclosed that:

**Accused in this matter is:**

Marika Bavoro, 22 years old, Farmer of Navedawa Settlement, Navesau, Ra. (hereinafter A1)

**Complainant [PW1]**

The complainant in this matter is one, Mohammed Hanish, 35 years old, Businessman of Colasi Rakiraki. (hereinafter PW1)

- i) A1 is charged with the following offences:
  - One count of Aggravated Robbery
  - One count of Assault Causing Actual Bodily Harm
  - One count of Injuring Animal
  - 5 counts of Damaging Property and;
  - One count of common nuisance
- ii) Plea was taken on 27/01/21 and A1 pleaded guilty for all the nine counts as charged.
- iii) On 17/08/20, A1 conducted a road block whereby he laid bamboo and logs on the road along Navesau Village. After the road block was erected, A1 started to stop vehicles in order to rob the occupants off their valuables.
- iv) PW1 was travelling in his minivan and was stopped by A1 at the road block. A1 demanded PW1's wallet by putting a cane knife on PW1's right shoulder. A1 robbed PW1 by threatening him with a cane knife and appropriated 1 x Samsung phone in line with a wallet containing \$700 cash and assorted cards.
- v) One Inoke Luvubula (PW2) was assisting the police to arrest A1 whereby A1 threw a stone towards Mr Luvubula which hit his right ankle causing him actual bodily harm. Mr Luvubula was examined by Dr. Isikeli Newton and superficial abrasion with swollen area was noted on the right leg ankle of Mr Luvubula. Medical Report of Mr Inoke Luvubula is attached and Marked "A".

- vi) In order to find A1, the police brought a K9 unit which was assisting in arrest of A1. A1 willfully threw a stone towards the police dog "BAXER" which wounded the said dog.
- vii) While at the road block, A1 stopped few vehicles to rob the occupants and upon unsuccessful attempts, A1 willfully and unlawfully damaged the following vehicles:
  - (i) A1 damaged the windscreen of a vehicle (BU 763) belonging to one David King.
  - (ii) A1 damaged the right side panel of vehicle (JK 609) belonging to Vikash Nambiar.
  - (iii) A1 damaged the windscreen and right side glass door of vehicle (HI 799) belonging to Deoji and Sons.
  - (iv) A1 damaged the windscreen of the motor vehicle (HD 447) belonging to Avikash Chand Sharma.
  - (v) A1 damaged the rear left door glass of vehicle (GR 367) belonging to Fiji Police Force.
- viii) A1 committed the above acts which were not authorized by law and caused danger and annoyance to the public.
- ix) The accused admitted in his record of interview to threatening PW1 (Q & A 63). A1 also admitted to damaging the above stated vehicles (Q & A 89). A copy of A1's Record of Interview is attached and marked "B".

6. I find that the summary of facts supports all elements of the charges in the Information, and find the charges proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and convict you of the alleged counts, as charged.
7. The maximum sentence for the offence of Aggravated Robbery is 20 years of imprisonment. The tariff for the offence of aggravated Robbery is a term of imprisonment between 8 to 16 years. [**Wallace Wise v The State**, Criminal Appeal No. CAV 0004 of 2015; (24 April 2015)] (though the defence submits it to be from 10-16 years). The offence of Assault Causing Actual Bodily Harm and the offence of Injuring Animal, each carries a maximum of 5 years of imprisonment. The accepted tariff for those offences range from a suspended term to 18 months of imprisonment. The offence of Damaging Property carries a maximum sentence of 2 years of imprisonment whereas the offence of Common Nuisance carries a maximum of 1 year of imprisonment. The accepted tariffs are from a 3-12 months and bound-over to 9 months of imprisonment, respectively.

8. The nine offences you have committed are committed on the same day and also forms a series of offences. Therefore, according to section 17 of the Sentencing and Penalties Act, it would be appropriate to impose an aggregate sentence against you, for the nine offences you have committed. Section 17 of the Sentencing and Penalties Act 2009 (“Sentencing and Penalties Act”) states;

*“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. In consideration of the objective seriousness of the offence and the fact that this is an aggregate sentence, together with the principles laid down in the case of **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013), I would select 9 years as the starting point of your sentence.

10. Explaining the aggravating circumstances of the offence of robbery with violence under the now repealed Penal Code, His Lordship Goundar J. said in the case of **State v Rokonabete** [2008] FJHC 226 that;

*“The dominant factor in assessing seriousness for any types of robbery is the degree of force used or threatened. The degree of injury to the victim or the nature of and duration of threats are also relevant in assessing the seriousness of an offence of robbery with violence.”*

11. In consideration of the degree of force used, the PW1 was only threatened. Therefore, a low degree of violence is used. It is an essential part of the offence itself and will not be reconsidered as aggravating. You are said to be heavily intoxicated at the time and said to have committed these offences to find money to buy liquor. That will neither absolve you from your criminal liability nor considered as an aggravating factor.

12. In mitigation, though your counsel submits that you have a previous conviction, state submits that you are a first time offender. Since I was not provided with your criminal record to ascertain, I will consider you as a first time offender, giving you the benefit of the doubt. In consideration of that and the rest of the mitigating factors submitted by the counsel, including your young age, I will deduct 18 months from the above. Now, your final sentence will be 7 ½ years of imprisonment. In addition, you will be entitled to the maximum possible discount of 1/3 on your guilty plea at the first available

opportunity. Therefore, your final sentence would be 5 years of Imprisonment. In consideration of all the relevant factors, I will set the non-parole period at 3 years.

13. The section 24 of the Sentencing and Penalties Act requires me to consider the remand period you have spent as already served. You seemed to have been arrested on the 18<sup>th</sup> of August 2020 and is in remand ever since. Therefore, I will deduct 7 months and a week as already served.
14. Therefore, the remainder you will have to serve would be;  
04 years, 04 months and 3 weeks of imprisonment with a non-parole period of  
02 years, 04 months and 3 weeks.
15. You will have thirty (30) days to appeal to the Court of Appeal, if you so desire.



**Chamath S. Morais**  
**JUDGE**

*Solicitors: Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission, Lautoka for the Accused.*