

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

High Court Criminal Case No. HAC 112 of 2022

**BETWEEN:**

**STATE**

**vs**

**JONE TABUYA NAVARA (JUVENILE)**

Counsel : *Ms. Mishra P for the State*  
*Ms. Manulevu L for Juvenile*

Date of Sentence : *05<sup>th</sup> August 2022*

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**PUNISHMENT**

1. **Jone Tabuya Navara**, you were charged in this Court by the Prosecution 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 (1)** of the **Crimes Act 2009**, as follows;

**First Count**

Statement of Offence

**AGGRAVATED BURGLARY:** Contrary to Section 311 (1) (a) of the Crimes Act 2009.

Particulars of Offence

**Jone Tabuya Navara** with another on the 07<sup>th</sup> day of May 2021 at Nasinu, in the Central Division, in the company of each other entered into the property of **ROHIT SINGH** as trespassers with the intention to commit theft.

**Second Count**

Statement of Offence

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

Particulars of Offence

**Jone Tabuya Navara** with another on the 07<sup>th</sup> day of May 2021 at Nasinu, in the Central Division, in the company of each other dishonestly appropriated 1 x Samsung J3 mobile phone, 1 x maroon handbag and 1 x small wallet containing assorted cards, the properties of **ROHIT SINGH** with the intention of permanently depriving **ROHIT SINGH** of the said properties.

2. You pleaded guilty to the above counts stipulated in the information filed by the prosecution on the 01<sup>st</sup> of June 2022 on your own volition when you were represented by a legal counsel and this Court was satisfied that you pleaded guilty without any undue stress or promise.
3. According to the summary of facts that were read to you in open Court and admitted by you on 18/02/2022:
  - On the 7<sup>th</sup> day of May, 2021 at about 12.30 pm at Lakha Singh Road, Sakoca the complainant was at home helping his wife with cooking and PW2 was in her bedroom playing games on her laptop.
  - Whilst the complainant was in the kitchen helping his wife namely Ranjita with cooking, he suddenly heard PW2 screaming from her bedroom.
  - The complainant and his wife then went running into PW2's bedroom to check the screaming, upon reaching PW2's room, the complainant saw PW2 crying. PW2 then told the complainant that two i-Taukei men had entered their house.

- The juvenile charged in this matter together with his accomplice had entered the complainant's house through the main door, which was unlocked without the complainant's knowledge, consent or authority. Therefore, the juvenile and his accomplice had unlawfully entered and remained on the property of the complainant as trespassers.
- According to PW2 she was in her room playing video games on her laptop when she suddenly heard someone saying "kaise jiji" meaning "how are you sister" and she started screaming.
- The juvenile and his accomplice upon entering the complainant's property entered into PW2's bedroom and grabbed her Samsung J3 mobile phone, valued at \$300 which was kept on top of her bed, then entered into complainant's bedroom and stole his wife's maroon handbag valued at \$45.00 which was empty and a blue handbag valued at \$39.00 which was kept on top of their bed containing a small maroon wallet containing assorted Bred Bank Card, Visa Card, Westpac Card (FNPF) Card and also driving license card.
- Upon hearing PW2 scream, the juvenile and his accomplice on dishonestly appropriating the following items fled from the complainant's house:
  - a. 1 x Samsung J3 mobile phone valued at \$300.00
  - b. 1 x Maroon handbag valued at \$39.00
  - c. 1 x Maroon wallet containing assorted cards

**All to the value of \$384.00**

The complainant then had run towards the road and attempted to catch the two intruders and failed.

- The complainant then reported the matter at the Valelevu Police Station and an investigation was conducted which led to the arrest of the Juvenile and his accomplice.
- Upon investigation the stolen Samsung J3 mobile phone was recovered from PW3.
- The juvenile had requested PW3 to keep his stolen phone for \$50.00.
- Thereafter, on the 3<sup>rd</sup> of June, 2021 the Juvenile had been interviewed under caution by PW5.

The following admissions were made by you in the Record of Interview.

- In the Record of Interview, you admitted from questions 26 – 27 that on the day of the offence you proceeded along Sakoca Road with the accomplice.

- In the Record of Interview, you admitted from questions 31 – 34 that in the company of your accomplice you unlawfully entered the house of the complainant.
  - In the Record of Interview, you admitted from questions 39-43 that upon entering the complainant's bedroom and took a red handbag which was kept on top of the settee and later threw it in one of the drains.
  - In the Record of Interview, you admitted from questions 63 – 65 that you took the stolen phone and sold it for \$50 and used the said money.
4. In comprehending the gravity of the offence you have committed, this Court is mindful that the maximum sentence prescribed by law for Aggravated Burglary is 17 years' imprisonment and the maximum sentence prescribed by law for Theft is 10 years' imprisonment
3. In considering the applicable tariff for your admitted guilt, this Court intends to highlight the tariff regime pronounced for Aggravated Burglary in the case of **State v Seninawanawa [2015] FJHC 548**, where **Midigan J** stated:

*“The accepted tariff for aggravated burglary is a sentence of between 18 months and three years, with three years being the standard sentence for burglary of domestic premise.”*

4. This tariff has been followed in several decided cases, i.e., **State v. Tavualevu [2013] FJHC 246**; HAC 43.2013 (16 May 2013); **State v. Drose [2017] FJHC 205**; HAC 325.2015 (28 February 2017); **State v. Rasegadi & Another [2018] FJHC 364**; HAC 101.2018 (7 May 2018) and **State v. Mudu [2020] FJHC 609**; HAC 116.2020 (30 JULY 2020).
5. In relation to the offence of Theft, the applicable tariffs was pronounced by **Midigan J** in the case of **Ratusili v State [2012] FJHC 1249**, where he stated:

*“From the cases the following sentencing principles are established:*

- (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.”*

6. In assessing the objective seriousness of your offending in this matter, this Court should consider the maximum sentence prescribed for the offences, the degree of culpability, the manner in which you committed the offences and the harm caused to the complainant. This Court gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a robbery that happened in the bedroom of the home of the complainant when the complainant’s daughter was alone at that locality. In this matter you have had the audacity to intrude into another person’s home and takeaway belongings of the complainant from his bedroom. This Court is very mindful that offences of this nature disturbs the peace and tranquility of mind of our citizens when intruded in this manner to your home. In this regard, the Courts has a duty to discourage and deter this kind of anti-social behavior that instill unwanted fear in members of the public.
7. Master **Jone Tabuya Navara** you are a very young boy of tender years still learning and exploring the right path to proceed in life. This Court wish to inform you that you have an entire future ahead of you and you’re expected to contribute positively and take responsibility in developing the future of this country as much as you can.
8. However, you have got entangled in the commission of this offence at the age of 17. In mitigation, your counsel has informed the Court that you have entered an early guilty plea and that you regret your action on the day in question. Further, Court recognizes that by pleading guilty to the charges you have saved court’s time and resources at a very early stage of the Court proceedings.

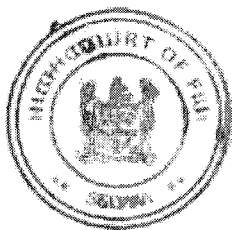
9. In identifying a suitable punishment for your admitted guilt in this matter, this Court intends to take guidance from the decision of *Nariva v The State (2006) FJHC 6; HAA 0148J.2005S (9 February 2006)*, where **Justice Nazhat Shameem** held as below:

*“The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment.”*

10. Therefore, with the expectation of supervising your conduct to assure that you don't get involved in social misbehaviour as seen in this matter in the future, this Court is willing to contemplate a probation order under **Section 32(1) (f)** of the **Juvenile Act of 1973** against you. In reaching this conclusion, this Court has considered the nature of your involvement in the commission of this offence, your young age and the high potential for your rehabilitation with adequate supervision. However, during this period you have to take stock of your life and your future. Consider this to be a form of assistance this Court is providing you to identify your future prospects.

11. In this regard, acting under **Section 3** of the **Probation of Offenders Act of 1952**, this Court imposes a Probation Order on you Operative for 3 years from today, as below:

12. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage'.

Hon. Justice Dr. Thushara Kumarage

**At Suva**

05<sup>th</sup> of August 2022

### Probation Order

In consideration of the provisions of **Section 32(1) (f)** of the **Juvenile Act of 1973**, and acting under **Section 3** of the **Probation of Offenders Act of 1952**, this Court imposes a Probation Order applicable on **JONE TABUYA NAVARA** operative for 3 years from today. This Probation Order carries the following conditions:

- i) You will be under the supervision of the Probation Officer with Social Welfare Department, Suva.
- ii) You will reside in Vunijaina Settlement, Tacirua.
- iii) Your probation will be supervised by the Magistrate's Court of Suva.
- iv) In addition, acting under **Section 3 (3)** of the **Probation of Offenders Act of 1952**, this Court directs you to report to the Valelevu Police Station on every first Saturday of every month.
- v) If you fail to comply with the directions stipulated in this Probation Order or commit another offence, you will be liable to be sentenced for the original offence.

The juvenile has been explained of these conditions in open Court.



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Hon. Justice Dr. Thushara Kumarage

At Suva

05 August 2022