

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 133 of 2019**

**STATE**

**V**

- 1. JUNIOR SAVENACA VIRIVIRISAI**
- 2. RATU KANITO MATANASAU**

**Counsel:** Ms. Prenika Lata for the State  
Ms. Nimita Sharma for the 1<sup>st</sup> and 2<sup>nd</sup> Accused

**Sentence Hearing:** 28 September 2022 and 17 October 2022

**Sentence:** 6 December 2022

## **SENTENCE**

**[1]** Junior Savenaca Virivirisai, as per the Consolidated Information filed by the Director of Public Prosecutions (DPP), you were charged along with Ratu Kanito Matanasau with the following offences:

### **COUNT 1**

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

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

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

**JUNIOR SAVENACA VIRIVIRISAI and RATU KANITO MATANASAU**, between the 29<sup>th</sup> day of July 2019 and 30<sup>th</sup> day of July 2019, at Nadi, in the Western Division, in the company of each other, broke and entered into the office of **TANAL INVESTMENT OWNED BY TAITO NALUKUYA**, 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*

**JUNIOR SAVENACA VIRIVIRISAI and RATU KANITO MATANASAU**, between the 29<sup>th</sup> day of July 2019 and 30<sup>th</sup> day of July 2019, at Nadi, in the Western Division, dishonestly appropriated (stole) 1 Acer brand laptop, 1 Jim Beam liquor, 1 Blue Label liquor, 1 Jack Daniel liquor, 2 x Ratu Rum liquor, 8 bottles of red wine, 1 Bombay Sapphire, 2 x leather bracelet, 7 x Seiko watches, 4 x leather Seiko watches, 1 Casio watch, all to the approximate value of \$12,320.00, the property of **TAITO NALUKUYA** with the intention of permanently depriving **TAITO NALUKUYA** of the said properties.

- [2] Junior Savenaca Virivirisai, on 6 November 2019, the DPP filed the Consolidated Information and Consolidated Disclosures in Court. On 20 November 2019, you and the 2<sup>nd</sup> Accused, Ratu Kanito Matanasau, were ready to take your pleas. On that day, you both pleaded not guilty to the two charges in the Consolidated Information.
- [3] However, on 23 August 2022, Junior Savenaca Virivirisai, you wished to take your plea once again. On that day you pleaded guilty to the two counts against you in the Consolidated Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your guilty plea.
- [4] Thereafter, the State filed the Summary of Facts. On 29 August 2022, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the respective counts in the Consolidated Information, and found the two counts proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the two charges.
- [5] I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State was as follows:
1. *The Complainant is Taito Nalukuya (hereafter PW1) 44 years at the time of alleged offence, Businessman of West Road, Legalega, Nadi.*
  2. *Accused is Junior Savenaca Virivirisai (hereafter Accused) 18 years at the time of alleged offence (20 years now), Carpenter of Sabeto, Nadi.*

3. *On the 30<sup>th</sup> day of July 2019 at around 4.20 a.m. at Tanal Investment in Legalega, Nadi, Taina Nadakuitavuki, Admin Officer of PW1 (hereafter PW2) saw their office ransacked. PW2 then called PW1 and informed him about the break in their office.*
4. *PW1 went to his office and saw that the entry was gained by breaking the window glass in his office. He noticed following items to be stolen:*

<i>1 x Jim Beam</i>	<i>\$ 120.00</i>
<i>1 x Blue Label</i>	<i>\$ 500.00</i>
<i>1 x Jack Daniel</i>	<i>\$ 150.00</i>
<i>1 x Ratu Rum</i>	<i>\$ 400.00</i>
<i>8 x Red Wine (\$50.00 each)</i>	<i>\$ 400.00</i>
<i>1 x Bombay Sapphire</i>	<i>\$ 50.00</i>
<i>2 x Bracelet (\$200.00 each)</i>	<i>\$ 400.00</i>
<i>7 x Seiko watches (\$1,000 each)</i>	<i>\$ 7,000.00</i>
<i>1 x Casio watch</i>	<i>\$ 800.00</i>
<i>1 Acer Laptop</i>	<i>\$ 1,500.00</i>
<i>4 x Leather wrist watch (\$250 each)</i>	<i><u>\$ 1,000.00</u></i>
 <b>Total</b>	 <b><u>\$12,320.00</u></b>

5. *The Acer Laptop and a Seiko brand wrist watch was recovered from Waisea Draciri (hereafter PW3). PW3 stated that the Accused gave him the Seiko brand watch and sold him the Acer Laptop for \$400.00.*
6. *The Accused was arrested and interviewed under caution by Police Officer Filipe Ratini (hereafter PW4). The Accused admitted breaking into the office of PW1 with a friend namely Ratu aka Raj. They used a pinch bar to break the sliding window of the office. The Accused then packed all the liquor whereas the friend grabbed the Acer Laptop and 10 Seiko brand watches. They then went to Sanasana Bridge whereby they shared the stolen items and later during the day drank the stolen liquor with other friends. The bottles of liquor were not recovered but only 3 empty bottles were found. The Accused was shown the empty bottles during caution interview and he admitted stealing those bottles from Tanal Enterprise office. The Accused was also shown the recovered Acer Laptop and watch which he admitted being stolen from Tanal Enterprise office. The Accused was then taken for reconstruction of scene whereby he showed how they entered into the office and stole the items. [Q & A 40-113].*

*[A copy of the record of interview is attached at Tab 1]*

7. *The Accused was charged with one count of Aggravated Burglary contrary to Section 313 (1) (a) and one count of Theft contrary to Section 291 (1) of the Crimes Act 2009.*
8. *The Accused pleaded guilty on the 23<sup>rd</sup> of August 2022 on his own free will for the above charges.*

[7] Junior Savenaca Virivirisai, you have admitted to the above Summary of Facts and taken full responsibility for your actions.

[8] Section 4(1) 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. The factors are as follows:

*4. — (1) The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

[9] I have duly considered the above factors in determining the sentence to be imposed on you.

[10] In terms of Section 313 (1) of the Crimes Act No. 44 of 2009 (“Crimes Act”), “A person commits an indictable offence (of Aggravated Burglary) if he or she-

*(a) Commits a burglary in company with one or more other persons; or*

*(b) .....*”

The offence of ‘Burglary’ is defined at Section 312 (1) of the Crimes Act as follows: “A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building”.

The offence of Aggravated Burglary in terms of Section 313 (1) of the Crimes Act carries a maximum penalty of 17 years imprisonment.

[11] The tariff for the offence of Aggravated Burglary is between 18 months to 3 years imprisonment. This tariff has been adopted in several decided cases: **State v. Mikaele Buliruarua** [2010] FJHC 384; HAC 157.2010 (6 September 2010); **State v. Nasara** [2011]

FJHC 677; HAC 143.2010 (31 October 2011); *State v. Tavualevu* [2013] FJHC 246; HAC 43.2013 (16 May 2013); *State v. Seninawanawa* [2015] FJHC 261; HAC 138.2012 (22 April 2015); *State v. Seru* [2015] FJHC 528; HAC 426.2012 (6 July 2015); *State v. Drose* [2017] FJHC 205; HAC 325.2015 (28 February 2017); and *State v. Rasegadi & Another* [2018] FJHC 364; HAC 101.2018 (7 May 2018).

[12] The Court of Appeal in *Leqavuni v. State* [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary is between 18 months to 3 years.

[13] This Court has been consistently following the tariff of 18 months to 3 years imprisonment for Aggravated Burglary: Vide *State v. (Venasio) Cawi & 2 others* [2018] FJHC 444; HAC 155.2018 (1 June 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 536; HAC 92.2018 (20 June 2018); *State v. Pita Tukele & 2 others* [2018] FJHC 558; HAC 179.2018 (28 June 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 995; HAC 92.2018 (17 October 2018); *State v. (Maika) Raisilisili* [2018] FJHC 1190; HAC 355.2018 (13 December 2018); *State v. (Taione) Waqa & 2 others* [2018] FJHC 1209; HAC 92.2018 (18 December 2018); *State v. Michael Bhan* [2019] FJHC 661; HAC 44.2019 (4 July 2019); *State v. Etika Toka* HAC 138.2019 (1 November 2019); *State v. Vakacavuti* HAC337.2018 (7 November 2019); *State v. Vakacavuti* [2019] FJHC 1088; HAC338.2018 (7 November 2019); *State v. Peniasi Ciri and Another* [2020] FJHC 63; HAC14.2019 (6 February 2020); *State v. Maikeli Turagakula and Another* [2020] FJHC 101; HAC416.2018 (19 February 2020); *State v. (Sachindra Sumeet) Lal & Another* [2020] FJHC 147; HAC71.2019 (26 February 2020); *State v. (Rupeni) Lilo* [2020] FJHC 401; HAC225.2018 (9 June 2020); *State v. (Taniela) Tabuakula* [2020] FJHC 464; HAC106.2020 (23 June 2020); *State v. (Eric Male) Robarobalevu* [2020] FJHC 630; HAC102.2020 (6 August 2020); *State v. (Usaia) Delai* [2020] FJHC 631; HAC7.2020 (6 August 2020); *State v Vakawaletabua* [2020] FJHC 645; HAC441.2018 (11 August 2020); *State v. (Sakeasi) Seru and Another* [2020] FJHC 770; HAC136.2020 (18 September 2020); *State v. (Kunal Edwin) Prasad* [2020] FJHC 785; HAC115.2020 (23 September 2020); *State v. (Emosi) Tabuasei* [2020] FJHC 994; HAC131.2020 (27 November 2020); *State v. LR and Others* [2020] FJHC 993; HAC133.2020 (27 November 2020); *State v. Lal and Another* [2020] FJHC 1024; HAC337.2019 (3 December 2020); *State v. Koroitawamudu and Another* [2020] FJHC 1055; HAC127.2020 (8 December 2020); *State v. Koroii and Another* [2020] FJHC 1065; HAC270.2020 (10 December 2020); *State v. (Joji) Kotobalavu* [2021] FJHC 101; HAC234.2020 (17 February 2021); *State v. Nabou Junior* [2021] FJHC 172; HAC277.2020 (22 March 2021); *State v. Nabou Junior* [2021] FJHC 173; HAC277.2020 (22 March 2021); *State v. Lutunamaravu & Others* [2021] FJHC 191; HAC192.2020 (23 March 2021); *State v. (Aminiasi) Vakalala & Another* [2021] FJHC 195; HAC325.2020 (25 March 2021); *State v. Lal* [2021] FJHC 247; HAC337.2019 (5 October 2021); *State v. Kaibalauma and Another* [2021] FJHC 349; HAC59.2021 (1 December 2021); and *State v. Senikaboa and Others* [2021] FJHC 416; HAC237.2020 (17 December 2021); *State v. Prasad & Another* [2022] FJHC 70; HAC115.2020 (11 February 2022), *State v. Pita Nanumi* HAC77.2021 (14 June 2022); *State v. Rafaele*

**Tuibucabuca** HAC152.2019 (26 August 2022); **State v. Cliff Douglas & Others** HAC011.2022 (20 September 2022) and **State v. Inoke Domo & Another** HAC095.2021 (23 September 2022).

[14] In terms of Section 291 (1) of the Crimes Act “A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property”. The offence of Theft in terms of Section 291 (1) of the Crimes Act carries a maximum penalty of 10 years imprisonment.

[15] In **Ratusili v. State** [2012] FJHC 1249; HAA011.2012 (1 August 2012); His Lordship Justice Madigan proposed the following tariff for the offence of Theft:

“(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.”

[16] Since the theft in this case involved property of a reasonably high value, and was consequent to you and your accomplice entering a business/commercial establishment, this cannot be considered as theft simpliciter. Therefore, it is my opinion that the appropriate tariff in this case should be in the range of 2 months to 3 years imprisonment for the offence of Theft.

[17] In determining the starting point within a tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”

[18] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Junior Savenaca Virivirisai, I commence your sentence at 18 months imprisonment for the first count of Aggravated Burglary.

[19] Similarly, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Junior Savenaca Virivirisai, I commence your sentence at 6 months imprisonment for the second count of Theft.

[20] Junior Savenaca Virivirisai, the aggravating factors in this case are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) You and your accomplice trespassed into the premises of a business/commercial establishment thereby paying complete disregard to the property rights of the said establishment and its owners.
- (iii) I find that there was some degree of pre-planning or pre-meditation on you and your accomplice's part in committing these offences, since you had trespassed into the business/commercial establishment in the early hours of the morning.
- (iv) You and your accomplice have caused damage to the business/commercial establishment while trespassing into the premises.
- (v) You are now convicted of multiple offending.

[21] Considering the aforementioned aggravating factors, Junior Savenaca Virivirisai, I increase your sentences by a further 4 years. Now your sentence for count one would be 5 years and 6 months imprisonment. Your sentence for count two would be 4 years and 6 months imprisonment.

[22] Junior Savenaca Virivirisai, you are now 22 years of age (your date of birth being 3 September 2000). You are single. You are said to be residing with your mother and two older sisters at Sabeto in Nadi. Your parents are said to have separated when you were 10 years old and since then you have been brought up by your mother.

[23] You are said to have attained your primary education at Namaka Public School and secondary education at Ratu Kadavulevu School until Year 12. Thereafter, you had joined Australia Pacific Training Coalition and attained a Certificate in Baking. You worked as an attaché at Ana's Cake Shop.

[24] You are said to be a member of the SDA Church and have been attending church regularly prior to being incarcerated for this matter.

[25] Junior Savenaca Virivirisai, however, the above are all personal circumstances and cannot be considered as mitigating circumstances.

[26] You are also not a first offender. Currently you are serving a sentence of 17 months and 16 days imprisonment, imposed by the Nadi Magistrate's Court, in Criminal Case No. 312 of 2021, on 11 February 2022. The said sentence was imposed on you for a similar property offence (Burglary, contrary to Section 312 (1) of the Crimes Act and Theft, contrary to Section 291 (1) of the Crimes Act).

[27] Junior Savenaca Virivirisai, I accept that at the time of the offending you were just above 18 years of age. I also accept that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine and the fact that you have promised not to re-offend. I also acknowledge the fact that some of the stolen items (to the value \$2,500.00) had been recovered. Accordingly, considering these mitigating factors, I deduct 2 years and 6 months from your sentences. Now your sentence for count one would be 3 years imprisonment. Your sentence for count two would be 2 years imprisonment.

[28] Junior Savenaca Virivirisai, I accept that although belatedly, you have entered a guilty in these proceedings. In doing so, you saved precious time and resources of this Court. For your guilty plea I grant you a further discount of 12 months for count one. Since I propose to make your sentences concurrent I do not deem it necessary to grant you any further discount for count two in lieu of this factor.

[29] In the circumstances, Junior Savenaca Virivirisai, your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act-  
2 years imprisonment.

Count 2- Theft contrary to Section 291 (1) of the Crimes Act –2 years  
imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore,  
your final total term will be 2 years imprisonment.

[30] Junior Savenaca Virivirisai, since you are not a first offender and currently serving a sentence of imprisonment, this Court cannot act in terms of Section 26 of the Sentencing and Penalties Act and suspend your sentence.

[31] Accordingly, I sentence you to a term of 2 years' imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 1 year and 6 months imprisonment.

[32] Section 24 of the Sentencing and Penalties Act reads thus:

*"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the*



*matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."*

[33] You were arrested for this case and produced in the Nadi Magistrate's Court on 6 August 2019 and remanded into custody. You were granted bail by the High Court on 30 July 2020. Accordingly, you have been in custody for this case for a period of nearly 1 year. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 1 year should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[34] In the result, your final sentence is as follows:

Head Sentence - 2 years' imprisonment.

Non-parole period - 1 year and 6 months imprisonment.

Considering the time you have spent in remand, the time remaining to be served is as follows:

Head Sentence - 1 year imprisonment.

Non-parole period - 6 months imprisonment.

[35] I make order that your sentence will commence from today and be concurrent to the sentence you are serving in Nadi Magistrate's Court Criminal Case No. 312 of 2021.

[36] You have 30 days to appeal to the Court of Appeal if you so wish.



AT LAUTOKA

Dated this 6<sup>th</sup> Day of December 2022

**Solicitors for the State:**

**Office of the Director of Public Prosecutions, Lautoka.**

**Solicitors for the Accused:**

**Office of the Legal Aid Commission, Lautoka.**