

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

Crim. Case No: HAC 056 of 2023

BETWEEN: STATE

PROSECUTION

A N D: SEPESA MATAWALU DURU

ACCUSED PERSON

Counsel : Mr. Z. Zunaid for the State  
Mr. T. Varinava for Accused

Date of Sentence : 08<sup>th</sup> March 2023

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**SENTENCE**

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1. Mr. Sepesa Matawalu Duru, 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, one count of Theft, contrary to Section 291 (1) of the Crimes Act, which carries a maximum sentence of ten years imprisonment, The particulars of offences are:

*COUNT 1*

*Statement of Offence*

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

*Particulars of Offence*

**SEPESA MATAWALU DURU** and another, in the company of each other, on the 20<sup>th</sup> day of January, 2023 at Nausori in the Eastern Division, entered into the property of **SHELVIN PAL**, 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*

**SEPESA MATAWALU DURU** and another, in the company of each other, on the 20<sup>th</sup> day of January, 2023 at Nausori in the Eastern Division, dishonestly appropriated 1x sound system (consisting of 2x small speakers, 1x long sound bar and 1x LG brand subwoofer), 1x small Sanyo brand music box and 1x electric kettle, the properties of **SHELVIN PAL** with the intension of permanently depriving **SHELVIN PAL** of the said properties.

2. Satisfied by the fact that you have fully comprehended the legal effect of your pleas and that your pleas were voluntary and free from influence, I now convict you for these two offences as charged in the Information.
3. According to the Summary of Facts, you and your accomplice entered the Complainant's house while he was away at work. You had entered the house removing louvre blades. You entered the house and stole the items while your accomplice stood outside. You stole the items as described in the Information.
4. This is a breaking of a dwelling house and stealing therein. You broke into this house while the occupant was at work. Crimes of this nature, targeting 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 severe 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. Therefore, imposing an aggregate sentence pursuant to Section 17 of the Sentencing and Penalties Act is appropriate.
7. The Fiji Court of Appeal in **Avishkar Rohinesh Kumar and Sirilo Vakatawa v The State (Criminal Appeals No AAU 33 of 2018 and AAU 117 of 2019)** stipulated a tariff range for the offence of Aggravated Burglary, which ranges from 1 year to 12 years. 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:

*For a first offence of simple Theft the sentencing range should be between 2 and 9 months.*

*Any subsequent offence should attract a penalty of at least 9 months.*

*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.*

*Regard should be had to the nature of the relationship between offender and victim.*


*Planned thefts will attract greater sentences than opportunistic thefts.*

8. Considering the nature of the items you have stolen and how you have entered the premises, the level of harm is low; hence, the starting point is three years, and the sentencing range is 1 to 5 years.
9. You are a young first offender. You pleaded guilty to these offences at the first available opportunity. Moreover, you admitted your responsibilities for committing these offences in your caution interview. In doing that, you expressed remorse and repented for

committing this crime. Therefore, you are entitled to a substantial discount for your early plea of guilty and good character.

10. Considering the above reasons, I sentence you to 20 months imprisonment as an aggregated sentence for these two counts as charged in the Information. Your sentence is partially suspended, where you shall serve ten months of your sentence instantly, and the remaining period of 10 months is suspended for three years. Considering the time spent in custody (nearly 45 days), I consider that you have already served two (02) months. Accordingly, you have to serve in custody for eight (08) months imprisonment.
11. If you commit any crime during the period of three (3) years and are 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.
12. Thirty (30) days to appeal to the Fiji Court of Appeal.



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

**At Suva**

08<sup>th</sup> March 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.