

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 207 of 2022**

**STATE**

**V**

**TEVITA TUINAMATA**

**Counsel:** Mr. Joeli Nasa for the State  
Ms. Keli Vulimainadave (As Duty Solicitor) for the Accused

**Sentence Hearing:** 9 June 2023

**Sentence:** 16 June 2023

### **SENTENCE**

- [1] Tevita Tuinamata, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

#### **COUNT ONE**

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

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

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

**TEVITA TUINAMATA**, between the 13<sup>th</sup> day of December 2022 and the 14<sup>th</sup> day of December 2022, at Nadi, in the Western Division, dishonestly appropriated a rental car registration number LR 2072, the property of **COASTAL RENTALS** with the intention of permanently depriving **COASTAL RENTALS** of the said property.

## COUNT TWO

### *Statement of Offence*

**DAMAGING PROPERTY**: Contrary to Section 369 (1) of the Crimes Act 2009.

### *Particulars of Offence*

**TEVITA TUINAMATA**, between the 13<sup>th</sup> day of December 2022 and the 14<sup>th</sup> day of December 2022, at Nadi, in the Western Division, wilfully and unlawfully damaged an aluminium door and steel shutters, the properties of **COASTAL RENTALS**.

- [2] On 17 April 2023, the DPP filed the Information in Court, while the Disclosures relevant to the case had been filed in Court on 11 April 2023.
- [3] Tevita Tuinamata, on 25 April 2023, you were ready to take your plea. On that day you pleaded guilty to the two counts against you in the 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 11 May 2023, the Summary of Facts were read out and explained to you and you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the respective counts in the 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 of Theft and Damaging Property.
- [5] Tevita Tuinamata, I now proceed to pass sentence on you.
- [6] The Summary of Facts filed by the State in respect of count two was as follows:

#### **"Background**

*The complainant is Ranit Chand (hereinafter referred to as "complainant"). He was 38 years of age at the time of the incidences.*

*The accused is Tevita Tuinamata (hereinafter referred to as "the accused"). He was 28 years of age at the time of his offending.*

*The accused was an employee of Coastal Rentals at the time of his offending. He lives in Nawai, Nadi.*

*The complainant is the Manager of Coastal Rentals located in Nadi.*

### **First Count**

*Between 13<sup>th</sup> December 2022 and 14<sup>th</sup> December 2022, the accused being an employee of Coastal Rentals trespassed into the said company and drove out of the premises a rental car registration number LR 2072 without hire and without permission of Coastal Rentals. The accused drove the said rental car to his home at Nawai, Nadi, and did not return it to Coastal Rentals until it was confiscated by police via check-point search at Korolevu Police Post, Sigatoka, on the afternoon of 14<sup>th</sup> December 2022.*

### **Second Count**

*Between 13<sup>th</sup> December 2022 and 14<sup>th</sup> December 2022, the accused when driving the rental car registration LR 2072 out of Coastal Rentals, without permission, deliberately damaged the aluminium door and steel shutters of Coastal Rentals.*

### **Confession**

*The matter was reported to police and the accused was apprehended, interviewed and charged at Nadi Police Station. The accused admits from questions 63 to 98 of his record of interview that he stole the rental car registration number LR 2072. He also admitted that he damaged the aluminium door and steel shutters of Coastal Rentals. The accused is charged with one count of Theft contrary to Section 291 (1) of the Crimes Act 2009 and one count of Damaging Property contrary to Section 369 (1) of the Crimes Act 2009."*

- [7] Tevita Tuinamata, 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]** Furthermore, Section 4(2) of the Sentencing and Penalties Act provides that a Court must consider the following factors when sentencing an offender:

*(2) In sentencing offenders a court must have regard to —*

*(a) the maximum penalty prescribed for the offence;*

*(b) current sentencing practice and the terms of any applicable guideline judgment;*

*(c) the nature and gravity of the particular offence;*

*(d) the offender's culpability and degree of responsibility for the offence;*

*(e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;*

*(f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;*

*(g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;*

*(h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;*

*(i) the offender's previous character;*

*(j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and*

*(k) any matter stated in this Decree as being grounds for applying a particular sentencing option.*

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

**[11]** 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.

[12] 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."*

[13] Since the theft in this case involved a vehicle (rental car), which is property of a reasonably high value, 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.

[14] 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."*

[15] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, Tevita Tuinamata, I commence your sentence at 6 months imprisonment for the first count of Theft.

[16] Tevita Tuinamata, the aggravating factors in this case are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) There has been a serious breach of trust. You were an employee of Coastal Rentals, the complainant company. As such, you should have protected and safeguarded the interests of the said establishment. Instead you have breached the trust expected from you.

- (iii) You paid complete disregard to the property rights of the complainant company.
- (iv) I find that the act of stealing the complainant's rental car was planned by you and was not merely an opportunistic act.

**[17]** Tevita Tuinamata, in mitigation you have submitted as follows:

- (i) That you are a relatively young first offender and that you have no previous convictions to date. The State too confirms that there are no previous convictions recorded against you.
- (ii) That you fully co-operated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions. You have promised not to re-offend and said you are willing to reform.
- (iv) The stolen rental car had been recovered.
- (v) That you entered a guilty plea at a very early stage of these proceedings.

**[18]** Considering the aforementioned aggravating factors, Tevita Tuinamata, I increase your sentence by a further 5 years. Now your sentence for count one would be 5 years and 6 months imprisonment.

**[19]** Tevita Tuinamata, I accept that you are a relatively young first offender and 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 and undertaken to reform. I also accept the fact that the stolen property had been recovered. Accordingly, considering these mitigating factors, I deduct 2 years and 6 months from your sentence. Now your sentence for count one would be 3 years imprisonment.

**[20]** Tevita Tuinamata, I accept that you entered a guilty at the earliest opportunity during these proceedings. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of one year.

**[21]** In the circumstances, Tevita Tuinamata, your sentence would be 2 years imprisonment for the offence of Theft, contrary to Section 291 (1) of the Crimes Act.

**[22]** In terms of Section 369 (1) of the Crimes Act "*A person commits a summary offence if he or she wilfully and unlawfully destroys or damages any property*". The offence of Damaging Property in terms of Section 369 (1) of the Crimes Act carries a maximum penalty of 2 years imprisonment, if no other punishment is provided under any other provisions of the Section.

[23] Considering the nature and gravity of the offence, your culpability and degree of responsibility for the offence, the aggravating factors and the mitigating factors, I sentence you to 6 months imprisonment for the second count of Damaging Property, contrary to Section 369 (1) of the Crimes Act.

[24] In the circumstances, Tevita Tuinamata your sentences are as follows:

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

Count 2- Damaging Property contrary to Section 369 (1) (a) of the Crimes Act - 6 months' imprisonment.

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

[25] The next issue for consideration is whether your sentence should be suspended.

[26] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

*(a) does not exceed 3 years in the case of the High Court; or*

*(b) does not exceed 2 years in the case of the Magistrate's Court.*

[27] Tevita Tuinamata, you are now 29 years of age [Your date of birth being 31 March 1994]. You are said to be separated and was residing at Nawai, Nadi prior to being remanded for this case. You were employed as a Driver earning approximately \$230.00 a week.

[28] You have admitted to the Summary of Facts and taken full responsibility for your actions. You have submitted that you were intoxicated at the time of the offending. However, you state that you fully understand the nature and gravity of the offences and that you take full responsibility for your conduct.

[29] In *Singh & Others v. State* [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

*"...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence."*

[30] In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:

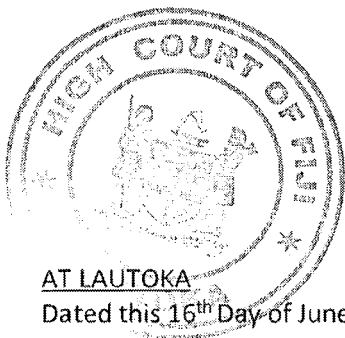
*"The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such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

[31] Tevita Tuinamata, you are a relatively young first offender with a previous good character. You have fully co-operated with the Police in this matter and you have accepted responsibility for your conduct. You have submitted that you are truly remorseful of your actions and promised not to re-offend and stated that you are willing to reform. I also accept the fact that the stolen property had been recovered. You entered a guilty plea at a very early stage during these proceedings. Furthermore, you have been in custody since 19 December 2022, the day you were produced in the Magistrate's Court of Nadi and remanded into custody for this case. That is a period of nearly 6 months. For these reasons, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentence.

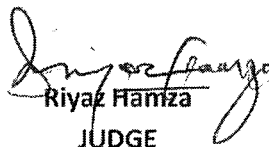
[32] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 5 years.

[33] In the result, Tevita Tuinamata, your final sentence of 2 years' imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.

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



AT LAUTOKA  
Dated this 16<sup>th</sup> Day of June 2023

  
Riyaz Hamza  
JUDGE  
HIGH COURT OF FIJI

Solicitors for the State:  
Solicitors for the Accused:

Office of the Director of Public Prosecutions, Lautoka.  
Office of the Legal Aid Commission, Lautoka.