

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

**Crim. Case No: HAC 31 of 2022**

**STATE**

vs.

1. **PAULA MUAYARA**
2. **VILIMONI SAUMAKI**

**Counsel:** Ms. M. Ramoala for the State  
Accused 1 In Person  
Accused 2 In Person

**Date of Hearing:** 10<sup>th</sup> to 14<sup>th</sup> July 2023

**Date of Closing Submission:** 21<sup>st</sup> July 2023

**Date of Judgment:** 15<sup>th</sup> August 2023

**Date of Sentence:** 05<sup>th</sup> September 2023

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**SENTENCE**

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1. The Court, on the 15th of August 2023, found both of you guilty of 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 has a maximum sentence of ten years imprisonment and convicted of the same accordingly.

2. On the night of the 4th of January 2022, two of you entered the Hanson Supermarket Building as trespassers intending to commit Theft and then stole cigarettes from Hanson Supermarket.
3. This is a breaking of a business establishment and stealing therein. You broke into this building in the night while the owners were away. Crimes of this nature, targeting business places, 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.
4. Having considered the serious nature of these offences, I now determine an appropriate sentence for you in line with general principles, objectives, and sentencing purposes under Sections 4 (1), 4 (2) and 15 of the Sentencing and Penalties Act.
5. These two 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.
6. 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** (the 1st of 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.*

7. 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.
8. This is a planned burglary committed at night; hence, the level of culpability is high. (*vide; Kumar and Vakatawa (supra)*).
9. Both of you are first offenders, hence, entitled to a discount for your previous good character.
10. Mr. Paula Muayara, having considered the above reasons, I sentence you to thirty-six (36) months imprisonment as an aggregated sentence for these two counts as charged in the Information. Your sentence is partially suspended, where you shall serve twenty-four (24) months of your sentence instantly, and the remaining period of twelve (12) months is suspended for three years. Considering the time spent in custody (nearly four (4) months), I consider that you have already served four (04) months. Accordingly, you have to serve in custody for twenty (20) 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. Mr. Vilimoni Saumaki, having considered the above reasons, I sentence you to thirty-six (36) months imprisonment as an aggregated sentence for these two counts as charged in the Information. Your sentence is partially suspended, where you shall serve twenty-four (24) months of your sentence instantly, and the remaining period of twelve (12) months is suspended for three years. Considering the time spent in custody (nearly four months), I consider that you have already served four (04) months. Accordingly, you have to serve in custody for twenty (20) months imprisonment.

13. 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.
14. 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**

05<sup>th</sup> September 2023

**Solicitors**

Office of the Director of Public Prosecutions for the State.

Accused 1 In Person.

Accused 2 In Person.