

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 17 of 2023

STATE

vs

- 1. MANU BIAU LAVEKAU**
- 2. ERONI LUTUNAMARAVU**

<i>Counsels:</i>	<i>Ms. Ali N</i>	-	<i>for Prosecution</i>
	<i>Mr. Varinava T.</i>	-	<i>for Accused 1</i>
	<i>In Person</i>	-	<i>for Accused 2</i>

SENTENCE

1. **MANU BIAU LAVEKAU** you were charged with one count of Aggravated Burglary and one count of Theft and **ERONI LUTUNAMARAVU** you were charged with one count of Theft, as below:

COUNT ONE

Statement of Offence

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

Particulars of Offence

MANU BIAU LAVEKAU and another between the 28th and 29th day of November 2022 at Nabua in the Central Division in the company of each other, entered into the dwelling house of **TEVITA NACAMA** as trespassers with intent to commit theft therein.

COUNT TWO

Statement of Offence

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

Particulars of Offence

MANU BIAU LAVEKAU and another between the 28th and 29th day of November 2022 at Nabua in the Central Division in the company of each other, entered into the

dwelling house of TEVITA NACAMA as trespassers with intent to commit theft therein.

COUNT THREE

Statement of Offence

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

Particulars of Offence

ERONI LUTUNAMARAVU and another on the 28th day of November, 2022 at Nabua in the Central Division dishonestly appropriated (stole) 1 x high cut safety brown boot, 1 x black canvas, 1 x green Bluetooth speaker, 1 x blue and white Adidas knapsack bag, 1 x black Adidas long pants, 1 x Alcatel black button phone, 1 x black touchscreen phone with a total value of \$787.00, the property of TEVITA NACAMA with intention to permanently deprive TEVIT NACAMA of the said property.

2. **MANU BIAU LAVEKAU** you pleaded guilty to the charges against you on 18th May 2023 and **ERONI LUTUNAMARAVU** you pleaded guilty to the charge against you on 31st March 2023. You understood the consequences of the guilty plea for offences you have committed. This Court was satisfied that your guilty pleas were informed and unequivocal and entered freely and voluntarily by the two of you.

Summary of Facts.

Complainant (PW1): Tevita Namaca, 53 years old, Security Officer at Lot5 Park Road, Raiwaqa.

PW2: Uraia Navicukalulu, 22 years old, Farmer, of Jittu Estate

PW3: Sereana Kaususu, 37 years old, self-employed, 296 Ratu Mara Road.

PW4: Joana Vakanawa, 40 YEARS OLD, Domestic Duties, Jittu settlement.

Accused (A1): Manu Biau Lavekau, 22 YEARS OLD (Date of birth: 14.03.2000), Unemployed of Jittu Settlement.

Accused (A2): Eroni Lutunamaravu, 22 years old (Date of Birth: 05.4.2001), Farmer, of Nanuku Settlement, Vatuwaqa.

Facts:

- On the 28th of November 2022, at around 7.00am, PW1 had securely locked their house and left for work together with his wife and grandson. At around 1.00pm on the same day PW1's wife called PW1 and informed him that the grandson had gone home and found out that someone had broken into the house.

- PW1 on his way back home had noticed that their back door was forcefully opened and that the padlock of their grill door was broken. Upon checking around his home he discovered that the following items were missing:
 - i) 1 x Alcatel mobile phone
 - ii) 1 x Music Box (Bluetooth speaker)
 - iii) 2 x Chicken No. 18
 - iv) 1 x bundle of fish
 - v) 1 x black and white Adidas bag
 - vi) Assorted clothes
 - vii) 1 x High cut safety brown boot
 - viii) 1 x black canvas (running shoes)
 - ix) 1 x mat
- PW1 then reported the matter to the Nabua Police Station and investigations were carried out. PW1 further stated in his police statement dated 1st December 2022 that on the 29th of November, at around 5.00pm he received a call from Sereana (PW3) who informed him that some youths were selling traditional mats to her. PW1 then went to PW3's house in Jittu settlement and discovered that the mat sold to PW3 belongs to him, which he also noticed was stolen from his residence on the 28th of November 2022.
- On the 28th of November 2022 at around 11.30am, PW2 was at Lagilagi Housing with some youths when they were approached by A2 and another youth. According to PW2, A2 was holding on to two touch screen phones and one button phone telling them that they broke into a house but did not tell them the location of that house. After a while, A2 and the other youth both went to their own homes.
- PW4 who is the aunt of A2 was at home at Jittu Estate on the 30th of November 2022 was at home when she was approached by Police officers with a search warrant. According to PW4, A2 had been residing with them for the past 4 years. Upon searching PW4's house the Police recovered the following items:
 - (i) 1 x blue and white Adidas bag
 - (ii) 1 x brown High cut safety brown boot
 - (iii) 1 x black canvas
 - (iv) 1 x long pants
 - (v) 1 x Bluetooth speaker
- PW4 then informed the Police Officer that some of the items were brought by A2 on the 28th of November 2022.

- On the 30th of November 2022, A2 was arrested and escorted to Nabua Police Station for questioning on allegations of Theft. A2 made no admissions in the caution interview.
 - A1 was arrested on the same day. A1 was arrested on the same day, 30th November where he admitted that he was with A2 on the day of the alleged incident. A1 in Q & A 33 to 43 had admitted that he broke into a house with A2, stating how they entered the property and the items that they have stolen. One of the phones that he stole was recovered by Police. He is charged for Aggravated Burglary contrary to Section 313(1)(a) of the Crimes Act of 2009.
 - On the 1st of December 2022, PW 1 was called into the Nabua Police Station and positively identified all the recovered items mentioned above as the items that were stolen from the house on the 28th of November 2022.
3. At the very outset, this Court was convinced that the summary of facts agreed by you on 04/09/23 satisfy all the elements of each offence you are charged with. Therefore, this Court convicted both of you for the charged offences in the information filed in this matter. On considering the submission made by the prosecution in aggravation and your counsel in mitigation, now this matter is pending for sentencing.
 4. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of Aggravated Burglary under **Section 313 (1) (a)** of the **Crimes Act of 2009** is an imprisonment term of 17 years and the maximum punishment for Theft under **Section 291** of the **Crimes Act 2009** is an imprisonment term of 10 years.
 5. The accepted tariff for counts 1, 2 and 3 depend on the nature and circumstances under which Aggravated Burglary and Theft were committed, and the consequences entailing the commission of the offences to the victims and the society at large.
 6. This Court also recognizes that to address the alarming rapidity of the increase of Burglaries and Robberies in our community, any punishment imposed by Court should have a reprehensible deterrent effect that could also send a profoundly strong signal to the community.
 7. In imposing the appropriate punishment for your admitted guilt, the Prosecution brings to the attention of this Court the updated tariff regime pronounced for Aggravated Burglary by the Court of Appeal of Fiji in the case of **State v Avishkar Rohinesh Kumar Sirino Aakatawa**¹, where it was stated, as below:

“Once the level of harm has been identified, the court should use the corresponding starting point in the following table to reach a sentence within the appropriate sentencing range. The starting point will apply to all offenders whether they plead guilty and irrespective of previous convictions. A case of particular gravity, reflected by multiple features of harm, could merit upward adjustment from the starting point before further adjustment for level of culpability and aggravating or mitigating features.

¹ [2022] FJCA (24th November 2022); AAU 33.18 & AAU 117.19 548 925 June 2018),

LEVEL OF HARM CATEGORY	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH	Starting Point: 05 years Sentencing Range: 03 – 08 years	Starting point 07 years Sentencing Range: 08 – 12 years	Starting Point – 09 years Sentencing Range: 08 - 12 years
MEDIUM	Starting Point 03 years Sentencing Range: 01 – 05 years	Starting Point: 05 years. Sentencing Range 03 – 08 years	Starting Point : 07 years Sentencing Range: 05 – 10 years
LOW	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 05 years Sentencing Range: 01 – 05 years	Starting point : 05 years Sentencing Range: 03 – 08 years.

8. In the above pronouncement of the Court of Appeal, Court has further identified the factors indicating the degree of harm, as below:

Factors indicating greater harm
Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)
Soiling, ransacking or vandalism of property
Restraint, detention or gratuitous degradation of the victim, which is greater than is necessary to succeed in the burglary. Occupier or victim at home or on the premises (or returns home) while offender present.
Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary
Violence used or threatened against victim, particularly the deadly nature of the weapon
Content of general public disorder
<i>Factors indicating lesser harm</i>
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal). No physical or psychological injury or other significant trauma to the victim.
Limited damage or disturbance to property. No violence used or threatened, and a weapon is not produced.

9. In relation to the offence of Theft, this Court intends to follow the tariffs pronounced by **Midigan J** in the case of **Ratusili v State**², where he stated:

“From the cases then, 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.”*

In this matter, in considering the value of the items you had stolen and that it was stolen from a dwelling premises, this cannot be regarded as simple theft.

10. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed against **MANU BIAU LAVEKAU** for counts 1 and 2 in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence for **MANU BIAU LAVEKAU** for Count 1 and 2.
11. In assessing the objective seriousness of offending of the two of you in this matter, I considered 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, which is the harm cause to the peace of mind of the complainant to continue to reside in this community and the impact it made to the community at large. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a Burglary that happened in a residence of a citizen. I am very mindful that offences of this nature disturb the tranquility and peace in our community. In this regard, the Courts have a duty to discourage and deter this kind of anti-social behavior that makes living in our society unsafe requiring extra safety measures for the protection of your own property. Having considered all these factors, I would pick a starting point of 5 years imprisonment against **MANU BIAU LAVEKAU** and 18 months imprisonment against **ERONI LUTUNAMARAVU**.
12. In aggravation, prosecution highlights that you had pre-planned this offence, where you had trespassed into the property of **Tevita Namaca**, with scant disregard to the property and privacy rights of the owners of the property. Further, it is stressed by the Prosecution that this offence was pre-planned. In considering this fact, I increase your sentence further by 1 year.
13. In mitigation, your counsel has informed Court that you are of a young age and that you have a high potential of rehabilitation. In recognition of your young age and rehabilitation potential, I reduce your sentence by 18 months.

² [2012] FJHC 1249; HAA011.2012 (1st August 20120

14. Further, 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. You have also been supportive to the police during investigations after your arrest, where several stolen items have been recovered. Further, by pleading guilty to the charge you have saved courts time and resources at a very early stage of the court proceedings.
15. For all these grounds in mitigation, you should receive a discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
16. Still further, state counsel brings to my attention that **ERONI LUTUNAMARAVU** has been in custody for 8 days, which period has to be reduced from the final sentence.
17. **MANU BIAU LAVEKAU**, consequent to your conviction, I sentence you to 36 **months** imprisonment. **ERONI LUTUNAMARAVU**, consequent to your conviction, I sentence you to 7 months and 22 days imprisonment.
18. You have thirty (30) days to appeal to the Fiji Court of Appeal.



.....
/ Hon. Justice Dr. Thushara Kumarage

At Suva

This 6th day of September 2023

cc: 1. *Director of Public Prosecutions*
 2. *Legal Aid Commission*