

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 93 of 2022

STATE

V

- 1. RUPENI TOKABE**
- 2. PENI VEIDREYAKI**

Counsel: Mr. Muhammed Rafiq for the State
Ms. Payal Reddy for the 1st and 2nd Accused

Sentence Hearing: 21 February 2024

Sentence: 8 March 2024

SENTENCE

[1] Rupeni Tokabe and Peni Veidreyaki, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

COUNT ONE

Statement of Offence

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

Particulars of Offence

RUPENI TOKABE & PENI VEIDREYAKI, in the company of each other, on the 03rd day of June 2022, at Lautoka, in the Western Division, entered into the office of **FIJI DEVELOPMENT BANK**, 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

RUPENI TOKABE & PENI VEIDREYAKI, in the company of each other, on the 03rd day of June 2022, at Lautoka, in the Western Division, dishonestly appropriated 1 x petty cash till and 1 x pair of yellow coloured hand gloves, the properties of **FIJI DEVELOPMENT BANK**, with intent to permanently deprive **FIJI DEVELOPMENT BANK** of its said properties.

COUNT THREE

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act [2002 as Amended by Bail Amendment Act] 2012.

Particulars of Offence

RUPENI TOKABE, on the 03rd day of June 2022, at Lautoka, in the Western Division, breached a Bail Condition imposed by the Lautoka Magistrates' Court, on the 08th day of October 2018, vide Criminal Case No. 623/2018, by re-offending whilst being released on Bail.

COUNT FOUR

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act [2002 as Amended by Bail Amendment Act] 2012.

Particulars of Offence

RUPENI TOKABE, on the 03rd day of June 2022, at Lautoka, in the Western Division, breached a Bail Condition imposed by the Lautoka Magistrates' Court, on the 18th day of February 2022, vide Criminal Case No. 993/2021, by re-offending whilst being released on Bail.

COUNT FIVE

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act [2002 as Amended by Bail Amendment Act] 2012.

Particulars of Offence

RUPENI TOKABE, on the 03rd day of June 2022, at Lautoka, in the Western Division, breached a Bail Condition imposed by the Lautoka Magistrates' Court, on the 18th day of February 2022, vide Criminal Case No. 993/2021, by failing to comply with curfew hours imposed on him between 6.00 p.m. to 6.00 a.m. whilst he was on Bail.

COUNT SIX

Statement of Offence

BREACH OF BAIL CONDITION: Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act [2002 as Amended by Bail Amendment Act] 2012.

Particulars of Offence

RUPENI TOKABE, on the 03rd day of June 2022, at Lautoka, in the Western Division, breached a Bail Condition imposed by the Lautoka Magistrates' Court, on the 23rd day of May 2022, vide Criminal Case No. 353/2022, by re-offending whilst being released on Bail.

- [2] The Information and Disclosures relevant to the case were filed by the DPP on 9 August 2022. Rupeni Tokabe and Peni Veidreyaki, on 25 August 2022, you were ready to take your pleas. On that day, Rupeni Tokabe, you pleaded not guilty to all six counts against you in the Information; whilst Peni Veidreyaki, you pleaded not guilty to the first two in the Information.
- [3] However, on 23 October 2023, Rupeni Tokabe, you wished to take your plea once again. Accordingly, on that day, you pleaded guilty to the six 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 pleas.
- [4] Rupeni Tokabe, on the 10 November 2023, the State filed the Summary of Facts in respect of you. On the same day, 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 six 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 six charges.
- [5] On 30 November 2023, Peni Veidreyaki, you wished to take your plea once again. Accordingly, 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 pleas.

[6] Peni Veidreyaki, on the 7 December 2023, the State filed the Summary of Facts in respect of both you and Rupeni Tokabe. On the same day, 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 first 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 first two charges.

[7] Rupeni Tokabe and Peni Veidreyaki, I now proceed to pass sentence on you.

[8] As stated earlier, the State filed two sets of Summary of Facts in this case: one in respect of the 1st Accused, Rupeni Tokabe, and another in respect of both 1st and 2nd Accused, Rupeni Tokabe and Peni Veidreyaki. Set out below is the Summary of Facts filed by the State in respect of both Rupeni Tokabe and Peni Veidreyaki:

“Charges:

1. *One count of Aggravated Burglary contrary to Section 311 (1) (a) of the Crimes Act 2009;*
2. *One count of Theft contrary to Section 291 (1) of the Crimes Act 2009; and*
3. *Four counts of Breach of Bail Condition contrary to Section 25 (1) (b) & 26 (1) of the Bail Amendment Act of 2012.*

Date of Offence: *3rd day of June 2022.*

Time of Offence: *At around 1.00 a.m.*

Place of Offence: *Fiji Development Bank, at Vitogo Parade, Lautoka.*

1st Accused: *RUPENI TOKABE – [male - iTaukei] (DOB – 05th February 1998) was 24 years old at the time of the offence – of Kaleli Settlement, Lautoka, and was Unemployed at the time of the offence.*

2nd Accused: *PENI VEIDREYAKI – [male – iTaukei] (DOB – 10th April 1999) was 23 years old at the time of the offence – of Waiyavi, Lautoka, and was Unemployed at the time of the offence.*

Victim: *Fiji Development Bank [FDB]*

Complainant: *SURESH CHAND – [male – indo Fijian] who was 52 years old at the time of the offence – of 5 Adam Street, Lautoka, who is employed by the Corporate Victim as its Regional Manager.*

1. *On the date and time of the offence, the Accused persons, whilst walking along Vitogo Parade, Lautoka, came across the FDB office situated at the Vitogo Parade. The Accused persons then broke an entrance into the FDB office by kicking the glass door of the FDB office multiple times until it broke. At no material times were the Accused persons lawfully authorized to enter the said premises of FDB office.*
2. *One Mr. Akuila Kalawa [male – iTaukei] residing at Vitogo Parade, Lautoka, who was 43 years old at the time of the offence, and his wife had seen the Accused persons breaking entry into the FDB office with another person from their residence which is opposite to the FDB office. Mr. Akuila Kalawa and his wife were able to recognize the Accused persons as two iTaukei boys and they recognized the colors and markings on the clothes that the Accused persons wore that evening.*
3. *Upon entering the premises of FDB office, the Accused persons had unlawfully appropriated a cash till black in colour and a pair of hand gloves yellow in colour, from therein. These two items were later recovered from the Accused persons by the Arresting Officer namely PC 7246 Peniasi Vuluma.*

Annexed herewith and marked with “Annexure A” are the Search Lists of items recovered from the Accused persons.

4. *The Accused persons did not return these items to the Complainant on their own accord, which reflects their intention of permanently depriving the Victim of its properties.*
5. *Subsequent positive identification of the Accused persons was done by Mr. Akuila Kalawa after the Arresting Officer had arrested the Accused persons.*
6. *The Arresting Officer also knew the Accused persons very well prior to this incident, as they are known offenders at the Lautoka Police Station.*
7. *At the time the Accused persons committed the within offence, the 1st Accused person had three pending cases in Court prior to the current charge. In those three cases, the Accused had been granted bail with strict bail conditions as follows:-*
 1. *Vide CF: 623/2018 – not to re-offend whilst on bail;*
 2. *Vide CF: 993/2021 – not to re-offend whilst on bail, and to comply with a daily curfew from 6.00 a.m. to 6.00 p.m.; and*
 3. *Vide CF: 353/2022 – not to re-offend whilst on bail.*

Annexed herewith and marked with “Annexure B” is the Accused’s Bail Undertaking Forms in all three of his Pending Cases.

8. *As per above, the 1st Accused has also breached his four Bail Conditions in his three pending cases.*
9. *The 1st Accused voluntarily admitted to committing the offences in joint enterprise with another during his Caution Interview from questions and answers 42 to 56, and from questions and answers 87 to 96. The 2nd Accused voluntarily admitted to committing the offences in joint enterprise with another during his Caution Interview from questions and answers 93 to 113. They had also gone with Police to conduct a crime scene reconstruction whereby they informed Police on the exact manner in which they burgled into and stole from within the FDB Office, in each other's company.*

Annexed herewith and marked with "Annexure C" is the Record of Interview of the Accused."

- [9] Rupeni Tokabe and Peni Veidreyaki, you have admitted to the above Summary of Facts and taken full responsibility for your actions.
- [10] 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.

- [11] Furthermore, Section 4(2) of the Sentencing and Penalties Act provides that in sentencing offenders a Court must have regard to the following factors—

(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.

[12] Rupeni Tokabe and Peni Veidreyaki, I have duly considered the above factors in determining the sentences to be imposed on you.

[13] In terms of Section 313 (1) of the 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.

[14] The tariff that this Court had been consistently following, up to this point in time, for the offence of Aggravated Burglary, was between 18 months to 3 years imprisonment. Even the Court of Appeal in *Leqavuni v. State* [2016] FJCA 31; AAU 106.2014 (26 February 2016), observed that the tariff for Aggravated Burglary was between 18 months to 3 years.

[15] However, in the decision of *(Avishkar Rohinesh) Kumar & Another v State* [2022] FJCA 164; AAU117.2019 (24 November 2022), the Fiji Court of Appeal formulated a new tariff for the offences of Burglary and Aggravated Burglary. Resident Justice of Appeal, His Lordship Justice Chandana Prematilaka (with Justices Suhada Gamalath and Priyantha Nawana agreeing) held:

“[75] As the first step, the court should determine harm caused or intended by reference to the level of harm in the offending to decide whether it falls into High, Medium or Low category. The factors indicating higher and lower culpability along with aggravating and mitigating factors could be used in the matter of deciding the sentencing range. This would allow sentencers wider discretion and greater freedom to arrive at an appropriate sentence that fits the offending and the offender.

Determining the offence category

The Court should determine the offence category among 01-03 using inter alia the factors given in the table below:

- **Category 1 - Greater harm (High)**
- **Category 2 - Between greater harm and lesser harm (Medium)**
- **Category 3 - Lesser harm (Low)**

Factors indicating greater harm
<i>Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)</i>
<i>Soiling, ransacking or vandalism of property</i>
<i>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</i>
<i>Significant physical or psychological injury or other significant trauma to the victim beyond the normal inevitable consequence burglary.</i>
<i>Violence used or threatened against victim, particularly the deadly nature of the weapon</i>
<i>Context 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</i>
<i>Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced</i>

[76] 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 or not 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.

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: 05–10 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: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years

- [16] Considering all the facts and circumstances of this case, as is depicted in the Summary of Facts, it is my opinion that in this case the level of harm could be considered as low. Therefore, the appropriate tariff in this case should be in the range of 1 to 5 years imprisonment for the offence of Aggravated Burglary.
- [17] 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.
- [18] 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.”*

[19] Considering all the facts and circumstances, it is my opinion that in this case the appropriate tariff should be in the range of 2 months to 3 years imprisonment for the offence of Theft.

[20] 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.”

[21] In ***Kumar & Another v State (supra)***, their Lordships held that once the level of harm has been identified, the Court should use the corresponding starting point in the given table to reach a sentence within the appropriate sentencing range (paragraph 76 of the Judgment). As could be observed, the starting points in the said table are all in the middle range of the sentencing tariff.

[22] However, I respectfully submit that this is not consistent with what has been stated in ***Laisiasa Koroivuki v State (supra)***, where it was held that as a matter of good practice, the starting point should be picked from the lower or middle range of the sentencing tariff.

[23] In the light of the above, Rupeni Tokabe and Peni Veidreyaki, I commence your sentences at 18 months imprisonment for the first count of Aggravated Burglary.

[24] Similarly, Rupeni Tokabe and Peni Veidreyaki, I commence your sentences at 6 months imprisonment for the second count of Theft.

[25] Rupeni Tokabe and Peni Veidreyaki, the aggravating factors in this case are as follows:

- (i) The frequent prevalence of these offences in our society today.
- (ii) The two of you trespassed into the premises of a business/commercial establishment (in this instance a leading banking institution), in the early hours of the morning, thereby paying complete disregard to the property rights of the establishment.
- (iii) I find that there was some degree of pre-planning or pre-meditation on your part in committing these offences, since you had trespassed into the said establishment in the early hours of the morning.
- (iv) You are now convicted of multiple offending.

[26] Rupeni Tokabe and Peni Veidreyaki, in mitigation you have submitted as follows:

- (i) 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.
- (ii) You have submitted that you are truly remorseful of your actions. You have promised not to re-offend.
- (iii) The stolen items had been recovered.
- (iv) That you have entered a guilty plea in these proceedings.

[27] Considering the aforementioned aggravating factors, Rupeni Tokabe and Peni Veidreyaki, I increase your sentences by a further 4 years. Now your sentences for count one would be 5 years and 6 months imprisonment. Your sentences for count two would be 4 years and 6 months imprisonment.

[28] Rupeni Tokabe and Peni Veidreyaki, you both have previous convictions. Therefore, you cannot be considered as persons with previous good character.

Rupeni Tokabe the previous convictions recorded against you are the following:

1. On 11 May 2016, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 249 of 2016, for Escaping from Lawful Custody (Sentenced to 6 months imprisonment, suspended for 5 years);
2. On 11 May 2016, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 237 of 2016, for Theft (Sentenced to 6 months imprisonment, suspended for 5 years);
3. On 1 April 2021, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 401 of 2021, for Absconding Bail (Fined \$100, in default 10 days imprisonment);

4. On 30 March 2023, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 353 of 2022, for Assault Causing Actual Bodily Harm (Sentenced to 9 months imprisonment, suspended for 3 years); and
5. On 2 February 2024, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 1326 of 2020, for Criminal Trespass and Theft (Sentenced to 7 months imprisonment).

Peni Veidreyaki the previous convictions recorded against you are the following:

1. On 31 July 2020, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 758 of 2020, for Unlawful Possession of Illicit Drugs (Sentenced to 2 months imprisonment, suspended for 6 months); and
2. On 31 July 2020, you were sentenced by the Magistrate's Court of Lautoka, in Case No. CF 896 of 2020, for Unlawful Possession of Illicit Drugs (Sentenced to 20 hours of community work).

[29] Rupeni Tokabe and Peni Veidreyaki, I 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 give credit to you since the stolen items were recovered. Accordingly, considering these mitigating factors, I deduct 1 year and 6 months from your sentences. Now your sentences for count one would be 4 years imprisonment. Your sentences for count two would be 3 years imprisonment.

[30] Rupeni Tokabe and Peni Veidreyaki, I accept that you both entered a guilty plea in these proceedings. However, the guilty plea was belated. You both pleaded guilty only after the matter was fixed for trial. Nevertheless, 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. Now your sentences for count one would be 3 years imprisonment. Your sentences for count two would be 2 years imprisonment.

[31] Rupeni Tokabe, you stand convicted of 4 counts of Breach of Bail Conditions (Counts 3-6).

[32] In terms of Section 26 (1) of the Bail Act No. 26 of 2002, as amended by Bail (Amendment) Act No. 28 of 2012: *"A person who has been released on bail and who fails without reasonable cause to surrender to custody, or otherwise without reasonable cause, breaches any condition of bail imposed by Court, commits an offence and is liable on conviction to a fine of \$2,000 or 12 months imprisonment, or both."*

[33] Rupeni Tokabe, considering the nature and gravity of the offending, your culpability and degree of responsibility for the offending, the aggravating factors and mitigating factors aforesaid, I impose on you a sentence of 6 months imprisonment for each of the counts of Breach of Bail Conditions.

[34] In the circumstances, Rupeni Tokabe, your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 years imprisonment.

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

Count 3- Breach of Bail Condition, Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act 2002 as amended- 6 months imprisonment.

Count 4- Breach of Bail Condition, Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act 2002 as amended- 6 months imprisonment.

Count 5- Breach of Bail Condition, Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act 2002 as amended- 6 months imprisonment.

Count 6- Breach of Bail Condition, Contrary to Sections 25 (1) (b) and 26 (1) of the Bail Act 2002 as amended- 6 months imprisonment.

I order that all your sentences of imprisonment to run concurrently. Therefore, your final total term will be 3 years imprisonment.

[35] In the circumstances, Peni Veidreyaki, your sentences are as follows:

Count 1- Aggravated Burglary contrary to Section 313 (1) (a) of the Crimes Act- 3 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 3 years imprisonment.

[36] The next issue for consideration is whether your sentences should be suspended.

[37] 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.

[38] Rupeni Tokabe, you are now 26 years of age [Your date of birth being 5 February 1998]. You are said to be in a de-facto relationship and have two children, aged 2 and 4 years old. You are said to be residing at Waiyavi with your de-facto partner and family. Prior to being remanded for this case, you had been employed as a Security Officer. It is submitted on your behalf that you have acquired a Certificate in Baking and that you wish to put it into good use once you are released from custody.

[39] You have submitted that you have committed this offence as a result of peer pressure. You state that you have become friends with the wrong group of people who had encouraged you to get involved in this kind of crime.

[40] Rupeni Tokabe, in addition to the five previous convictions listed above, there are two cases pending against you, which are the following:

- (i) Magistrate's Court of Lautoka, Case No. CF 260 of 2020, for Damaging Property (Charge filed on 25 March 2020); and
- (ii) Magistrate's Court of Lautoka, Case No. CF 993 of 2021, for Robbery and Assault (Charge filed on 14 October 2021).

[41] Rupeni Tokabe, considering the nature and gravity of the offending and your culpability and degree of responsibility for the offending in this case, and the previous convictions and pending cases against you, this Court is not in a position to suspend your sentence or even a part of the sentence that the Court is imposing in this case.

[42] Accordingly, I sentence you to a term of 3 years imprisonment. Pursuant to the provisions of Section 18 of the Sentencing and Penalties Act, I fix your non-parole period as 2 years imprisonment.

[43] 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."

[44] You were arrested for this case and produced in the Magistrate’s Court of Lautoka on 4 June 2022 and remanded into custody. You have remained in custody for this case since that day. Therefore, you had been in remand custody for a period of 21 months. Although, the Magistrate’s Court of Lautoka, in Case No. CF 1326 of 2020, has considered part of this period in remand and granted you a concession when sentencing you in that case, the entire period you were in custody shall be regarded by me as period of imprisonment already served by you in this case. Accordingly, I hold that a period of 21 months should be considered as served in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[45] In the result, Rupeni Tokabe, your final sentence is as follows:

Head Sentence - 3 years imprisonment.

Non-parole period - 2 years imprisonment.

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

Head Sentence - 1 year and 3 months imprisonment.

Non-parole period - 3 months imprisonment.

[46] Peni Veidreyaki, you are 24 years of age [Your date of birth being 10 April 1999]. You are said to be single. You are said to be currently going through a rehabilitation process at Lololo, Drasa in Lautoka. You have submitted a certificate from Rev. Epi David Ligairi, Program Director, Teen Challenge Fiji Trust, Lautoka, in proof of same.

[47] You have submitted that you have committed this offence under the influence of alcohol and as a result of peer pressure. You state that you have become friends with the wrong group of people who had encouraged you to get involved in this kind of crime.

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

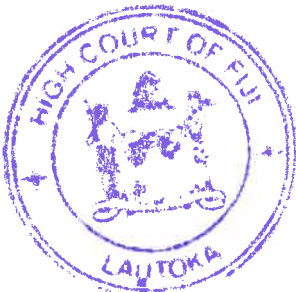
“...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse. If these factors are present then the offender is usually given a non-custodial sentence.”

[49] 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.”

- [50] Peni Veidreyaki, although you are not a first offender, you are a relatively young offender. You have fully cooperated 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. You entered a guilty plea during these proceedings, although belatedly.
- [51] For the aforesaid reasons, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentence.
- [52] 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 7 years.
- [53] In the result, Peni Veidreyaki, your final sentence of 3 years imprisonment, is suspended for a period of 7 years. You are advised of the effect of breaching a suspended sentence.
- [54] Rupeni Tokabe and Peni Veidreyaki, you have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 8th Day of March 2024

Solicitors for the State: Office of the Director of Public Prosecutions, Lautoka.
Solicitors for the 1st and 2nd Accused: Office of the Legal Aid Commission, Lautoka.