

Particulars of Offence

PETERO BAI BIAUDAMU, on the 18th day of March, 2024 at Suva in the Central Division entered into the property of **LIVIA SAURARA** as a trespasser with intent to steal therein.

COUNT TWO

Statement of Offence

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

Particulars of Offence

PETERO BAI BIAUDAMU, on the 18th day of March, 2024 at Suva in the Central Division dishonestly appropriated (stole) 1 x 32-inch Philip Brand TV Screen valued at \$699.00, 1 x HP Laptop valued at \$1999.00, 1 x Portable Aircon valued at \$989.00, 1 x Philip Rice Cooker valued at \$79.00, 1 x Safe valued at \$989.00, 1 x Water Dispenser valued at \$95.00, 2 x Samsung Tablet valued at \$459.00 each, 1 x Mahogany Coffee Table valued at \$259.00, 1 x 12kg Cylinder valued at \$110.00, 1 x Canterbury School Bag valued at \$59.00, Assorted Curtains valued at \$360.00, Home Theater System valued at \$399.00, 1 x Microwave valued at \$279.00, 1 x Electric Oven valued at \$459.00, 1 x Under Armour Canvas valued at \$239.00, 2 x Kids Crocs shoes valued at \$75.00 each, Food Ration worth \$485.00, Wall Clock valued at \$8.00, Utensils [Cooking & Eating Utensils] valued at \$160.00, 3 x Fiji Passports valued at \$211.05 each, and \$4,000.00 Cash, all to the Total Value of \$13,368.15 the property of **LIVIA SAURARA** with the intention to permanently deprive the said **LIVIA SAURARA** of her property.

2. On 22 July 2024 the Appellant waived his right to counsel and pleaded ***guilty*** to the aforesaid two counts or offences voluntarily and unequivocally, admitted the prosecution's *Summary of facts*, and then duly convicted by the learned magistrate. The Appellant then submitted his plea in mitigation and the matter adjourned to 31 July 2024 for sentencing.

3. On 31 July 2024 the learned magistrate sentenced the Appellant to a concurrent custodial term of 21 months.
4. On 15 August 2024 the Appellant lodged a timely petition of appeal against his sentence of 21 months imprisonment.
5. The appeal hearing was held on 20 November 2024 and the matter adjourned to 13 December 2024 for appeal judgment.
6. This is the Court's judgment on the appeal against sentence.

Power of High Court on appeal against conviction and sentence

7. Section 256(2)(a)-(f) and (3) of the Criminal Procedure Act 2009 state:

256.-(2) The High Court may –

(a) confirm, reverse or vary the decision of the Magistrate's Court; or

(b) remit the matter with the opinion of the High Court to the Magistrates Court;

or

(c) order a new trial; or

(d) order trial by a court of competent jurisdiction; or

(e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or

(f) the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed.

Appeal against sentence

8. The Appellant contend that his custodial term of 21 months imprisonment is excessive mainly because the learned magistrate (a) did not take into consideration (i) the recovery of the stolen items; and (ii) his previous good character being a first offender, and (b) that he is under rehabilitation while in custody and seeks a suspended sentence.
9. On an appeal against sentence the appellate court will consider whether the sentencing court below (i) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to guide or affect him or her; (iii) mistook the facts; and/or (iv) failed to take into account some relevant consideration. Refer to Bae v State [1999] FJCA 21; AAU0015.98S (26 February 1999) and Naisua v State [2013] FJSC 14; CAV 10 of 2013 (20 November 2013), paragraphs 19 – 20.
10. Having heard the appeal, I find that the learned magistrate acted upon a wrong principle by relying on the wrong sentencing tariff for *Burglary* and *Theft* to the effect that, pursuant to section 256(3) of the Criminal Procedure Act 2009, this Court may quash the sentence passed by the learned magistrate and order a substitute sentence warranted in law, based on the following rationale or justification.

Count 1 - Burglary

11. The maximum sentence for the offence of ***Burglary*** contrary to section 312(1) of the Crimes Act 2009 is a custodial term of 13 years.
12. The sentencing guideline for *Burglary* and *Aggravated Burglary* was enunciated by the Fiji Court of Appeal in Kumar v State [2022] FJCA 164; AAU117.2019 (24 November 2022), and at paragraphs 72 to 78, the Fiji Court of Appeal held:

Sentencing guidelines (Burglary and Aggravated burglary)

*[72] Therefore, considering the offending of ***burglary*** and aggravated burglary and sentencing regimes in other jurisdictions, the sentencing guidelines in UK appear most apt and suitable for assistance in formulating sentencing tariff for burglary and aggravated burglary in Fiji as approved by the Supreme Court in Tawake.*

[73] *In doing so, I consider it pertinent to quote Goundar, J's following remarks in State v Takalaibau - Sentence [2018] FJHC 505; HAC154.2018 (15 June 2018) (while quoting Lord Bingham CJ in Brewster 1998 1 Cr App R 220):*

[10] Burglary of home must be regarded a serious offence. A home is a private sanctuary for a person. People are entitled to feel safe and secure in their homes. Any form of criminal intrusion of privacy and security of people in their homes must be dealt with condign punishment to denounce the conduct and deter others. As Lord Bingham CJ in Brewster 1998 1 Cr App R 220 observed at 225:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled. The seriousness of the offence can vary almost infinitely from case to case. It may involve an impulsive act involving an object of little value (reaching through a window to take a bottle of milk, or stealing a can of petrol from an outhouse). At the other end of the spectrum it may involve a professional, planned organisation, directed at objects of high value. Or the offence may be deliberately directed

at the elderly, the disabled or the sick; and it may involve repeated burglaries of the same premises. It may sometimes be accompanied by acts of wanton vandalism.”

[74] In terms of section 125(1) of the Coroners and Justice Act 2009 (UK) every court must, in sentencing an offender, follow any sentencing guideline and must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so. However, in Fiji section 4(2)(b) states that a sentencing court must have regard to inter alia any applicable guideline judgment. Therefore, the sentencing judges in Fiji are not compelled by law to follow sentencing guidelines but is obliged to have regard to them. Therefore, the sentencing judges in Fiji enjoy greater freedom and wider discretion in sentencing offenders after having regard to the guidelines.

[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 1 – 3 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)*

<i>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)
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
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
Limited damage or disturbance to property. No violence used or threatened and a weapon is not produced

[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 <u>EITHER</u> WITH ANOTHER <u>OR</u> WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER <u>AND</u> WITH A WEAPON)
HIGH	Starting Point: 5 years Sentencing Range: 3 – 8 years	Starting Point: 7 years Sentencing Range: 5 – 10 years	Starting Point: 9 years Sentencing Range: 8 – 12 years
MEDIUM	Starting Point: 3 years Sentencing Range: 1 – 5 years	Starting Point: 5 years Sentencing Range: 3 – 8 years	Starting Point: 7 years Sentencing Range: 5 – 10 years
LOW	Starting Point: 1 year Sentencing Range: 6 months – 3 years	Starting Point: 3 years Sentencing Range: 1 – 5 years	Starting Point: 5 years Sentencing Range: 3 – 8 years

[77] *The following table contains a non-exhaustive list of higher and lower*

culpability factors relating to the offending. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

<i>Factors indicating higher culpability</i>
Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation) or victim compelled to leave their home (in particular victims of domestic violence). Child or the elderly, the sick or disabled at home (or return home) when offence committed
A significant degree of planning, or organization or execution. Offence committed at night.
Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.
Equipped for burglary (for example, implements carried and/or use of vehicle)
<i>Factors indicating lower culpability</i>
Offence committed on impulse, with limited intrusion into property or little or no planning
Offender exploited by others or committed or participated in the offence reluctantly as a result of coercion or intimidation (not amounting to duress) or as a result of peer pressure
Mental disorder or learning disability, where linked to the commission of the offence

[78] *The following table contains a non-exhaustive list of aggravating and mitigating factors relating to the offender. Any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.*

<i>Factors increasing seriousness</i>	<i>Factors reducing seriousness or reflecting personal mitigation</i>
<i>Statutory aggravating factors:</i>	Genuine remorse displayed, for example the offender has made voluntary reparation to the victim
Previous convictions, having regard to a) the nature of the offence to which the conviction	Subordinate role in a group or gang
	No previous convictions or no relevant/recent convictions.

relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	
Offence committed whilst on bail or parole.	Cooperation with the police or assistance to the prosecution
<i>Other aggravating factors include:</i>	Good character and/or exemplary conduct
Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution	Determination, and/or demonstration of steps taken to address addictions or offending behaviour
Established evidence of community impact	Serious medical conditions requiring urgent, intensive or long-term treatment
Commission of offence whilst under the influence of alcohol or drugs	Age and/or lack of maturity where it affects the culpability and responsibility of the offender
Failure to comply with current court orders	Lapse of time since the offence where this is not the fault of the offender
Offence committed whilst on licence	Mental disorder or learning disability, where not linked to the commission of the offence
Offences Taken Into Consideration (TICs)	Any other relevant personal considerations such as the offender being sole or primary care giver for dependent relatives or has a learning disability or mental disorder which reduces the culpability

13. Based on the Fiji Court of Appeal sentencing guideline for *Burglary* in Kumar v State (supra) and the Prosecution's *Summary of facts*, the category of harm in this instant is **low**, thus, the corresponding sentencing range of 6 months to 3 years imprisonment, and starting point of 1 year imprisonment.
14. With the starting point of 1 year imprisonment, 2 years is added for the aggravating circumstances of the offending, in particular, the unlawful trespass and stolen items valued

at \$13,368.15 including the unlawful compromising of the safety and wellbeing of the complainant and her children including the damage done to the complainant's flat due to the unlawful intrusion. Furthermore, the Appellant's total disregard of the utility, value and lack of respect of the complainant's hard-earned properties contributing to the emotional and psychological trauma endured by the complainant, and prevalence of the offence of *Burglary* are aggravating factors as well.

15. Having considered the mitigating factors, 1 year is deducted considering that the Appellant has no prior conviction, cooperated with the police and recovery of some of the stolen items, 33 years, father to a 14 year old child, and a subsistence farmer.
16. With the interim custodial term of 2 years, I further make the following special deductions:
(i) 8 months as 1/3 discount for the early guilty plea – see Qurai v State [2015] FJSC 15; CAV24.2014 (20 AUGUST 2015) per Justice Saleem Marsoof at para. 54, and Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 12-15; and (ii) one month for time spent in custody – see Sentencing and Penalties Act 2009, s.24 and Aitcheson v The State [2018] FJSC 29; CAV0012.2018 (2 November 2018), paras. 12-15.
17. Therefore, the head sentence for *Burglary* is 15 months imprisonment.

Count 2 - Theft

18. The maximum sentence for the offence of *Theft* contrary to section 291(1) of the Crimes Act 2009 is 10 years imprisonment.
19. In terms of the sentencing tariff for *Theft*, Justice Vincent Perera (as he then was) held in Waqa v State [2015] FJHC 729; HAA017.2015 (5 October 2015) at paras. 10-14:

Tariff for Theft under section 291 of the Crimes Decree

10. After considering a number of decisions of this court on tariff for the offence of Theft, I find that the court has opined the lower end to be 2 months imprisonment and the higher end to be 3 years imprisonment. (See Navitalai Seru v State [2002] FJHC 183; State v Saukilagi [2005] FJHC 13; Chand v State [2007] FJHC 65; Kaloumaira v State [2008] FJHC 63; Chand v State [2010] FJHC 291; Ratusili v State [2012] FJHC 1249; State v Koroinavusa [2013] FJHC 243; Lal v State [2013] FJHC 602; State v Batimudramudra [2015] FJHC 495).

11. An imprisonment of 2 to 9 months has been the tariff recognised under the now repealed Penal Code for a first offender who commits the offence of Theft. Section 262 of the Penal Code specified three different penalties for the offence of Theft as follows:

- a) First offence of Theft (simple larceny) – 5 years
- b) Simple larceny committed after having been previously convicted of a felony – 10 years
- c) Simple larceny committed after having been previously convicted of a misdemeanor – 7 years

12. However, it is pertinent to note that the Crimes Decree 2009 does not specify different penalties for Theft based on previous convictions. The only penalty provided under section 291(1) of the Crimes Decree is an imprisonment for 10 years.

13. In view of the fact that the Crimes Decree has increased the maximum penalty for Theft from 5 years as stipulated in the Penal Code to 10 years, it is logical that the tariff for Theft should also be increased. Further, it is no longer the law in Fiji to recognise a different sentence or a tariff for Theft for offenders with previous convictions.

14. Considering all the above factors and the decisions of this court, I am inclined to hold the view that the tariff for Theft is 4 months to 3 years imprisonment.

- 20. The sentencing range for *Theft* is 4 months to 3 years imprisonment, and for this instant I take the starting point of 12 months or 1 year.
- 21. 2 years is added to the 1 year starting point for the aggravating factors considering the items stolen from the complainant's flat with the total value of \$13,368.15, total disregard of the utility and benefit of the stolen items to the complainant including the loss and emotional and psychological trauma endured by the complainant, and prevalence of the offence of *Theft*.
- 22. For the mitigating factors of having no prior conviction, cooperation with the police and recovery of some of the stolen items, 33 years, father to a young son and subsistence farmer, 1 year is deducted.
- 23. Further special deductions of (i) 8 months for early guilty plea, and (ii) 1 month for time spent in custody, are also made resulting in the head sentence of 15 months for *Theft*.

24. In light of the *Totality principle of sentencing*, the sentences for Count 1 – Burglary and Count 2 – Theft are made concurrent resulting in the custodial term of 15 months for the Appellant.
25. For the above reasons, the Appellant’s sentence of 21 months imprisonment ordered by the learned magistrate is hereby **quashed**, and **substituted** with the lesser concurrent custodial term of 15 months effective from 31 July 2024.

Suspended sentence

26. The next immediate issue for this appeal is whether it is appropriate to suspend the substituted custodial term of 15 months, despite the learned magistrate having not considered the matter of suspended sentence.
27. Regarding suspended sentence, the Fiji Court of Appeal in State v Khan FJCA 235; AAU139.2017 (24 February 2023), at paragraphs 55 – 61, held:

[55] The 2nd ground of appeal states about the Magistrate’s failure to expressly articulate exceptional circumstances that led him to impose a suspended sentence. The wording gives the impression that there is an obligation on the part of a Magistrate to expressly articulate exceptional circumstances that substantiate the imposition of a suspended sentence; in other words a prison term cannot be suspended by a Magistrate when exceptional circumstances are lacking.

[56] There is no statutory or common law obligation imposed on a Judge to expressly articulate exceptional circumstances to substantiate his decision to suspend a custodial sentence.

[57] Section 26(1) of the Sentencing and Penalties Act 2009 (the Sentencing Act) confers power on a Criminal Court to suspend a custodial sentence stating: “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.”

[58] *In terms of the above provision a wide discretion has been granted to a judge in imposing a suspended sentence without an obligation to seek exceptional circumstances.*

[59] *However, section 26(2) of the said Act imposes a ceiling on the jurisdiction, that the original criminal courts exercise, in relation to imposing of suspended sentences.*

“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 proceedings 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 Magistrates Court.”

[60] *The foregoing provision makes it clear, that the option of suspending a sentence of imprisonment is available for less serious offences, where the head sentence does not exceed 3 years in the High Court or 2 years in the Magistrate’s Court.*

[61] *The process that should be followed in suspending a sentence is considered in R v. Petersen [1994] 2 NZLR 533 by the New Zealand Court of Appeal in the following terms:*

“The principal purpose of [the relevant section] was to encourage rehabilitation and to provide the Courts with an effective means of achieving that end by holding a prison sentence over an offender’s head. It was available in cases of moderately serious offending but where it was thought there was a sufficient opportunity for reform, and the need to deter others was not paramount. The legislature had given it teeth by providing that the length of the sentence of imprisonment was fixed at the time the suspended sentence was imposed, that it was to correspond in length to the term that would have been imposed in the absence of power to suspend and that the Court before whom the offender appeared on further conviction was to order the suspended sentence to take effect, unless of the opinion it would be unjust to do so. So, there was a presumption that upon further offending punishable by imprisonment the term previously fixed would have to be served (see p.537 line 4). The Court’s first duty was to consider what would be the appropriate immediate

custodial sentence, pass that and then consider whether there were grounds for suspending it. The Court must not pass a longer custodial sentence than it would otherwise do because it was suspended. Equally, it would be wrong for the Court to decide on the shorter sentence than appropriate in order to take advantage of the suspended sentence regime (see p.538 line 47, p.539 line 5). R v Mah-Wing (1983) 5 Cr App R (S) 347 followed. The final question to be determined was whether immediate imprisonment was required or whether a suspended sentence could be given. If, at the previous stages of the inquiry, the Court had applied the correct approach, all factors relevant to the sentence were likely to have been taken into account already; the sentencer must either give double weight to some factors, or search for new ones which would justify suspension although irrelevant to the other issues already considered. Like most sentencing, what was required here was an application of common sense judgment, in which the sentencer must stand off and decide whether the imposition of a suspended sentence would be consonant with the objectives of the new legislation (see p.539 line 8, p.539 line 37).”

28. Furthermore, in State v Chand [2002] FJCA 50; AAU0027U.2000S (1 March 2002), the Fiji Court of Appeal held:

Petersen’s case [i.e. R v. Petersen [1994] 2 NZLR 533] was a prosecution appeal against leniency of sentence. Petersen had pleaded guilty, at early opportunity, to reasonably serious drug offences: he was sentenced in the High Court to 18 months’ imprisonment suspended for 2 years plus 9 months’ periodic detention. He had no previous drug convictions and was aged 42 with family commitments. The New Zealand Court of Appeal considered Petersen’s offending so serious that it quashed the suspended sentence and imposed one of 18 months’ imprisonment concurrent on the several charges. The Court discussed at p.539 the factors needing to be weighed in choosing immediate imprisonment or suspended sentence in these words:

“Thomas at pp.245-247 lists certain categories of cases which suspended sentences have become associated, although not limited to them. We do not propose to repeat those in detail since broadly all can be analysed as relating either to the circumstances of the offender or alternatively the offending. In the

former category may be the youth of the offender, although this does not mean the sentence is necessarily unsuitable for an older person. Another indicator may be a previous good record, or (notwithstanding the existence of a previous record, even one of some substance) a long period of free of criminal activity. The need for rehabilitation and the offender's likely response to the sentence must be considered. It is clear that the sentence is intended to have a strong deterrent effect upon the offender; if the latter is regarded as incapable of responding to a deterrent the sentence should not be imposed. As to the circumstances of the particular case, notwithstanding the gravity of the offence, as such, there may be a diminished culpability, arising through lack of premeditation, the presence of provocation, or coercion by a co-offender. Cooperation with the authorities can be another relevant consideration. All the factors mentioned are by way of example only and are not intended as an exhaustive or even a comprehensive list. The factors may overlap and more than one may be required to justify the suspension of the sentence in any particular case. Finally, any countervailing circumstances have to be considered. For example, in a particular case the sentence may be regarded as failing to protect the public adequately.

In conclusion our consideration of the principles, we wish to add this. Understandably, the form of the legislation requires the sentencer to pass through a series of statutory gates, before reaching the point of availability of a suspended sentence. Subject to that however, like most sentencing what is required in the end is an application of commonsense judgment, in which the sentencer must stand off and decide whether the imposition of a suspended sentence would be consonant with the objectives of the new legislation. In many instances an initial broad look of this kind will eliminate the possibility of a suspended sentence as an appropriate response.”

29. Based on the Fiji Court of Appeal decisions in State v Khan (supra) and State v Chand (supra) on suspended sentence, I find as follows:

- a) The Appellant is not automatically entitled to a suspended sentence, but certain threshold must be met under section 26 of the Sentencing and Penalties Act 2009 before the sentencer can even consider suspending a custodial sentence.

- b) Pursuant to section 26(1) of the Sentencing and Penalties Act 2009, it is not mandatory or obligatory for the learned magistrate to consider a suspended sentence; however, if the learned magistrate had considered it then it may order it provided *'it is satisfied that it is appropriate to do so in the circumstances'*.

- c) The question then is whether it is appropriate to consider and order a suspended sentence given the circumstances of the Appellant's case. I find that the learned magistrate did not err in law when she did not consider suspending the Appellant's custodial sentence, furthermore, despite the Appellant's no prior conviction, good character and cooperation with the police, the need to deter outweighs that to reform bearing in mind that *Burglary* and *Theft* are serious offences and prevalent. Consequently, the concurrent custodial term of 15 months will not be suspended.

Conclusion

- 30. Based on all of the above reasons, the Appellant's appeal is allowed to the extent that the sentence of 21 months imprisonment is hereby **quashed**, and **substituted** with the lesser concurrent custodial term of 15 months effective from 31 July 2024, and there will be no order for suspension of the said sentence.

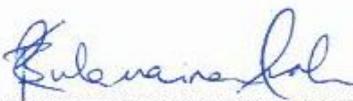
- 31. The Appellant's sentence has therefore been reduced from 21 months to 15 months imprisonment effective from 31 July 2024.

- 32. Thirty (30) days to appeal to the Fiji Court of Appeal.

Orders of the Court:

- (1) The appeal against sentence is allowed to the extent of quashing the sentence of 21 months imprisonment, and substituting it with the lesser concurrent custodial term of 15 months effective from 31 July 2024.
- (2) No order for suspension of the 15 months imprisonment term.




.....
Hon. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

13 December 2024

Solicitors

Appellant in person

Office of the Director of Public Prosecutions for the Respondent