

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 131 of 2024

STATE

-v-

ERONI LUTUNAMARAVU

State : Ms. Mishra, Pooja for the (ODPP)
Accused Ms. Nabainivalu, Ruci of Legal Aid Commission

Date of Mitigation and Sentencing submission: 23rd September, 2024
Date of Sentence: 6th January, 2025

SENTENCE

1. **ERONI LUTUNAMARAVU**, you pleaded guilty on your own free will to the following offences:

COUNT 1

Statement of Offence

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

Particulars of Offence

ERONI LUTUNA1VIARAVU and another on the 16th of April, 2024 at Samabula in the central Division, in the company of each other, unlawfully entered into the dwelling house of **PATRICIA KAILOLA** as trespassers, with the intent to commit theft.

COUNT 2

Statement of Offence

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

Particulars of Offence

ERONI LUTUNAMARAVU and another on the 16th of April, 2024 at Samabula in the Central Division, dishonestly appropriated, 1 x HP Silver grey laptop with laptop cooler, 1 x blue Motorola mobile phone, lx black Samsung mobile phone, 15 x cans of Brunswick tuna, 1 x 2kg packet Sugar, 1 x Hard drive, 1 x Blackwolf backpack, AUD

\$400.00 cash, NZD) \$200.00 cash and chocolates the properties of **PATRICIA KAILOLA** with the intention to permanently deprive **PATRICIA KAILOLA** of the said properties.

COUNT 3

Statement of Offence

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

Particulars of Offence

ERONI LUTUNAMARAVU and another on the 16th of April, 2024 at Samabula in the Southern Division, dishonestly appropriated, 1 x Dell greyish black laptop, 1 x black Dell laptop bag, 1 x brown pencil case, 1 x black wireless earbuds, assorted cards and cash in the sum of \$50.00 the properties of **ELENOA DICOVI** with the intention to permanently deprive **ELENOA DICOVI** of the said properties.

2. You also admitted to the following summary of facts that reveal that on the 16th of April, 2024, at about 8.05am, Patricia Kailoaloa [PW1] left out with Elenoa Dicovi [PW2] to do some business. When they returned at about 11.00am, PW1 noticed that there was a piece of timber lying across near the main door which was not there when they had left in the morning.
3. PW1 became suspicious and when she opened the main door she noticed that her laptop was not at the place where she always keeps it which is on top of the table.
4. She then informed PW2 that someone had broken into her house. Upon further checking, she noticed that her house had been ransacked which confirmed that someone had broken into her house.
5. Upon checking inside the house, she discovered that the following items were missing from her house;
 - a. 1 x HP Silver Grey Laptop with laptop cooler valued at \$2,000.00;
 - b. 1 x Blue Motorola mobile phone valued at \$250.00;
 - c. 1 x black Samsung mobile phone valued at \$300.00;
 - d. 15 x cans of Brunswick Tuna valued at \$45.00;
 - e. 1 x 2kg sugar valued at \$6.00;
 - f. 1 x Hard drive valued at \$150.00;
 - g. 1 x black wolf backpack valued at \$150.00;
 - h. AUD \$400.00 cash;
 - i. NZD \$200.00 cash;
 - j. Assorted chocolates worth \$30.00; and
 - k. White phone charger.
6. Ms. Kailola confirmed that later on the same day at about 1.45pm, the police brought 1 x blue Motorola mobile phone and black Samsung mobile phone which she positively identified as property belonging to her.
7. PW2 in this matter stated that before she left the house with PW1, she left a bag which contained her laptop and wallet containing assorted cards inside the house. PW2 confirmed that before they left out, they had locked all the front doors and back doors.

8. Ms. Dicovi stated that when she returned with PW1, she noted that there was a piece of timber at the porch. She then checked the window, whereby she discovered that some of the louvre blades were removed from the front window. She suspected that someone had broken into the house.
9. PW2 stated that she then viewed the CCTV footage whereby she saw two i-taukei males breaking into the house. She then reported the matter to the police.
10. She stated that upon receiving the report, the police also viewed the CCTV footage and thereafter, approximately an hour later the police came back with recovered stolen items.
11. PC 5469 Samuela [PW4] in this matter stated that he attended to the Crime Scene with PC Josateki, PC Nemani and CPL Inoke,
12. He stated that whilst he was at the crime scene, he met PW1 and was informed by her that her house was broken into and that she had a CCTV footage. PW4 then proceeded inside the house whereby PW1 showed him the CCTV cameras.
13. PW4 confirmed that upon viewing the CCTV footage he could positively identify the accused on the front side camera (time 9.18am- 9.19am) in which the accused was wearing a black muscle vest with "PROJECT" printed on it and blue shorts. PW4 had viewed the front side camera for about 5 minutes in which he could identify the accused.
14. PW4 stated that the accused was known to him and upon viewing the front side camera, he could clearly see that the accused was breaking into the house. PW4 further identified him through the front porch camera as the accused was wearing the same clothing and entering inside the house and stole 1 x black bag with tin fish which was clearly seen in the camera. PW4 stated that he had known the accused since 2021.
15. Inoke Tuiloaloa [PW6] in this matter confirmed that he had also positively identified the accused person after viewing the CCTV footage. He also attended to the crime scene. PW6 stated that he identified the accused who is residing at Gaji Settlement, Jittu Estate.
16. DC 3094 Josateki [PW7] in this matter was also part of the team that attended to the crime scene. He confirmed that upon viewing the CCTV footage he was able to positively identify the accused person as he has known him for 2 years.
17. PW6 stated that they then proceeded towards the residence of the accused and enquired with his aunt. Whilst they were at the accused's residence they saw the accused person wearing the same black vest with "PROJECT" printed on it, with navy blue shorts. They then approached them.
18. They then greeted the accused and saw him carrying a black laptop computer bag. PW6 then enquired from the accused as to his whereabouts, whereby he informed them that he had just returned from town.
19. PW6 then explained him the reason why they were there and further cautioned him pursuant to the Judge's Rules. PW6 together with the team then conducted the search and seized the following items from him:

- a. 1 x black Dell Laptop knapsack carry bag containing 1 x Dell laptop black in colour MFGYR; 2021;
 - b. 1 x Laptop charger CN — OWIN 63 —LOCO;
 - c. 1 x Laptop cooler black in colour;
 - d. 1 x IPRO black phone [phone in box] IMEII: 359456967092140 IMEI 2: 3594569067092157];
 - e. 1 x Samsung black mobile phone [IMEII 355921/47/76/4550/9];
 - f. 1 x blue Motorola mobile phone;
 - g. 1 x Fiji Tropic Garden perfume;
 - h. 1 x black muscle vest brand "PROJECT" size XL;
 - i. 1 x blue pants LAKERS brand;
 - j. 8 x \$50.00 AUD currency inside the accused pocket;
20. Thereafter, these items were seized by PW6 and the same was documented in a search list in the presence of the accused person whereby he signed the same voluntarily.
 21. The accused was then arrested by PC 7397 Daniele [PW5] and escorted to Samabula Police Station.
 22. Taina Levatu [PW8] in this matter confirmed that he extracted 16 footages from the CCTV system at PW1's house and the said footages were copied into 3 discs.
 23. The accused and another on the 16th of April, 2024 at Samabula in the Central Division, in the company of each other, unlawfully entered into the dwelling house of PW1 as trespassers, with the intent to commit theft.
 24. The accused and another on the 16th of April, 2024 at Samabula in the Central Division, dishonestly appropriated, 1 x HP Silver grey laptop with laptop cooler, 1 x blue Motorola mobile phone, 1x black Samsung mobile phone, 15 x cans of Brunswick tuna, 1 x 2kg packet Sugar, 1 x Hard drive, 1 x Blackwolf backpack, AUD \$400.00 cash, NZD \$200.00 cash and chocolates the properties of PW1 with the intention to permanently deprive the complainant of her properties

Conviction

25. The Court is aware that the Accused understands the implication of his plea and finds him guilty accordingly. The Accused is convicted of one count of Aggravated Burglary contrary to section 313(1)(a) of the Crimes Act, 2009 and two counts of Theft pursuant to section 291(1) of the Crimes Act, 2009.

Sentencing Guidelines

26. Before sentencing the Accused, this court has considered the sentencing guidelines pursuant to **sections 4(1), 4(2) and 15** of the **Sentencing and Penalties Act, 2009**.

Maximum Penalty and Tariff

27. The maximum penalty of the offence of aggravated burglary is 17 years imprisonment.
28. In the Fiji Court of Appeal case of **Kumar and Vakatawa** [2022] FJCA; AAU33.18 and AAU117.19 (24 November 2022), the Court has outlined the starting point and tariff. This offence falls under the low harm of Aggravated Burglary whereby the starting point is 3 years and the sentencing range is from 1 year to 5 years.

29. In the case of *State v Chand* [2018] FJHC HAC44.2018 2018 (6 September 2018), Morais J observed thus;

*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 organization, 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.”

30. For the offence of theft the maximum penalty is 10 years imprisonment. The tariff for the offence of theft is settled. In *Mikaele Ratusili v. State*, Criminal Appeal no. HAA 011 of 2012 (1 August, 2012) Madigan J. set out the tariff for theft as follows:

- “(i) For the 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.”*

Sentence

31. **Section 17** of the **Sentencing and Penalties Act 2009** stipulates that;

“If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.”

32. The count of Aggravated Burglary and the two counts of Theft which you have been convicted are offences founded on the same facts and are of similar character. In accordance with section 17 of the Sentencing and Penalties Act, I consider it just and appropriate to impose an aggregate sentence for the three offences having the Aggravated Burglary count as the base sentence as it is the more serious of the offences.

Starting Point

33. In considering the gravity and objective seriousness of the offence of Aggravated burglary, in my opinion it is reasonable to pick 3 years' imprisonment as the starting point of the aggregate sentences for this offence. However, the final sentence will depend on the mitigating and aggravating factors which I will now proceed to consider.

Aggravating factors

34. As for the aggravating factors. I observe the following aggravating circumstances of your offending:
- a. The complainants were away from their residence when you took the opportunity to break into their house,
 - b. Thus this is an opportunistic offending and a well-planned burglary carried out with premeditation,
 - c. the items stolen were substantial and almost all were recovered,
 - d. This was an invasion of a residential property, a place where the complainants' private space was invaded. Home invasion is a serious crime as it can have long-lasting consequences on the victims.
35. Based on the aforesaid factors, I enhance your sentence by 2 years and arrive at 5 years imprisonment.

Mitigating Factors

36. In considering your personal circumstances, and that you are remorseful for your actions, this Court reduces 2 years from your sentence and arrive at 3 years.

Early Guilty Plea

37. Since Accused pleaded guilty on the first available opportunity, this Court reduces 1 year and finally arrive at 2 years imprisonment.

Head Sentence

38. Accordingly, I sentence you to a period of 2 years' aggregate sentence of imprisonment for the offences of Aggravated Burglary and two counts of theft as charged in the information.

Period in Custody

39. I also note that you have been in custody since 18 April, 2024, almost 9 months.
40. As per section 24 of the Sentencing and Penalties Act, 2009, I further reduce your sentence by 9 months and arrive at **1 year and 3 months imprisonment.**

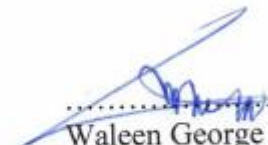
Suspend or not to suspend

41. There is partial recovery in this case. Furthermore, I hope the time you have been in custody would have taught you a lesson.
42. As per Section 26(2) of the Sentencing and Penalties Act, the discretion to suspend a sentence/punishment should only be exercised by a High Court where the custodial sentence/punishment does not exceed 3 years and as opined in the Sentence Ruling in *State v Aiding Zhang [2017] HAC 061* if there be circumstance which are exceptional.
43. I, therefore decide to order that your sentence of 1 year and 3 months imprisonment term be suspended to a period of 2 years effective forthwith.
44. The effect and the consequences of any violation of a suspended term are explained to the Accused in open court.

Appeal Period

45. You have 30 days to appeal to the Court of Appeal if you so desire.




Waleen George
Acting Puisne Judge

Dated at Suva this 6th day of January, 2025.

**Solicitors: Office of the Director of Public Prosecution for the State
Legal Aid Commission for Accused**