

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Crim. Case No: HAC 48 of 2023

STATE

vs.

IFEREIMI TAUVA JUNIOR

Counsel: Ms. E. Thaggard for the State
Ms. M. Besetimoala for Accused

Date of Sentence: 23rd April 2025

SENTENCE

1. Mr. Ifereimi Tauva Junior, you have been charged with one count of Burglary: contrary to Section 312 (1) of the Crimes Act, which carries a maximum sentence of thirteen (13) years imprisonment, one count of Theft: contrary to Section 291 (1) of the Crimes Act, which has a maximum sentence of ten years, and one count of Arson: contrary to Section 362 (a) of the Crimes Act, which carries a maximum sentence of life imprisonment. The particulars of the offences are:

FIRST COUNT

Statement of Offence

BURGLARY: *Contrary to Section 312 (1) of the Crimes Act 2009.*

Particulars of Offence

IFEREIMI TAUVA JUNIOR on or around the 12th day of May 2023 at Nabekau, Labasa in the Northern Division, entered as a trespasser into the dwelling house of **MAHENDRA KUMAR** with the intent to commit theft.

SECOND COUNT

Statement of Offence

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

Particulars of Offence

IFEREIMI TAUVA JUNIOR on or around the 12th day of May 2023 at Nabekau, Labasa in the Northern Division, dishonestly appropriated 1 x minibar Modyl Fridge, 1 x 43'flat screen, 1 x Total brand chain saw, 1 x Total brand circular saw, 1 x Hitachi brand grinder, 1 x Total brand iron jack planner, 1 x Total brand sander, 1 x yellow coloured salwar kameez, 1 x aquamarine coloured Indian skirt, 1 x Police blue camouflage cap, 1 x orange lace coat, 1 x gold and maroon imitation necklace and pair of earring, 1 x battery charger, 4 x cans of fish, 4 x cans of tuna, 2 x pack of chicken soup pack and 4 pieces of lamb neck, the property of **MAHENDRA KUMAR**, with the intent to permanently deprive **MAHENDRA KUMAR** of the same.

THIRD COUNT

Statement of Offence

ARSON: Contrary to Section 362 (a) of the Crimes Act 2009.

Particulars of Offence

IFEREIMI TAUVA JUNIOR on or around the 12th day of May 2023 at Nabekau, Labasa in the Northern Division, willfully and unlawfully set fire to a building belonging to **MAHENDRA KUMAR**.

2. You pleaded guilty to this offence on the 3rd of April 2025. Satisfied by the fact that you have fully comprehended the legal effect of your plea and your plea was voluntary and free from influence, I now convict you of these three offences.
3. According to the summary of facts presented in Court, which you acknowledged, the Complainant and his partner left their home in Nabekavu on the 7th of May, 2023, for Suva, expecting to return on the 12th of May, 2023. At some point between the night of the 11th of May, 2023, and the early hours of the 12th of May, 2023, you broke into the Complainant's house by opening the louver frame and removing three louver frames. You then stole the items described in the Information therein. After placing the stolen items at another location, you returned to the house and created a contraption using a pipe from the gas cylinder, a mosquito coil, and a nail thread. You left the house after lighting the mosquito coil and tying three matchsticks to it. A fire broke out, burning the house down.
4. This involves breaking into a dwelling house, stealing from it, and then setting it on fire. You entered this house during the night while the owners were away. Crimes of this nature, targeting residential properties, undoubtedly impact the entire community. By committing this crime, you have instilled fear and insecurity. Arson is a serious offence that carries a maximum penalty of life imprisonment. Destroying any dwelling house could adversely affect its occupants or the owner. Therefore, the objective seriousness of these offences is high.
5. These three offences stem from the same series of crimes. Therefore, it is appropriate to impose an aggregate sentence under Section 17 of the Sentencing and Penalties Act.
6. The Fiji Court of Appeal in **Damodar Naidu and Others (1978 FLR 93)** has imposed sentences of seven (7) and ten (10) years for the burning down of several shops.
7. Shameem J in **Lagi v The State [2004] FJHC 69; HAA0004J.2004S (12 March 2004)** found that the tariff for the offence of Arson is between 2 and 4 years, where Her Ladyship held that:

"In this case the Respondent appears to have ensured that the house was empty when he lit the fire. However the fact that he accompanied a group of men who threatened the occupants, the fact that the arson was motivated by revenge and the serious consequences of the arson on the victims who were forced to leave the village they called home, called for a sentence within the 2-4 year range. With a starting point of 3 years imprisonment, reduction for the previous good character and other mitigation, and increase for the aggravating factors I have outlined, I see nothing wrong in principle, with a 3 year term. Arson is a most serious offence with a maximum sentence of life imprisonment. A family's home and belongings were destroyed in the fire. The children of the family may never recover for the trauma of what they saw on the night of the 19th of January 1999."

8. The Fiji Court of Appeal in **Lesu v State [2014] FJCA 214; AAU58.2011 (5 December 2014)** held that:

"Arson is an extremely serious offence and the maximum penalty is life imprisonment. Despite the serious penalty, as mentioned earlier, the Courts in Fiji for considered reasons have placed the tariff for arson between 2 years and 4 years imprisonment."

9. Temo J (as His Lordship then was) in **State v Raralevu -[2015] FJHC 374; HAC026.2013S (22 May 2015)** has sentenced the Accused to a period of four (4) years for burning down the house of his wife, where Temo J observed that:

"Arson ", as an offence, is viewed seriously by the law makers of this country. It carried a maximum penalty of life imprisonment. Previous case laws had set a tariff between 2 to 4 years imprisonment (see Kelemedi Lagi & Others v State, Criminal Appeal Case No. HAA 0004 of 2004S, High Court, Suva, which was endorsed by the Fiji Court of Appeal in Niko Lesu and Sunia Vosataki v State, Criminal Appeal No. AAU 058 of 2011).

However, the Fiji Court of Appeal, in Damodar Naidu & Another v Reginam, Fiji Law Report, Vol 24, 1978, pages 93 to 106, approved a sentence of 7 years imprisonment for accused no. 1 and 10 years imprisonment for accused no. 2, for burning down a number of shops in Rakiraki Town, in May 1977. Of course, the final sentence will depend on the mitigation and aggravating factors.”

10. The Fiji Court of Appeal in **Nakato v State [2018] FJCA 129; AAU74.2014 (24 August 2018)** found that the applicable tariff for a conviction after the trial is 5 to 12 years. Perera JA held that:

*“Having considered the views expressed by the courts in the decisions cited above and the aforementioned tariffs, it is my considered view that the tariff for the offence of **arson** under section 362(a) of the Crimes Decree should be an imprisonment term between 5 to 12 years. In selecting the lower end of 5 years imprisonment, I have taken into account inter alia the nature of the offence under section 362(a) which is unlawfully setting fire to a building or a structure, the natural implications of that offence and the maximum penalty which is life imprisonment. Further, this tariff should be regarded as the range of the sentence on conviction after trial. A sentencer may inevitably arrive at a final sentence which is below 5 years imprisonment in applying the two-tier approach unless the aggravating circumstances are quite substantial. If the final sentence reached is one that is below 3 years imprisonment, then it would be at the discretion of the sentencer to opt for any sentencing option as provided under the Sentencing and Penalties Act.”*

11. The Fiji Court of Appeal in **Avishkar Rohinesh Kumar and Sirilo Vakatawa v The State (Criminal Appeals No AAU 33 of 2018 and AAU 117 of 2019)** stipulated a tariff range for the offence of Burglary, set between 6 months and 8 years. The tariff for the offence of theft has been stipulated in **Ratusili v State [2012] FJHC 1249; HAA011.2012 (the 1st of August 2012)**, where Justice Madigan held that:

For a first offence of simple Theft the sentencing range should be between 2 and 9 months.

*Any subsequent offence should attract a penalty of at least 9 months
Theft of large sums of money and thefts in breach of trust, whether first offence or not can attract sentences of up to three years.*

Regard should be had to the nature of the relationship between offender and victim.

Planned thefts will attract greater sentences than opportunistic thefts.

12. Given the nature of the items you have stolen and the manner in which you entered the premises, the level of harm concerning the Burglary offence is low; therefore, the starting point for Burglary is 1 year, with a sentencing range of six months to three years.
13. Considering the sophisticated method of setting a contraption to ignite the fire, I find the level of culpability in Arson to be high. The house was entirely destroyed by the fire, although the stolen items were recovered, resulting in a significant level of harm as well.
14. No previous convictions are recorded against you; thus, the Court considers you as a first offender. You pleaded guilty to these offences just before the commencement of the hearing. Although you pleaded guilty at a later stage of the proceedings, you are still entitled to a certain discount for your plea of guilty, which saved the Court and the witnesses' time and resources.
15. Considering the reasons outlined above, I hereby sentence you to four years of imprisonment for the three offences with which you are charged.
16. Having considered your age, family circumstances, and opportunities for rehabilitation, I find that a non-parole period of two (02) years would serve the purpose of this sentence.

Head Sentence

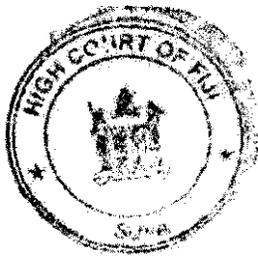
17. Accordingly, I sentence you to four (4) years imprisonment as an aggregate sentence for these three offences charged in the Information. You are not eligible for parole for two (02) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of Sentence

18. You have been in remand custody for this case for three months and eleven days, as the Court did not grant bail. Pursuant to Section 24 of the Sentencing and Penalties Act, I consider the four (04) months as the period of imprisonment that you have already served.

19. Accordingly, your actual sentencing period is **three years and eight months** of imprisonment, with **one year and eight months** of non-parole period.

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



A handwritten signature in black ink, appearing to read "R. D. R. T. Rajasinghe".

.....
Hon. Mr. Justice R. D. R. T. Rajasinghe

At Suva

23rd April 2025

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.