

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 183 of 2025

BETWEEN : **STATE**

AND : **DAVID ETIKA & PENISONI NAUPOTO**

Counsel : Mr J V Vaurasi for State
Both accused in person

Mitigation/sentencing : 15 August 2025

Sentence : 9 September 2025

SENTENCE

[1] David Etika, Penisoni Naupoto, you both appear today for sentencing.

[2] On 31 July 2025, you both pleaded guilty to one count of aggravated burglary contrary to section 313(1)(a) of the Crimes Act 2009 and one count of theft contrary to section 291(1). The prosecution has filed a Summary of Facts which you have accepted as true

[3] The facts are as follows. On 3 July 2025, the two of you and another person broke into the home of Nicholas Goundar. He was operating his business from his home and had his work tools and equipment at the property. You gained access through a window and ransacked the tool room before stealing the following items:

- 5 inch Ronix Grinder Machine

- Welding Plant (x2)
- Rotter Machine
- Grey Grinder (x2)
- Silver floodlight
- Saw blade
- Power board
- Extension cord
- White Hisense microwave
- Black arc mouse
- Black HP keyboard
- Blue HDMI connector
- Black DCL containing 2 total drill
- HP CPU
- LED Light (x7)
- Total Brand Grinder Machine
- Empty Inco toolbox

Total value: \$4,535.00

[4] The police discovered your involvement in the offending. You both admitted to your roles and all items that you had stolen were recovered.

[5] You were arrested on 3 July 2025 and bailed on 31 July, meaning you were on remand for 28 days.

[6] I am satisfied that you pleaded guilty of your own free will and understood the consequences of doing so. I am also satisfied that the facts contained in the Summary of Facts, which you have accepted as true, satisfy the elements for aggravated burglary and theft. Accordingly, I convict you both.

Mitigation

[7] You have provided the following mitigation:

- Mr Etika, you are 21 years old. Mr Naupoto, you are 19 years old.
- You are both first offenders with no previous convictions.
- You have expressed remorse for your offending.
- Mr Etika, you have claimed responsibility for the offending and sought to downplay or minimise Mr Naupoto's role. While it is commendable that you seek to take responsibility I do not accept that Mr Naupoto is any less responsible. It was his choice to participate in the offending.

[8] You are both known to the victim. Mr Etika, you stated that you stole the items because you felt that the victim had not paid your bother properly for work previously done.

Sentencing Regime

[9] The maximum penalty for aggravated burglary is 17 years imprisonment. The tariff for this offending has been set and requires me to firstly categorise the level of harm caused by your offending and then consider aggravating and mitigating factors.¹

[10] I categorise the level of harm here as **medium** based on the value of the property and because you ransacked the tools room. I place it at the low end of the medium category given no violence was used or threatened by you both. The tariff for the medium category is 1 to 5 years imprisonment with a starting point of 3 years.

¹ *Kumar v State* [2022] FJCA 164 (24 November 2022)

[11] Before I set a starting point, I note that the maximum sentence for theft is 10 years imprisonment and the tariff for a first offence is between 2 and 9 months.² The two counts were committed on the same occasion and, as such, I will consider an aggregate (ie combined) sentence for you both for the two offences.

[12] In assessing the objective seriousness of your offending in this matter, I have considered the maximum sentence prescribed, the sentencing tariff by the Court of Appeal³, and the sentencing guidelines stipulated in section 4 of the Sentencing and Penalties Act 2009. As you both fall within the medium category, the appropriate starting point is 3 years imprisonment.

[13] The next step involves a consideration of the aggravating and mitigating factors.

[14] I begin with the aggravating factors. Your degree of culpability is low. The prosecution argue that your offending involved some planning. I agree. I also agree that this type of offending is prevalent. The victim has stated in his Victim Impact Statement that the burglary has made his family feel afraid to move back into the house, afraid that you both will return to do something worse. The theft of his tools and equipment left the victim unable to work during the period before the items were recovered. He also states that he had treated you both as his sons and employed you both, assisting with your education costs. The victim has, nevertheless, forgiven you both and wants you both to understand the impact your actions have had on him. I add 6 months for the aggravating factors taking your sentences to 3½ years imprisonment.

² *Ratusili v State* [2012] FJHC 1249 (1 August 2012) at 13.

³ In *Kimar* (supra).

[15] The mitigating factors are that you are both young and first offenders. Importantly, all the items stolen have been recovered. I deduct two years for mitigating factors taking your sentences to 18 months imprisonment.

[16] I now consider your guilty pleas. The largest deduction permitted for a guilty plea is one third of the sentence where an accused person cooperates with the police and pleads guilty at the earliest opportunity. Here you both made full admissions in your police interview and pleaded guilty early. I allow the full one third deduction, being 6 months. This takes your sentence to 12 months imprisonment.

[17] I now consider whether this is an appropriate case to impose a suspended sentence. This Court may impose a suspended sentence where the sentence does not exceed 3 years imprisonment.⁴ I am satisfied that this is an appropriate case to suspend your sentence. Neither of you have any previous convictions. You are both ideal candidates for rehabilitation given your ages. However, in order to deter you (and other persons) from committing offences of this nature, and also to protect the community, I suspend your sentences for a period of two years.

[18] Before I impose the sentence on you, I wish to inform you that I have considered whether to discharge you both without conviction. Under the Sentencing and Penalties Act I have a discretion not to record a conviction. However, there are only limited circumstances where I can do so. For example, where you are morally blameless or where the crime is trivial. Neither situation applies to your offending. While I have a concern that a conviction at this point in your young lives will adversely affect your career and other prospects, it does not appear that you fall within the parameters to qualify for a discharge without conviction.

⁴ Section 26 of the Sentencing and Penalties Act.

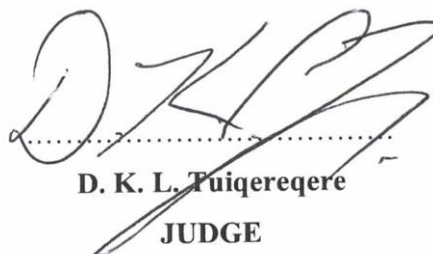
Sentence

[19] Mr. Etika, Mr Naupoto would you both please stand.

[20] I sentence you as follows:

- i. Mr Etika, you are sentenced to 12 months imprisonment. Your sentence is, however, suspended for a period of two years.
- ii. Mr Naupoto, you also are sentenced to 12 months imprisonment, suspended for a period of two years.
- iii. I will advise you both of the effect of breaching a suspended sentence. If you commit any crime punishable by imprisonment during the suspended operational period of two years and you are found guilty of the crime by a court, then you are liable to be charged and prosecuted for breaching your suspended sentence. If this happens, your sentence of imprisonment of 12 months may be restored.⁵
- iv. You both have 30 days to appeal to the Court of Appeal.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Office of Director of Public Prosecutions for the State

⁵ You have been on remand for 28 days from 3 July to 31 July 2025. If your sentence is restored, the time in remand will be considered time already served as per section 24 of the Sentencing and Penalties Act.