

IN THE HIGH COURT OF FIJI

AT LABASA

APPELLATE JURISDICTION

Criminal Appeal Case No. HAA 05 of 2025
(Taveuni Criminal Case CF Nos. 19 of 2025 and 39 of 2025)

BETWEEN: **NACANIELI NAQARI**

APPELLANT

AND: **THE STATE**

RESPONDENT

Counsel: **Appellant in person**
 Mr E Kotoilakeba for the State

Date of Hearing: **14 October 2025**

Date of Judgment: **8 January 2026**

JUDGMENT

1. The appellant pleaded guilty to two charges of theft of yaqona. In CF 39/25 he stole 12 5-year-old green plants valued at \$1,200. In CF 19/25 he stole 23 plants of 4-year-old yaqona, valued at \$2,300.
2. On 13 March 2025, in the Magistrates' Court at Savusavu, the learned Resident Magistrate sentenced the appellant to 18 months' and 19 days' imprisonment and fixed a non-parole period of 15 months. The sentencing remarks set out clearly how the Resident Magistrate arrived at the sentence imposed ("the impugned sentence").
3. Dissatisfied with the impugned sentence, on 8 May 2025, the appellant filed a home-made document headed "Notice of Late Appeal" dated 28 April 2025. The appellant sought to advance five substantive grounds of appeal. The gravamen of his appeal is that the impugned sentence was harsh and excessive in all the circumstances of the case.

Grounds of Appeal

- A. In criminal file 39/25 the starting point of 18 months is too high for a case of theft only and taking into account the less aggravating factors and seriousness of the offending in particular.
 - B. In criminal file 19/25 the starting point of 12 months is unreasonable since there is full recovery and less mitigating factors respectively.
 - C. In paragraph 27 of the sentencing paper, the totality principle can be addressed or mitigated by a concurrent sentence since both criminal files have similar nature of offence.
 - D. In fixing a 15 month non-parole period to a first offender with previous good character which is inappropriate to reflect any reasonable prospects of rehabilitation.
 - E. The sentence ordered by the Resident Magistrate was harsh and excessive in all the circumstances of the case.
4. When the matter came before me on 20 May 2025, the appellant accepted that he was not, in fact, a man of previous good character. He was serving a suspended sentence when he committed the index offences. I ordered that the copy record be compiled and raised with the prosecutor my concern that, on the face of it, the non-parole period of 15 months was unlawful, being contrary to section 18(4) of the Sentencing and Penalties Act (“the Act”), which provides that any non-parole period fixed must be at least 6 months less than the term of the sentence.

Appellant’s written submissions

- 5. In his written submissions dated 4 August 2025, the appellant asserted his right to represent himself and acknowledged the assistance of a brother inmate in the drafting of his written submissions.
- 6. In support of Ground A, the appellant cited *Seniloloku v State* (2018) FJSC 5, Cav 0017, 2017 (26 April 2018) in which the Supreme Court raised concerns about the risk of double counting in a two-tiered approach to sentencing.

7. In relation to Ground B, the appellant asserted that the sentencing magistrate failed to give sufficient weight to the mitigating factors, including full recovery of the stolen plants and his early guilty plea.
8. The submission in support of Ground C is a little difficult to understand. The gist of it is that the magistrate ought to have imposed wholly concurrent sentences.
9. It is submitted that the non-parole period is totally inappropriate and fails to reflect the appellant's reasonable prospects of rehabilitation.
10. Finally, the appellant argues that the magistrate failed to have proper regard to section 15(3) of the Act. Sentences of imprisonment should be regarded as the sanction of last resort.

Respondent's written submissions

11. In characteristically late and largely incoherent written submissions, filed in court on the day of the appeal hearing, Mr Kotoilakeba concedes that the starting point of 18 months was excessive in CF 39/25. He further submits that the learned magistrate considered the correct tariff and that the ultimate sentence is not excessive or wrong in principle.
12. Rather more cogently, Mr Kotoilakeba argues that the magistrate was sentencing for two separate offences committed against different complainants. Although he does not say so in terms, I infer that Mr Kotoilakeba's point is that the sentencing magistrate did not err in his approach to totality.
13. The respondent submits that I should impose a non-parole period of 12 months, but fails to specifically address (as requested) the issue whether the non-parole period of 15 months was unlawful in light of section 18(4) of the Act. When I raised this with Mr Kotoilakeba at the hearing, he conceded that the magistrate had made a technical error and invited me to correct that error by quashing the non-parole period of 15 months and substituting a non-parole period of 12 months.

Discussion and resolution

14. In my considered view, there is no arguable merit in any of the grounds advanced by the appellant. Farm theft is a serious and increasingly prevalent offence,

particularly the theft of yaqona. An overall sentence of 20 months' imprisonment to reflect the appellant's group offending across two separate offences against different complainants is plainly not manifestly excessive or wrong in principle. The learned magistrate had proper regard to totality and reduced what would have been an aggregate sentence of 22 months by 2 months. He did not err in not making the two sentences wholly concurrent. Indeed, it would have offended against totality had he adopted that course. The magistrate gave appropriate weight to the appellant's limited mitigation.

15. The learned magistrate did, however, fall into error when fixing a non-parole period that was not at least 6 months less than the head sentence. In my view, the head sentence of 18 months' and 19 days' imprisonment is unimpeachable. That shall remain undisturbed. I must, however, quash the erroneous non-parole period.
16. Section 18(3) of the Act gives a sentencing court a discretion whether or not to impose a non-parole period when imposing a sentence of less than two years. I consider that a non-parole period of 12 months would appropriately reflect the punitive element of the appellant's sentence and also incentivise his rehabilitation. Accordingly, I make the following orders:
 - (i) Appeal against sentence allowed.
 - (ii) Impugned sentence quashed.
 - (iii) The appellant is sentenced to 18 months' 19 days' imprisonment with effect from 13 March 2025.

(iv) A non-parole period is fixed at 12 months with effect from 13 March 2025.



At Labasa
8 January 2026

Hon. Mr Justice Burney

Solicitor:

Office of the Legal Aid Commission for the Appellant
Office of the Director of Public Prosecutions for the State