

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Case No: HAC 138 of 2025

STATE

V

MAIKA KAMIKAMICA and S. M [Juvenile]

Counsel : Mr. J. Nasa for the State.
: Ms. J. Terubea for the Accused and the Juvenile.
: Mr. N. N. Wara for the Social Welfare Department.

Date of Submissions : 21 January, 2026
Date of Punishment Hearing : 26 January, 2026
Date of Sentence/ Punishment : 28 January, 2026

SENTENCE/PUNISHMENT

(The name of the Juvenile is suppressed he will be known as "S.M")

1. The accused and the juvenile are charged by virtue of the following information filed by the Director of Public Prosecutions dated 26th November, 2025:

FIRST COUNT

Statement of offence

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

Particulars of Offence

MAIKA KAMIKAMICA AND S.M, on the 3rd of September to the 4th of September 2025, at Lautoka in the Western Division, in the company of each other, entered as trespassers into the premises of SINGHS RENTAL, with intent to commit theft therein.

SECOND COUNT

Statement of offence

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

Particulars of Offence

MAIKA KAMIKAMICA AND S.M, on the 3rd of September to the 4th of September 2025, at Lautoka in the Western Division, dishonestly appropriated 2 x brush cutter, 1 x Solar light, 1 vacuum cleaner, 20 meter lead wire, 1 x 100 meter Richard set, 1 x air pressure pump, 1 complete ring set (from no. 8-32) all to the total value of \$3134.00 the property of SINGHS RENTALS, with the intention of permanently depriving the said SINGHS RENTAL.

2. On 19th December 2025, the accused and the juvenile pleaded guilty to the above counts in the presence of their counsel. Thereafter on 31st December 2025, the accused and the juvenile admitted the summary of facts read in the presence of their counsel.
3. The brief facts were as follows:

- 3.1 At around 5.30 am, on 4th September 2025, the complainant, an employee of Singh's Rentals, went to pick up a vehicle for delivery to a customer at the Nadi Airport.
- 3.2 As the complainant drove into the yard, she noticed that the bulk and boardroom doors of the shop were open.
- 3.3 After informing the shop manager of the open bulk and boardroom doors, the complainant went out of the office to have breakfast. When she returned, she saw her manager reviewing the shop's CCTV footage and learned that the shop had been broken into.
- 3.4 According to the complainant, on 3rd September 2025, the front grill gate was closed but not locked.
- 3.5 The complainant checked to see if anything was missing and she found that the following items had been removed:
 - a). 2 x Brush cutter (Husgavana);
 - b). 1 x Solar Light;
 - c). 1 x Vacuum Cleaner;
 - d). 1 x 20 meter lead wire;
 - e). 1 x 100 meter Richard set;
 - f). 1 x Air Pressure pump;
 - g). 1 x complete ring set (From no. 8-32).
- 3.6 The matter was reported to the police. Upon investigation and review of the CCTV footage, the accused and the juvenile were

arrested, caution interviewed and charged. They admitted committing the offences as alleged.

3.7 None of the properties stolen from Singhs Rentals were recovered.

4. On 31st December, after considering the summary of facts read by the state counsel which was admitted by the accused and the juvenile and upon reading their caution interviews this court was satisfied that the accused and the juvenile had entered an unequivocal plea of guilty on their freewill.
5. This court was also satisfied that the accused and the juvenile had fully understood the nature of the charges and the consequences of pleading guilty. The summary of facts admitted satisfied all the elements of the offences of aggravated burglary and theft which the accused and the juvenile admitted committing in the company of each other.
6. In view of the above, this court found the accused guilty and he was convicted as charged. In respect of the juvenile this court found him guilty as charged. The state counsel filed sentence/punishment submissions and the defence counsel filed mitigating submissions for which this court is grateful.
7. The learned counsel for the accused and the juvenile presented the following mitigation and personal details:

Accused – Maika Kamikamica

- a) He was 18 years at the time of the offending;
- b) Is unemployed;
- c) First time offender;

- d) Pleaded guilty at the earliest opportunity;
- e) Cooperated with the police during investigations;
- f) Genuinely remorseful and he regrets his actions ;
- g) Seeks forgiveness and leniency of the court;
- h) Promises not to reoffend.

Juvenile- S.M

- a) He was 15 years at the time;
- b) Unemployed;
- c) First and young offender;
- d) Has pleaded guilty at the earliest opportunity;
- e) Cooperated with the police during investigations;
- f) Takes full responsibility for his actions;
- g) Seeks forgiveness and leniency of the court;
- h) Promises not to reoffend;
- i) Is genuinely remorseful of what he has done.

REASONS FOR THE OFFENDING

The accused and the juvenile understand the seriousness of the offending and it was peer group influence that led to the commission of the offences and poor judgment on their part.

TARIFF

8. The maximum penalty for the offence of aggravated burglary is 17 years imprisonment. The Court of Appeal in *Avishkar Rohinesh Kumar and Another vs. The State [2022] FJCA 164; AAU 117 of 2019 (24 November, 2022)* has established a new tariff for the offence of aggravated burglary by dividing the harm caused or intended in three categories from paragraphs 74 and 77 of its judgment as follows:

[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 01-03 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)

Factors indicating greater harm
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

Factors indicating lesser harm

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: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years	Starting Point: 09 years Sentencing Range: 08–12 years
MEDIUM	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years

<i>LOW</i>	<i>Starting Point: 01 year Sentencing Range: 06 months – 03 years</i>	<i>Starting Point: 03 years Sentencing Range: 01–05 years</i>	<i>Starting Point: 05 years Sentencing Range: 03–08 years</i>
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[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.

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).</i>
<i>Child or the elderly, the sick or disabled at home (or return home) when offence committed</i>
<i>A significant degree of planning, or organization or execution. Offence committed at night.</i>
<i>Prolonged nature of the burglary. Repeated incursions. Offender taking a leading role.</i>
<i>Equipped for burglary (for example, implements carried and/or use of vehicle)</i>
<i>Member of a group or gang</i>
Factors indicating lower culpability
<i>Offence committed on impulse, with limited intrusion into property or little or no planning</i>
<i>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</i>
<i>Mental disorder or learning disability, where linked to the commission of the offence</i>

[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.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
Statutory aggravating factors:	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 relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	Subordinate role in a group or gang No previous convictions or no relevant/recent convictions.
Offence committed whilst on bail or parole.	Cooperation with the police or assistance to the prosecution
Other aggravating factors include:	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 addiction 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

9. 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.”*

AGGRAVATING FEATURES

10. The following aggravating features are obvious:

a) Early Morning Invasion

It was early morning the accused and the juvenile entered the premises of the victim.

b) Bold and undeterred

Both were bold and undeterred in entering the property of the victim and stealing the items mentioned in the information.

- c) No regard to the property rights of the victim
The accused and the juvenile had no regard for the property rights of the victim.
- d) Prevalence of the offending
There is an increase in property related offending by people who roam around aimlessly.

SOCIAL WELFARE REPORT

- 11. As per the order of this court Mr. Wara from the Department of Social Welfare, Lautoka prepared a comprehensive pre-punishment report for the juvenile. This report was compiled after an interview was conducted by the officer with the juvenile and his mother Sainimere Tabualevu.
- 12. Mr. Wara in his submissions informed the court that arrangements have been made for the juvenile to study for one year at the Ministry of Youth & Sports Technical School at Nasau, Nadroga. As per the interest of the juvenile to become a Carpenter the school in question will provide education in this discipline for one year. Thereafter, the juvenile will be enrolled in the same school to do another course of his choice or attend a Vocational School to further progress his skills and education in carpentering.
- 13. The Social Welfare Department recommends the following for the juvenile:
 - a) *The juvenile be given a chance to be rehabilitated;*
 - b) *The juvenile to be put under good behaviour;*
 - c) *Be enrolled at Ministry of Youth & Sports Technical School, Nasau, Nadroga;*
 - d) *Attend programs assigned by the Community-Based Officer and the Ministry of Youth & Sports, Sigatoka.*

FAMILY SUPPORT

14. The mother of the juvenile was in court. She accepts responsibility for the actions of her son has pledged her support, guidance and supervision of the juvenile. The mother of the juvenile has assured the court that she will play a more active role in the life of her son.
15. The juvenile also takes responsibility of his actions, he is remorseful and he promises not to be in conflict with the law again. The juvenile told the court that he is keen to pursue studies in carpentry. The mother of the juvenile stated that she knows that the juvenile has to change his mind set about his peers which she will address during their family meetings. According to the juvenile's mother, her defacto partner is happy to support the juvenile in becoming a good citizen of this country.
16. The mother of the juvenile as part of her commitment agreed to be bonded in respect of the good behaviour of the juvenile in the sum of \$600.00 and is willing to compensate the victim in the sum of \$100.00 payable within 14 days at the High Court Registry.

DETERMINATION

17. Section 17 of the Sentencing and Penalties Act states:

“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.”

18. Taking into account section 17 of the Sentencing and Penalties Act I prefer to impose an aggregate punishment for both counts.
19. Considering the level of harm caused to the victim particularly the value of the items stolen being \$3,134.00 and there being no damages to the victim's properties where the burglary took place the level of harm caused to the victim will fall under low category of harm as per *Tawake's* case (supra). The punishment range for this category is 1 to 5 years imprisonment.
20. After taking into account the objective seriousness of the offences committed I select 12 months imprisonment (lower range of the tariff) as the aggregate punishment for both counts. The punishment is increased for the aggravating factors, but reduced for mitigation and early guilty plea. The juvenile has been in detention for 4 months and 9 days which is also deducted from the punishment.
21. The final aggregate punishment for both counts is 1 year, 10 months and 21 days imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
22. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

"[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been

perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

23. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended punishment.

24. The juvenile is a young person as per the Juveniles Act (15 years of age at the time of the offending), is of good character, isolated offences were committed by him, has pleaded guilty at the earliest opportunity, is remorseful, cooperated with police, opportunistic offending and he takes full responsibility for his actions. These

special reasons render an immediate imprisonment term inappropriate.

25. I am sure the juvenile with his mother's guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for him. In view of the above, this court has taken into account rehabilitation over and above retribution. Section 30 (3) of the Juveniles Act also imposes a limit on the punishment of young persons for a maximum of two years imprisonment.
26. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that this punishment is just in all the circumstances of this case.
27. In summary the juvenile is given a punishment of 1 year, 10 months and 21 days imprisonment as an aggregate punishment for both counts which is suspended for 3 years. The effect of the suspended sentence is explained to the juvenile. The following orders are to take effect immediately.

ORDERS

- a) The juvenile is given a punishment of 1 year, 10 months and 21 days imprisonment as an aggregate punishment for the two counts mentioned in the information which is suspended for 3 years with immediate effect;
- b) The mother of the juvenile namely Sainimere Tabualevu is to sign a good behaviour bond on behalf of the juvenile in the sum of \$600.00. Furthermore, the mother of the juvenile is to pay the victim compensation of \$100.00 payable at the High Court Registry within 14 days from today;

- c) It is the responsibility of the Social Welfare Department and the mother of the juvenile to ensure that the juvenile is enrolled at the Ministry of Youth & Sports Technical School, Nadroga (with boarding facility) for one year and thereafter to be enrolled at the same school as a continuing student or at a Vocational School;
- d) The Social Welfare Department is to immediately arrange for the counselling of the juvenile in the presence of his mother with the view to assist him in keeping out of peer group influence and to engage in education and training;
- e) The Social Welfare Department is at liberty to work out any plans or programs that will be in the interest of the juvenile. The Social Welfare Department is also at liberty to appoint a Community Based Officer to assist and monitor the progress of the juvenile in accordance with the provisions of the Community-Based Corrections Act 2018;
- f) It is the responsibility of the mother of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department or the Community-Based Officer;
- g) The Social Welfare Department to provide assistance and counselling to the mother of the juvenile in improving her parenting skills towards the juvenile;
- h) The Social Welfare Department and/or the Community-Based Officer are to monitor the performance and progress of the juvenile by contacting the school he will be attending;
- i) A copy of this punishment is to be served on the Officer in Charge of the Department of Social Welfare.

ACCUSED

28. Considering the objective seriousness of the offences committed I select 12 months imprisonment at the lower range of the sentence. The sentence is increased for the aggravating factors and reduced for the early guilty plea, mitigation, good character, genuine remorse and the remand period of 4 months and 21 days.
29. The final aggregate sentence for both counts is 2 years, 7 months and 9 days imprisonment. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspended the final sentence since it does not exceed 3 years imprisonment.
30. The accused is a first offender of comparatively good character, isolated offences have been committed, he was 18 years of age at the time, pleaded guilty at the earliest opportunity, was remorseful, cooperated with police, opportunistic offending and takes responsibility for his actions. I consider these special reasons as rendering immediate imprisonment term inappropriate.
31. The accused has been in remand for 4 months and 21 days which is in itself an adequate and appropriate punishment, an experience that will remind him of his misdeeds and act as a motivation to keep away from illegal activities. This court has taken rehabilitation over and above retribution.
32. In summary the accused is sentenced to 2 years, 7 months and 9 days imprisonment which is suspended for 3 years. The effect of suspended sentence is explained to the accused.

33. 30 days to appeal to the Court of Appeal.



Sunil Sharma
Judge



At Lautoka

28 January, 2026

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for the Accused.