

IN THE MAGISTRATE'S COURT OF FIJI

AT SUVA

Criminal Case # : 656/2012

State

Vs

Lila Mani

For Prosecution: WPC/ Ms. Fisher for DPO

For Defense: Mr. Ram Chand

On this 16<sup>th</sup> Day of July 2012

SENTENCE

01. You, Lila Mani, was charged for committing the alleged offence of 'THEFT' between 20<sup>th</sup> day of March 2010 to 20<sup>th</sup> day of October 2011 at Suva in terms of section 291(1) of the Crimes Decree No: 44 of 2009 for dishonestly appropriating several items to the total value of \$ 10, 573, the property which belongs to one Marshall Nusbaum.
02. You pleaded 'GUILTY' to the above mentioned amended charge on 22.06.2012 and having satisfied that your decision to have a progressive approach towards the charge is a well considered one, I proceeded to convict you to the afore mentioned charge on the same day.
03. As expressly admitted by you, the 'Summary Of Facts' reveal that you, Lila Mani, being a house girl of the complainant's house since July 2008, had stolen considerable amount of items during your routinely housekeeping duties. You had volunteered to hand over certain items upon the police visited you after receiving the complaint in this regard. The complainant had managed to identify the items to be belonged to him. Further to the admitted Summary Of Facts, you had made an unqualified admission about this offence even at the caution interview.

04. Upon considering the application of the Prosecution to have an early Hearing as the complainant family is leaving Fiji, the court accommodated that application and the matter had been fixed for Hearing. In the middle of the evidence of Prosecution witness Ms. Marsha Nusbaum, the learned counsel informed court that you are agreeable to change your plea from 'NOT GUILTY' to 'GUILTY'. Then the Prosecution took steps to amend the charge and you pleaded guilty to the said amended charge accordingly. The complainant was also informed the court their desire to finish this case without going for a full Hearing as they are satisfied that they are getting their items back and would manage to leave the country as already scheduled. Therefore, basically no monetary loss has been occurred to the complainant party over this issue.

05. It seems that you have a different version to the allegation. With the subsequent conduct of the complainant and the complainant of your counsel to the Commissioner of Police shows that there was something behind the curtain and that sort of background makes things more uncertain as far as this charge of 'theft' is concerned. But, as you have already agreed, that you had got your-self involved even to a smaller portion of the allegation leveled against you. In that sense you had committed this offence with a crafty manner by keeping the trust of your employer for a long period. This is indeed an act of opportunity and dishonesty. You, Lila Mani, got involved in stealing from your own work place which provided you the employment. There is no doubt that you breached the trust and the confidence of your employer by getting involved to this type of a felony, especially as an employee who is entrusted with the safety of the entire house hold goods therein. Your act manifestly demonstrates the value that you attach to the social values such as trust and confidence which goes to the roots of the relationship of 'employer and employee'. This, undoubtedly aggravates the offence with which you are being charged with.

06. I now proceed to determine the 'sentence' which is most appropriate to the offence that you have already admitted and placed a plea of guilty before this court. Before proceeding ahead, I consider the 'General Principle of sentencing' which is stipulated in section 15(3) of the Sentencing and Penalties Decree-2009 is to make use of the 'sentences of imprisonment as the sanction of last resort' and the purpose and objectives anticipated by sections 4(1) and 4(2) in the 'sentencing guide lines' of the said Decree.

07. The maximum penalty for the offence of 'theft' attracts a punishment of 10 years imprisonment. I now turn to decide a 'starting point' of the sentence that you, Joeli Vuetaki Leuda, are going to receive. In *Kaloumaira V State* [(2008) FJHC 63] and *Manasa Lesuma V State* [(2004) FJHC 490] it is recognized that the tariff for 'simple larceny' is 6 months to 12 months. In *Tikoitoga V State* [(2008) FJHC 44, HAM 088.2007—decided on 18<sup>th</sup> March 2008], it was held that the tariff for 'Larceny' is 18 months to 3 years. But, I pay more attention to justice Shammem as she held in *Vahiqi V State* [(2008) FJHC 348,

HAA080.2008] that tariff for simple 'Larceny' with previous convictions of a felony to be over 9 months.

02. Considering all the above factual and legal aspects, I select 15 months as a starting point for your sentence.

03. You, Lila Mani, urged following mitigatory factors to be considered in favor of you in considering your sentence.

- # you are a first offender of 50 years of age,
- # married and having 02 children and supporting one child in University studies,
- # pleaded guilty at the initial stage of the trial showing true signs of remorse,
- # assisted the complainant to stick to his original plan of leaving the country by pleading guilty to the charge,
- # you purchased all the allegedly stolen items from the garage sale of the complainant's mother,
- # asked the forgiveness of court and the complainant,
- # apologetic and promise not to re-offend and
- # you have lost your employment and presently unemployed.

04. In view of the above mentioned aggravated factors, I add 12 months to the starting point of the sentence of each count to reach the same to 27 months. Now I proceed to reduce 9 months for your early guilty plea as you are entitling for a one third reduction of your sentence in such instances. Further, I decide to reduce 6 more months for all the other mitigatory factors including the fact that you are a 1<sup>st</sup> offender, to which, you drew the attention of court.

05. In this scenario, Lila Mani, your final sentence remains to run for 12 months imprisonment for the count of 'theft'.

06. I am quite aware that in terms of section 26 (2) (b) of the Sentencing and Penalties Decree-2009 that a sentence which is less than 2 years imposed by the Magistrate's court can be suspended.

07. Especially considering the facts that you are a first-offender, pleaded guilty to the charge at the earliest available opportunity showing true colors of remorsefulness, your age, the recovery of the stolen items and especially your subsequent apologetic and co-operative conduct towards the complainant party, I order your sentence of 12 months

imprisonment for committing the offence of 'Theft' contrary to section 291 (1) of the Crimes Decree # 44 of 2009 to be suspended for a period of 3 years commencing from today.

08. Effects of suspended term are explained to you.

09. 28 days to appeal to the High Court.



Janaka P. Bandara  
Resident Magistrate, Suva