

**IN THE RESIDENT MAGISTRATES COURT  
AT LABASA - CRIMINAL DIVISION**

**Criminal Case No. 632 of 2017**

**BETWEEN :** The State

**Prosecution**

**AND :** Ratu Penaia Rosaumaka

**Accused**

For the State : Sgt. Qolitabua  
For the Accused : In-person

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**SENTENCE**

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1. The accused has been charged for the following offences:

**First Count**

**Statement of Offences (a)**

**BURGLARY:** Contrary to section 312 [1] of the Crimes Act of 2009

**Particulars of offence (b)**

RATU PENAIA ROSAUMAKA between 8<sup>th</sup> day of December, 2017 and the 11<sup>th</sup> day of December, 2017 at Labasa in the Northern Division, as a trespasser, broke and entered into the office of **SOUTH PACIFIC VALUATION** with intent to commit theft.

**Second Count**

**Statement of Offences (b)**

**THEFT:** Contrary to section 291[1] of the Crimes Act of 2009.

**Particulars of offence [b]**

RATU PENAIA ROSAUMAKA, between the 8<sup>th</sup> day of December, 2017 and the 11<sup>th</sup> day of December, 2017 at Labasa in the Northern Division dishonestly appropriated one HP brand laptop valued at \$850.00, the property of **SOUTH PACIFIC VALUATION** with the intent to permanently deprive the said **SOUTH PACIFIC VALUATION.**”

2. The accused on the day he was first produced elected to have the burglary charge (that is, count 1) dealt with by the Magistrate Court. He was remanded thereafter.
3. When he was produced thereafter he informed the court that he was waiving his right to counsel, indicating his willingness to take his plea to the charges. The charges were put to the accused wherein he pled guilty to both counts and he admitted the summary of facts.
4. The Court is satisfied that the accused's guilty plea was voluntary and unequivocal. The accused is therefore convicted as charged.
5. The summary of facts are stated as follows:

"Between 4.30pm on Friday, 08/12/17 and 8.30am of Monday 11/12/17, at Labasa, one RATU PENAI A ROSAUMAKA, ACCUSED, aged 23yrs, Labourer of Vaturekuka Prison compound, broke and entered into the South Pacific Valuation office and stole 1 x 'HP' brand laptop with charger, valued at \$850.00, the property of SHYAL CHAND, VICTIM, aged 22 yrs, Value officer, of Siberia, LABASA.

On 08/12/17, Victim closed up her office after work. On Monday, dated 11/12/17, of the following week, Victim came to work at 8.30am and discovered her office being broken into and her laptop missing with its charger. She then reported the matter to Police.

Upon receiving of the report Detective Constable 2936 Kalivati Turagaca of Labasa CID, was appointed to be the Investigating officer.

On 18/12/17, the Investigating Officer, noticed a HP laptop being in the property of Accused who was in the station for questioning in a different matter, who then called Victim to view the laptop. Victim did so, and positively identified the HP laptop to be hers which was stolen from her office. Accused was then arrested and interviewed under caution. In the interview, he admitted to the Police to have committed

the offence. He also pointed out to the Police during the reconstruction of the scene how he committed the offence.

Accused was then charged for one count of Burglary, contrary to Section 312(1) and one count of Theft, contrary to Section 291(1), of the Crimes Act of 2009, and is in Police custody to appear at Labasa Magistrate Court on 20/12/17.

**Sub-Recovery:** 1 x HP Laptop with charger”

6. Prosecution informed the court that the accused was a first offender.

7. The accused in a detailed written mitigation submission highlighted the following matters which the court is summarising as follows:

Personal Circumstances

23 years of age, farmer whose father has passed away whilst his mother left the family when the accused was young. The accused tries to assist with the younger sister's education whilst living with relatives.

Mitigation

He is a first offender who committed the act on an opportunistic basis due to the influence of self-induced alcohol intoxication. The accused asks for a suspended sentence or an order for probation to obtain assistance. He also states that he has been receiving counseling in prison from pastors of the Christian faith.

8. The maximum punishment for the offence of burglary is 13 years. In ***Uluicicia v State***<sup>1</sup> Madigan J stated the following:

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<sup>1</sup> [2015] FJHC 61; HAA028.2014 (30 January 2015)

“The tariff for domestic burglary is now between one year and two years with the usual sentence being 15 months. (see Tabeusi [2010] FJHC 426). If the burglary is in breach of trust, such as invading the premises of an employer then a higher sentence could be justified (see Gonerogo HAA 22 of 2012).”

9. The maximum punishment for the offence of theft is 10 (ten) years imprisonment and the tariff for this offence was discussed by Madigan J in ***Ratusili v State***<sup>2</sup> where the following principles were established:

- a. *For a first offence of simple theft the sentencing range should be between 2 and 9 months;*
- b. *Any subsequent offence should attract a penalty of at least 9 months;*
- c. *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;*
- d. *Regard should be had to the nature of the relationship between offender and victim;*
- e. *Planned thefts will attract greater sentences than opportunistic thefts.”*

10. In reaching the appropriate sentence the court is mindful to consider Section 4(1) of the **Sentencing and Penalties Act 2009** which it regurgitates herein below as follows:

“Sentencing Guidelines

4. — (1) *The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

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<sup>2</sup> [2012] FJHC 1249; HAA011.2012 (1 August 2012)

e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes....”

11. In **Laisiasa Koroivuki v the State** (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed:

"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".

12. Considering the gravity of offending and the defendant's culpability, this Court selects 15 (fifteen) months as the starting point of sentencing for count 1 (Burglary) and it selects 5 (five) months as the starting point for count 2 (Theft).

13. This court does not consider that there are any aggravating features of the offending.

14. The court notes mitigation presented as highlighted under paragraph 7 above-herein which it deducts 01 month bringing the sentences to 14 (fourteen) months for count 1 (Burglary) and 4 (four) months for count 2 (theft).

15. The Fiji Court of Appeal specifically his Lordship Justice Madigan in **Rainima v State** [2015] Criminal Appeal No. AAU0022 of 2012 set out the appropriate discounts that courts of first instance must have regard to when sentencing accused

persons whom have pleaded guilty. This court regurgitates verbatim the same as follows:

*"[46] Discount for a plea of guilty should be the last component of a sentence after additions and deductions are made for aggravating and mitigating circumstances respectively. It has always been accepted (though not by authoritative judgment) that the "high water mark" of discount is one third for a plea willingly made at the earliest opportunity. This Court now adopts that principle to be valid and to be applied in all future proceedings at first instance."*

16. As such the Court deducts one third (1/3) from the remaining 14 (fourteen) months for count 1(Burglary) and 4 (four) months for count 2 imprisonment because of the defendant's early guilty plea, which brings the sentence to 9 (nine) months 1(one) week for count 1(Burglary) and 2 (two) months 3(three) weeks for count 2.
17. The Accused has spent approximately 2 (two) months 3 (three) weeks and 5 (days) in remand. Pursuant to Section 24 of the **Sentencing and Penalties Act 2009** that period is deemed as period of imprisonment already served.
18. Following the deductions for the period spent in remand this court notes that for count 2 (theft), the accused has effectively served his sentence however in terms of Count 1(Burglary) the remaining period following deduction of the remand period is 6 (six) months 5(five) days.
19. Therefore the final sentence after deductions are as follows:  
**Count 1(Burglary)** – 6 (six) months 5(five) days;  
**Count 2(Theft)** – No further period of imprisonment as his time in remand has been considered as his period of imprisonment.
20. As the final period of imprisonment falls below 2 (two) years, the court as per Section 26 (2)(b) of the **Sentencing and**

**Penalties Act 2009** has the discretion to order a suspended sentence.

21. In considering whether or not to suspend the sentence the court garners direction from *Goundar, J's* sentencing remarks in ***Muskaan Balagan v State*** [2012] HAA 31/11S 24 April 2012 at [20] as follows:

'Whether an offender's sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. For instance, a young and a first time offender may receive a suspended sentence for the purposes of rehabilitation. But, if a young and a first time offender commits a serious offence, the need for special and general deterrence may override the personal need for rehabilitation. The final test for an appropriate sentence is - whether punishment fits the crime committed by the offender?'

22. In this case the accused is a young first offender. The accused in his mitigation states that he is a farmer and is responsible for his younger sister.

23. Although valid the above factors are the court also has to consider that the offence was committed at the complainant's workplace wherein a tool of employment (that is, the laptop) was taken by the accused.

24. This court should not afford offenders although 'first and young offenders' the benefit of a suspended sentence on the basis of purported rehabilitation especially when the offence is a serious one.

25. There needs to be general deterrence on this type of offences to ensure that house and business owners are not hijacked by apprehensions of fear of being burgled and having items stolen.

26. As such this court shall not suspend the sentence as a result.

27. Therefore Ratu Penaia Rosaumaka you shall serve an immediate custodial sentence of 6 (six) months 5 (days) imprisonment for the offence of **Burglary**. You have already served your sentence for the offence of **Theft**.

28. 28 days to appeal.

  
J.N.L.SAVOU

Resident Magistrate

19<sup>th</sup> March 2018

