

THE RESIDENT MAGISTRATES COURT IN LABASA

CRIMINAL DIVISION

Criminal Case No 493/14

(HAC 72/14)

STATE –V- MALAKAI BALEISANAKI & ANOTHER

For State : **Ms Kumar (ODPP)**
For First Accused : **Mr Kototini. J (LAC)**
For Second Accused : **In Person**
Date of Sentencing
Hearing : **27 February 2018 and 9 May 2018**
Date of Sentencing : **10 July 2018**

SENTENCE

1.0 **MALAKAI BALEISANAKI** you are jointly charged with another and have pleaded guilty to the offence of **AGGRAVATED ROBBERY** contrary to section 311(1) (a) of the Crimes Act No. 44 of 2009. The statement and particulars of the offence are as follows –

Statement of Offence

AGGRAVATED ROBBERY :Contrary to section 311 (1) (a) of the Crimes Act No 44 of 2009.

Particulars of Offence

MALAKAI BALEISANAKI AND ANOTHER be on the 24th of October 2014 at Labasa in the Northern Division stole 1 * compact mobile phone valued at \$1500.00, 1 * sony brand digital camera valued at \$600.00 and 1 * Nokia brand mobile phone valued at \$100.00 all to the total value of \$2200.00 the property of Dharma Reddy and immediately before the stealing they used force on the said DHARMA REDDY, MARGARET REDDY AND CHINAP REDDY.

- 2.0 After the charges were read and explained to you, you pleaded guilty of your own free will and the court holds your plea as unequivocal.
- 3.0 You have admitted to the summary of facts. n October 2014, Dharma Reddy (who was 56 years old at the time) resided at Ranibulublulu, Labasa with his wife Margaret Reddy (who was 55 years old at the time) and his father Chinapa Reddy (who was 79 years old at the time).

Malakai Baleisanaki was aged 22 years in October 2014. He planned 3-4 days before that he will steal from the Reddy Family. He agreed with another person that they will carry out this plan.

On the 24th of October 2014 after 2am he and the other went to Reddy's house. Malakai Baleisanaki stood as a look out while his accomplice removed 3 louver blade and tried to enter through the window but couldn't. He then opened the door to the house through the window and entered the house.

When Dharma Reddy woke up, he was punched him 3 times causing Dharma Reddy to lose consciousness. Margret Reddy woke up too and the accused accomplice punched at least 2 times on her face and the accused person put pillow on Margret Reddy's mouth until she stopped screaming.

The accomplice met Chinapa Reddy on the door way and slapped him 2 times on the face.

Dharma, Margret and Chinapa Reddy all bleed because of the injuries they sustained during the encounter. They all had medical examinations done and had to be treated.

Malakai Baleisanaki and his accomplice then took the items mentioned in the particulars of the charge from the Reddy's house and escaped from the scene.

The matter was reported to police and during the course of investigation; Malakai Baleisanaki was arrested interviewed by police. Amongst other things, he admitted being part of plan to steal from Reddy's house with another. He admitted covering Margret's mouth with a pillow.

So far only the laptop and camera mentioned in the particulars of the charge has been recovered by police during the course of their investigation.

- 4.0 When sentencing you the court is mindful of section 4 (1) and section 4 (2) of the Sentencing and Penalties Decree 2009 as well as the sentencing principles.
- 5.0 The court denounces the form of offending when assessing your culpability. You together with another entered the premises of Mr Reddy, caused injuries by attacking the Reddy's premises and you specifically held Margaret Reddy down by placing a pillow on top of her face and both of you stole items from them premises all to the total value of \$2200.00. People must feel safe in the comfort of their homes.
- 6.0 For the offence of AGGRAVATED ROBBERY the maximum penalty is 20 years imprisonment and the tariff ranges from 8 years to 16 years as established in the case of State-v- Low [2016] FJHC 739; HAC 151.2016 (19 August 2016) where Alguthe. J stated-
 30. 'Therefore, the tariff affirmed by the Supreme Court in Nawalu(*supra*)is applicable to a sentence to be imposed in respect of Crimes Decree offence of Aggravated Robbery where there is a 'spate of **aggravated robberies** '.
 31. However, the operative part in so far as a single case of **Aggravated Robbery** is concerned is to be found at Paragraph 25 of Wallace Wise(*supra*)judgment.
 32. His Lordship the Chief Justice Anthony Gates observed:

*“The matter does not end there. We believe that offences of this nature should fall within the range of 8-16 years imprisonment. Each case will depend on its own peculiar facts. But this is not simply a case of robbery, but one of **aggravated robbery**. The circumstances charged are either that the robbery was committed in company with one or more other persons, sometimes in a gang, or where the robbers carry out their crime when they have a weapon with them”. (emphasis mine)*

33. This Court is of the view that a tariff range of 8-16 years’ imprisonment has been prescribed for a single offence of **Aggravated Robbery** and the reference to Nawalu (*supra*) by the Supreme Court in Wallace Wise (*supra*) should be considered *obiter* in so far as a single case of **Aggravated Robbery** is concerned.’

7.0 In the case of State –v- Manoa [2010] FJHC 409; HAC 061 of 2010 (6 August 2010) Goundar J adopted the same starting tariff and stated –

[10] The maximum penalty for robbery with violence under the Penal Code is life imprisonment, while the maximum penalty for aggravated robbery under the Crimes Decree is 20 years imprisonment. Although the maximum sentence under the Decree has been reduced to 20 years imprisonment, in my judgment, the tariff of 8 to 14 years imprisonment established under the old law can continue to apply under the new law. I hold this for two reasons. Firstly, the established tariff of 8 to 14 years under the old law falls below the maximum sentence of 20 years under the new law. Secondly, under the new law, aggravated robbery is made an indictable offence, triable only in the High Court, which means the Executive's intention is to continue to treat the offence seriously.

8.0 In Nadavelevu –v- State [2015] FJHC 651; HAC 46 of 2015s (10 September 2015) Temo J stated –

Aggravated Robbery " is a serious offence, and it carries a maximum penalty of 20 years imprisonment (section 311 (1) of the Crimes Decree 2009). The tariff for a spate of robberies is a sentence between 10 to 16 years imprisonment: Nawalu v State, Criminal Appeal Case No. CAV 0012 of 2012, Supreme Court of Fiji. The tariff for a single case of robbery with violence is 8 to 16 years imprisonment: Wallace Wise v The

State, Criminal Appeal Case No. CAV 0004 of 2015, Supreme Court of Fiji. The actual sentence will depend on the aggravating and mitigating factors.'

Given that you were equally culpable with the other, the court picks a starting point of 8 years imprisonment which is at the lower end of the tariff given that this is only a one off incident.

- 9.0 The aggravating factor is that there was some form of pre-planning, there was home invasion and the offence occurred during the night, with one of the complainants being a senior citizen and Margret Reddy suffering injuries. The court adds 1 year to the sentencing for aggravating factors.
- 10.0 In oral mitigation you are a young and first offender looking after your siblings who attend school and residing with your wife. You had assisted and cooperated with police in recovering the stolen items. You are remorseful and have taken responsibility for the offence. There was a recovery of a laptop and a camera and the court deducts 2 years for your mitigating factors.
- 11.0 You have pleaded guilty, although not at the earliest and lasting 4 years from when the case was initiated. However given that you have saved the courts time in proceeding to trial the court will deduct 1 year. Your sentencing is now below the tariff because of the reduction of your plea.
- 12.0 You have spent 8 months in remand from when you were initially charged including when you were captured and kept in remand in 2018. This will be deducted from your sentencing.

MALAKAI BALEISANAKI you are hereby sentenced with conviction to 5 years 4 months imprisonment. 4 years on non-parole.

- 13.0 28 days to appeal.
- 14.0 The court clerk will explain the sentence and the implications of the sentence.



Ms Senileba Levaei

Resident Magistrate

